



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

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## Committee against Torture

### Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 826/2017<sup>\*, \*\*</sup>

<i>Communication submitted by:</i>	Ismet Bakay (represented by counsel, El kbir Lemseguem)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Morocco
<i>Date of complaint:</i>	30 May 2017 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 115 of the Committee's rules of procedure, transmitted to the State party on 8 June 2017 (not issued as a public document)
<i>Date of decision:</i>	... November 2019
<i>Subject matter:</i>	Extradition to Turkey
<i>Procedural issues:</i>	Exhaustion of domestic remedies; inadmissibility owing to non-substantiation
<i>Substantive issue:</i>	Risk of torture if extradited for political reasons (non-refoulement)
<i>Article of the Convention:</i>	3

1.1 The complainant is Ismet Bakay, a national of Turkey born on 5 April 1984. He is facing extradition to Turkey and considers that his removal would constitute a violation by Morocco of article 3 of the Convention. Morocco ratified the Convention on 21 June 1993 and has made the declaration pursuant to article 22 of the Convention, effective from 19 October 2006. The complainant is represented by counsel, El kbir Lemseguem.

1.2 On 8 June 2017, pursuant to rule 114 (1) of its rules of procedure, the Committee, acting through its Rapporteur on new complaints and interim measures, asked the State party not to deport the complainant to Turkey while the complaint was being considered.

\* Adopted by the Committee at its sixty-eighth session (11 November–6 December 2019).

\*\* The following members of the Committee participated in the examination of the communication: Felice Gaer, Abdelwahab Hani, Claude Heller Rouassant, Jens Modvig, Ana Racu, Diego Rodríguez-Pinzón, Sébastien Touzé and Bakhtiyar Tuzmukhamedov. Pursuant to rule 109, read in conjunction with rule 15, of the Committee's rules of procedure, and paragraph 10 of the guidelines on the independence and impartiality of members of the human rights treaty bodies (the Addis Ababa guidelines), Essadia Belmir did not participate in the examination of the communication.



### **The facts as submitted by the complainant**

2.1 The complainant had been working as a school teacher in Turkey since 2010. After several of his fellow teachers were arrested arbitrarily, he decided to leave Turkey with his wife and young son<sup>1</sup> in March 2016. They set up home in Casablanca in Morocco, where the complainant started his own business. On 31 August 2016, he registered his company in the commercial register.

2.2 On 27 July 2016, the prosecutor general of Balikesir province in Turkey opened an investigation into the complainant for membership of a terrorist organization<sup>2</sup> and financing terrorism.

2.3 On 21 February 2017, the Turkish authorities filed a request for the complainant's extradition with the Moroccan authorities. On 28 March 2017, the complainant was summoned to appear before Casablanca Court of First Instance, which ordered that he be incarcerated pending extradition and that he be held in Salé prison until extradition proceedings were initiated before the Court of Cassation.

2.4 At a hearing before the Court of Cassation of Morocco on 3 May 2017, the complainant, with the assistance of his lawyers, denied the allegations contained in the case file submitted by the Turkish authorities, which were unsubstantiated and based solely on two detailed testimonies that were riddled with contradictions. The complainant argued that there had been no surveillance, no questioning and no summons by or from the Turkish authorities since 2004.<sup>3</sup> He also argued that the extradition request was of a political nature, in that it was based on the fact that he was a human rights activist who had adopted political opinions at variance with those of the political regime in power in Turkey and on the Turkish Government's political characterization of the Fethullah terrorist organization/Parallel State Structure as a terrorist group. He also invoked the danger to which he would be exposed in Turkey given the general human rights situation prevailing there, particularly after the attempted coup d'état of 15 July 2016, which was followed by a massive wave of arrests, trials and convictions.

2.5 In a hearing on 10 May 2017, the complainant submitted a document dated 8 May 2017 which attested to an asylum application he had submitted to the Office of the United Nations High Commissioner for Refugees in Rabat,<sup>4</sup> invoking his right to international protection and in particular to non-refoulement, in accordance with articles 31, 32 and 33 of the Convention relating to the Status of Refugees and article 29 of Act No. 02-03 of 11 November 2003 on the admittance and residence of foreign nationals in the Kingdom of Morocco and on illegal emigration and immigration.

2.6 On 10 May 2017, the Court of Cassation of Morocco ruled in favour of the complainant's extradition to Turkey.

### **The complaint**

3.1 The complainant maintains that, if he is extradited to Turkey, he will be at risk of being subjected to torture by the Turkish authorities, in violation of his rights under article 3 of the Convention.

3.2 On 20 July 2016, after the attempted coup d'état of 15 July 2016, Turkey declared a state of emergency throughout the country. Since then, judges, journalists, lawyers and academics face "arbitrary repression and a crushing of fundamental freedoms".<sup>5</sup> The political context in Turkey since the attempted coup makes it impossible to guarantee that the procedural rules of a State based on the rule of law will be respected and is thus an impediment to extradition in accordance with international standards. On 21 July 2016,

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<sup>1</sup> Born on 20 June 2013.

<sup>2</sup> Fethullah terrorist organization/Parallel State Structure, a conservative Islamist movement composed mainly of academic institutions.

<sup>3</sup> He has no criminal record.

<sup>4</sup> On 20 September 2017, the Swiss State Secretariat for Migration informed the complainant's wife that she and her son had been granted asylum in Switzerland.

<sup>5</sup> European Democratic Lawyers and European Magistrates for Democracy and Freedoms, "*Le glas de la démocratie ne cesse de sonner en Turquie*" (The death knell of democracy continues to sound in Turkey), joint press release, 25 March 2017.

Turkey announced that it intended to derogate from the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) in line with article 15. In a resolution of 25 April 2017, the Parliamentary Assembly of the Council of Europe expressed its deep concern about the human rights situation in Turkey and noted that “eight months after the attempted coup, the situation has deteriorated and measures have gone far beyond what is necessary and proportionate.”<sup>6</sup> The Parliamentary Assembly also highlighted that large-scale purges had been carried out in the public administration,<sup>7</sup> that a large number of individuals had been arrested and kept in custody waiting indictment,<sup>8</sup> that many civil servants had been dismissed, and that the measures taken against them, which included cancelling their passports, banning them from ever working again in the public administration and withdrawing their access to the social security system, amounted to the “civil death” of the persons concerned.<sup>9</sup> In the Parliamentary Assembly’s view, respect for fundamental rights was not guaranteed in Turkey.<sup>10</sup> In view of all these circumstances, the complainant faces a personal risk of being subjected to torture if he returns to his country.<sup>11</sup>

3.3 Furthermore, the Greek Supreme Court has refused to extradite eight Turkish soldiers on the grounds that the Greek courts could not in good conscience agree to extradite them to Turkey, a country where the Court judged there to be a risk of the death penalty being reintroduced, where there is evidence of political dissidents being subjected to degrading and inhuman treatment, and, lastly, where there is no fair trial in the strict sense of the word.

3.4 The complainant therefore faces a foreseeable, personal, present and real risk of being subjected to torture if extradited to Turkey.

#### **State party’s observations on admissibility and the merits**

4.1 On 7 August 2017, the State party contested the admissibility of the complaint. It specifies that the Moroccan authorities received the request for the complainant’s extradition to Turkey from the Turkish authorities – formally and through diplomatic channels – on the basis of the Agreement on Mutual Assistance in Criminal Matters and Extradition concluded between the Kingdom of Morocco and the Republic of Turkey on 15 May 1989. On 10 May 2017, the Court of Cassation ruled in favour of the extradition request, concluding that the Turkish authorities’ request was not only supported by an international arrest warrant, but also met the conditions of form and substance required by the Moroccan Code of Criminal Procedure and by the Agreement on Mutual Assistance. In court, the complainant fully benefited from his rights, as guaranteed by the universally recognized principles and rules of the right to a fair trial.

4.2 Even though the Court of Cassation’s decision could not be challenged through an ordinary appeal process, it could be subject to an application for revocation in accordance with articles 563 and 564 of the Code of Criminal Procedure.<sup>12</sup> The complainant has thus not exhausted all domestic remedies.

<sup>6</sup> Council of Europe, Parliamentary Assembly, The functioning of democratic institutions in Turkey [resolution 2156 (2017)] para. 7.

<sup>7</sup> Ibid., para. 14.

<sup>8</sup> Ibid., para. 16.

<sup>9</sup> Ibid., para. 17.

<sup>10</sup> Ibid., para. 20.

<sup>11</sup> The complainant notes that a woman was subjected to acts of torture at the hands of a mob that was waiting for her at the door of the plane when she was extradited to Turkey from northern Cyprus, in plain view of police officers, but that she had been fortunate enough to escape without being lynched on the airport tarmac, which is supposed to be a high security zone.

<sup>12</sup> Article 563 stipulates that the judgments of the Court of Cassation can be subject to an application for revocation in the following cases: (a) if a decision has been handed down on the basis of documents declared or recognized to be forgeries; (b) to correct judgments vitiated by an obvious material error and that can be remedied using material provided by the decision itself; (c) if the court has failed to rule on a request presented in the context of the presentation of evidence or if the reasoning of the decision has not been specified; and (d) if a decision of inadmissibility or termination of a case has been issued for reasons arising from elements considered to be authentic, but that are determined to be false following the submission of new documents that are equally authentic.

4.3 With respect to the allegation that the extradition request is of a political nature, the Court of Cassation concluded that the acts with which the complainant has been charged in Turkey are criminal acts under Moroccan criminal law, in that they involve the establishment and command of a terrorist organization and money-laundering. Such acts cannot be considered political in nature or associated with a political offence, nor are they akin to a failure to carry out military obligations. They can also not be associated with motives or considerations linked to religion, race, nationality or political opinion. Furthermore, Moroccan criminal law is in line with the Convention and not only provides for the punishment and prevention of torture but also strictly prohibits, without exception, all acts of torture and all other acts of a similar or related nature.

4.4 On 8 December 2017, the State party submitted observations on the merits. Firstly, it sets out procedural details of the complainant's arrest in Morocco in follow-up to the extradition request submitted by the Turkish authorities. The arrest was carried out in accordance with article 29 of the Agreement on Mutual Assistance in Criminal Matters and Extradition concluded between the two countries.

4.5 Secondly, the State party refers to the proceedings before the Court of Cassation, which concluded that the acts with which the complainant is charged in his country of origin are offences under ordinary law, that is, terrorism offences, that also constitute offences under the Moroccan Criminal Code, and that such offences cannot be considered political in nature and are not associated with political offences. During the proceedings, the complainant fully benefited from all guarantees of a fair trial, including access to a lawyer. The State party routinely refuses extradition requests when the conditions set under article 721 of the Code of Criminal Procedure<sup>13</sup> are met. There are sufficient provisions in national legislation to implement the principles of the Convention adequately. The complainant has not been subjected to any form of torture or ill-treatment in the territory of the State party.

4.6 As an extradition court, the Court of Cassation is not competent to rule on the essential legal value of the evidence contained in the extradition request. The Court considered that the extradition request was not political in nature, as the complainant was implicated in terrorism and the financing of terrorism. In essence, extradition and refoulement are two completely different legal procedures.

#### **Complainant's comments on the State party's observations**

5.1 On 29 December 2017, the complainant asserted that the application for revocation invoked by the State party is, as specified in the Code of Criminal Procedure, an exceptional remedy. It is not an ordinary appeal against a decision handed down by a court of first instance or a court of appeal, but rather an exceptional remedy against a decision handed down by the Court of Cassation itself. Thus, applications for revocation are brought not before a higher court, but before the same Court of Cassation.

5.2 Moreover, the application for revocation procedure is ineffective and would serve no purpose in the present case. Firstly, the complainant has no new points of evidence that would be decisive in the examination of his appeal by the very same court that issued the ruling in favour of his extradition. Secondly, in similar cases, applications for revocation have not been effective.<sup>14</sup> Thirdly, an application for revocation does not have suspensive effect. This being the case, the complainant cannot be required to initiate such an appeal and to await its outcome while constantly facing the risk of being extradited and exposed to irreversible harm.

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<sup>13</sup> Article 721 stipulates that extradition will not be agreed when the offence for which it is requested is considered a political offence, or an offence connected with a political offence, by the State of Morocco. This rule applies, in particular, when the State of Morocco has substantial grounds for believing that an extradition request apparently related to an ordinary offence has in fact been made for the purpose of prosecuting or punishing a person on grounds of his or her race, religion, nationality or political opinion, or may aggravate this person's situation for any of these reasons.

<sup>14</sup> The complainant refers to the case of *Alhaj Ali v. Morocco* (CAT/C/58/D/682/2015), where the complainant submitted an application for revocation of the decision of the Court of Cassation, without success.

5.3 Lastly, the complainant refers to the high cost of the application for revocation – the equivalent of €100 – if the appeal is dismissed. In view of the finances of the complainant, who is in prison pending extradition and does not have family in Morocco, the deposit requirement is onerous and beyond what he can afford.

5.4 In his observations of 26 May 2018, the complainant clarifies the subject of the appeal, explaining that it is not the arrest procedure in Morocco, nor the terms of the mutual assistance agreement concluded between Morocco and Turkey, but rather the judicial opinion handed down by the Court of Cassation and the extradition-related proceedings that ensued. The State party has failed to meet its obligations under article 3 of the Convention.

5.5 The Court of Cassation has not applied article 721 of the Code of Criminal Procedure. It has not verified whether the request for the complainant's extradition is political in nature, while in the Turkish extradition case file there is a glaring gap between the unfounded evidence adduced by Turkey – detailed statements presented without material evidence, legitimate financial transactions, personal notes and correspondence exchanged between the complainant and his businessmen friends – and the grave and serious charges in connection with terrorism and the financing of terrorism. This clear and considerable discrepancy should be sufficient in and of itself to prompt the State party to give greater consideration to the complainant's allegations and, consequently, to have serious doubts about the hidden nature of the extradition request. Assessing such a discrepancy is the essence of article 721 of the Moroccan Code of Criminal Procedure and article 3 of the Convention.

5.6 Although the Court of Cassation is not competent to assess the essential legal value of the evidence contained in the extradition request, it does have full legal capacity and competence to assess the evidence in relation to the other elements of the case, in accordance with the provisions of article 721 of the Code of Criminal Procedure and article 3 of the Convention. The Court of Cassation has the right to question the hidden reasons behind the request for the complainant's extradition and to take real and concrete steps to make an informed decision.

5.7 The State party does not explain how it was able to conclude that the complainant was involved in the acts with which he is charged by Turkey, especially since it maintains that the Court of Cassation cannot assess the merits of the case linked to the extradition request. According to the testimony of a person who knows the complainant, he is a religious moderate bearing no resemblance to the description of him provided by his country's Government.

5.8 The complainant notes that the principle of non-refoulement established in article 3 of the Convention applies to both expulsion and extradition.

5.9 Lastly, the complainant refers to paragraph 6 of the Committee's general comment No. 1 (1997) on the implementation of article 3 of the Convention in the context of article 22,<sup>15</sup> arguing that the Committee interprets article 3 of the Convention as a provision that imposes on the State party an obligation to assess whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture if expelled, returned or extradited. All legal means of assessing the risk of torture are legitimate and should be explored, including the assessment of the general human rights situation in Turkey. The extension of the state of emergency in Turkey has led to grave human rights violations, including serious acts of torture, as reported by the Office of the United Nations High Commissioner for Human Rights (OHCHR) in its report of 20 March 2018.<sup>16</sup> The use of torture, arbitrary detention and arbitrary deprivation of the right to work and the right to freedom of movement, expression and association was also denounced in the 2017 report.<sup>17</sup> The complainant also notes that the German authorities have criticized Turkey for misuse of the International Criminal Police Organization (INTERPOL) since the attempted coup d'état in 2016. In the complainant's view, the INTERPOL National Central Bureau in

<sup>15</sup> This general comment was replaced on 6 December 2017 by general comment No. 4 (2017) on the implementation of article 3 of the Convention in the context of article 22.

<sup>16</sup> OHCHR, *Report on the impact of the state of emergency on human rights in Turkey, including an update on the South-East: January–December 2017*, March 2018, paras. 7, 77, 81 and 83.

<sup>17</sup> OHCHR, *Report on the human rights situation in South-East Turkey, July 2015 to December 2016*, February 2017.

Morocco should have examined the notice issued against him more closely and should have ignored it, in line with articles 2 and 3 of the Constitution of INTERPOL.<sup>18</sup>

5.10 The complainant requests that he be released and be accorded international protection in the State party's territory or in a safe third country.

### Issues and proceedings before the Committee

#### *Consideration of admissibility*

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

6.2 The Committee recalls that, in accordance with article 22 (5) (b) of the Convention, it shall not consider any complaint from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. It notes that the State party argues that the complainant has not exhausted all available domestic remedies and invokes the possibility of an application for revocation. The Committee also notes the complainant's argument, which the State party does not contest, regarding the special nature of this remedy, which does not have suspensive effect and therefore provides no guarantee of satisfaction. The Committee observes that, pursuant to article 563 of the Moroccan Code of Criminal Procedure, this remedy offers the possibility of challenging decisions of the Court of Cassation in the following situations: (a) if the judgment was handed down on the basis of documents recognized to be forgeries; (b) if necessary to correct obvious material errors; (c) to overturn a court decision for lack of reasoning in the judgment; and (d) to quash decisions based on grounds that were considered authentic but have proved to be false. The Committee also notes that in the present case the complainant raises the risk of being tortured by the Turkish authorities if he is extradited to Turkey. It considers, therefore, that, given the specific requirements of article 563 of the Code of Criminal Procedure, the complainant's claim that he would be at risk of torture would not appear to be a possible subject for an application for revocation. The State party has neither indicated nor demonstrated the contrary. In addition, the Committee recalls that, in order to be effective, a remedy must offer the possibility of close, rigorous scrutiny of the complainant's grievance and of a particularly prompt response.<sup>19</sup> Moreover, the suspensive effect of a remedy is one of the essential procedural guarantees in expulsion proceedings, since suspension is intended to prevent possible violations of the principle of non-refoulement and thus to ensure the full implementation of article 3 of the Convention.<sup>20</sup>

6.3 The Committee refers to its jurisprudence and recalls that in the present case, in accordance with the principle of exhaustion of domestic remedies, the complainant was only required to apply for remedies that are directly related to the risk of being subjected to torture in Turkey.<sup>21</sup> The Committee notes that the State party has not specified how an application for revocation of the Court of Cassation's decision of 10 May 2017 could affect the complainant's extradition to Turkey, as it has not indicated whether this remedy has suspensive effect. The Committee also notes that the State party has not refuted the complainant's allegation that applications for revocation do not have suspensive effect. In addition, the State party has not indicated whether the complainant's grievance could be invoked in application for revocation proceedings. The Committee recalls that in several cases that have been brought to its attention, the Head of Government has signed the extradition decree before the Court of Cassation has even issued a decision on the application for revocation,<sup>22</sup> thereby confirming that it considered the judgment of the Court of Cassation to be final and to have the force of *res judicata*. Considering that Moroccan

<sup>18</sup> See Constitution of INTERPOL, I/CONS/GA/1956 (2017).

<sup>19</sup> European Court of Human Rights, *M.S.S. v. Belgium and Greece*, application No. 30696/09, judgment of 21 January 2011, para. 293.

<sup>20</sup> Committee's general comment No. 4, paras. 13, 18 (e) and 34.

<sup>21</sup> *Gharsallah v. Morocco* (CAT/C/64/D/810/2017), para. 7.4; and *Kalinichenko v. Morocco* (CAT/C/47/D/428/2010), para. 14.3. See also the Committee's general comment No. 4, para. 34.

<sup>22</sup> See *R.A.Y. v. Morocco* (CAT/C/52/D/525/2012), paras. 6.3 and 6.4.

law does not specify whether this remedy has suspensive effect, the real possibility of the complainant being able to invoke his grievance during the proceedings and the fact that the State party provides no examples of applications for revocation having been filed and cites no specific examples of jurisprudence clarifying the suspensive nature and the urgency of applications for revocation,<sup>23</sup> the Committee is not in a position to conclude that the fact that the complainant did not submit an application for revocation prevents him from submitting his complaint to the Committee.<sup>24</sup> Therefore, since the application for revocation does not allow the complainant to invoke an actual violation of a right and owing to its exceptional nature and lack of suspensive effect, the Committee concludes that this remedy is not effective and even less useful. In the circumstances of the present case, the Committee finds that article 22 (5) (b) of the Convention does not preclude it from declaring the communication admissible.

6.4 The Committee also notes that the State party has challenged the admissibility of the complaint on the grounds of insufficient substantiation, since the complainant alleges that the extradition request from Turkey was political in nature. However, the Committee notes the complainant's argument that he would be at risk if extradited, as a person related to the Fethullah terrorist organization/Parallel State Structure, which has been described as a terrorist group by the Turkish Government. The Committee therefore finds that the complainant has sufficiently substantiated his complaint for the purposes of admissibility.

6.5 The Committee accordingly finds that the communication is admissible under article 22 of the Convention with respect to the alleged violation of article 3 and proceeds to consider it on the merits.

#### *Consideration of the merits*

7.1 The Committee has considered the communication in the light of all the information made available to it by the parties, in accordance with article 22 (4) of the Convention.

7.2 In the present case, the issue before the Committee is whether the complainant's extradition to Turkey would constitute a violation of the State party's obligation under article 3 (1) of the Convention not to expel or to return ("refouler") a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture. The Committee recalls that the prohibition of torture is absolute and non-derogable and that no exceptional circumstances whatsoever may be invoked by a State party to justify acts of torture.<sup>25</sup> The principle of "non-refoulement" of persons to another State where there are substantial grounds for believing that they would be in danger of being subjected to torture, in accordance with article 3 of the Convention, is also absolute.<sup>26</sup>

7.3 In assessing whether there are substantial grounds for believing that the alleged victim would be in danger of being subjected to torture, the Committee recalls that, under article 3 (2) of the Convention, States parties must take into account all relevant considerations, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights in the country to which he or she would be returned. In this case, however, the Committee must determine whether the complainant runs a personal risk of being subjected to torture if he is extradited to Turkey. The existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient reason for determining that the complainant would be in danger of being subjected to torture if he is extradited to this country; additional grounds must be adduced to show that the individual concerned would be personally at risk.<sup>27</sup> Conversely, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.<sup>28</sup>

<sup>23</sup> Ibid., para. 6.3.

<sup>24</sup> See *Erdoğan v. Morocco* (CAT/C/66/D/846/2017), para. 8.3.

<sup>25</sup> See the Committee's general comment No. 2 (2007) on the implementation of article 2 by States parties, para. 5.

<sup>26</sup> Committee's general comment No. 4, para. 9.

<sup>27</sup> See *Alhaj Ali v. Morocco*, para. 8.3; *R.A.Y. v. Morocco*, para. 7.2; and *L.M. v. Canada* (CAT/C/63/D/488/2012), para. 11.3.

<sup>28</sup> *Kalinichenko v. Morocco*, para. 15.3.

7.4 The Committee recalls its general comment No. 4 (2017) on the implementation of article 3 in the context of article 22, 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 as a member of a group which may be at risk of being tortured in the State of destination. The Committee’s practice has been to determine that “substantial grounds” exist whenever the risk of torture is “foreseeable, personal, present and real”.<sup>29</sup> It also recalls that the burden of proof lies with the complainant, who must present an arguable case, that is to say, submit substantiated arguments showing that the danger of being subjected to torture is foreseeable, present, personal and real. However, when complainants are in a situation where they cannot elaborate on their case, the burden of proof is reversed and the State party concerned must investigate the allegations and verify the information on which the complaint is based.<sup>30</sup> The Committee also recalls that it gives considerable weight to findings of fact made by 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 (4) of the Convention, taking into account all the circumstances relevant to each case.<sup>31</sup>

7.5 In the present case, the Committee takes note of the complainant’s argument that, in the event of extradition to Turkey, he faces a serious risk of torture because of his perceived membership of the Fethullah terrorist organization/Parallel State Structure. In this regard, the Committee notes that the complainant is being investigated for membership of this movement, and that, according to reports on file, the use of torture and ill-treatment against persons with his profile is commonplace during their detention. Secondly, the Committee notes the complainant’s argument that the Court of Cassation has not implemented article 721 of the Criminal Procedure Code and did not ascertain whether the request for the complainant’s extradition was political in nature. The Committee also notes that, according to the State party, Moroccan criminal law is in line with the Convention, since it establishes that no person may be extradited if he or she is likely to be subjected to persecution on grounds of their race, religion, political opinions or personal situation, or if they may be in danger for any such reasons.

7.6 The Committee must take into account the current human rights situation in Turkey, including the impact of the state of emergency (lifted in July 2018, but the restrictive measures were extended by the adoption of a series of legislative measures). The Committee notes that the successive extensions of the state of emergency in Turkey have led to serious human rights violations against hundreds of thousands of people, involving, in particular, arbitrary deprivation of the right to work and the right to freedom of movement, torture and ill-treatment, arbitrary detention and infringements of the right to freedom of association and expression.<sup>32</sup> The Committee recalls in this regard its concluding observations on the fourth periodic report of Turkey (CAT/C/TUR/CO/4), in which it noted with concern, in paragraph 9, the significant disparity between the high number of allegations of torture reported by non-governmental organizations and the data provided by the State party in its periodic report (see paras. 273–276 and annexes 1 and 2), which suggested that not all allegations of torture had been investigated during the reporting period. In the same concluding observations, the Committee highlighted, in paragraph 19, its concern about recent amendments to the Code of Criminal Procedure, which gave the police greater powers to detain individuals without judicial oversight during police custody. In paragraph 33, the Committee expressed regret about the lack of complete information on suicides and other sudden deaths in detention facilities during the period under review.

7.7 The Committee notes that, according to the complainant, the state of emergency declared in Turkey on 20 July 2016 increased the risk of persons accused of belonging to a terrorist group being subjected to torture while in detention. The Committee recognizes that the concluding observations in question were issued prior to the declaration of the state of emergency. However, it recalls that, following the attempted coup d’état of July 2016, it

<sup>29</sup> Committee’s general comment No. 4, para. 11.

<sup>30</sup> *Ibid.*, para. 38.

<sup>31</sup> *Ibid.*, para. 50.

<sup>32</sup> OHCHR, *Report on the impact of the state of emergency on human rights in Turkey, including an update on the South-East: January–December 2017*, March 2018.



expressed concern about the situation in Turkey in a follow-up letter sent to the State party on 31 August 2016.<sup>33</sup> It also notes that reports on the human rights situation and the prevention of torture issued since the declaration of the state of emergency in Turkey have indicated that the concerns raised by the Committee remain relevant.<sup>34</sup>

7.8 In the present case, the Committee notes that the complainant claims to be at risk of being persecuted on account of his political activities, as he is perceived to be a member of the Fethullah terrorist organization/Parallel State Structure considered responsible for the attempted coup d'état of July 2016. The Committee observes that, according to its 2018 report, OHCHR had access to reliable information indicating that torture and ill-treatment were used during pretrial detention in the context of the Turkish authorities' response to the attempted coup d'état of July 2016.<sup>35</sup> In the same report, OHCHR states that it has documented the use of various forms of torture and ill-treatment in detention, including beatings, threats of sexual assault, actual sexual assault, electric shocks and simulated drowning. These acts of torture were generally intended to extract or coerce confessions or force denunciations of other individuals as part of the investigation of acts connected with the attempted coup d'état.<sup>36</sup> In his report on his mission to Turkey, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment expresses the view that the use of torture was widespread following the attempted coup d'état.<sup>37</sup> The Special Rapporteur also notes that the low number of investigations and prosecutions initiated in response to allegations of torture or ill-treatment seemed grossly disproportionate to the alleged frequency of the violations, indicating insufficient determination on the part of the responsible Turkish authorities to investigate the allegations made.<sup>38</sup>

7.9 With regard to the direct impact of the state of emergency declared on 20 July 2016, the Committee takes note of the concern expressed by OHCHR about the adverse effects of the measures on safeguards against torture and ill-treatment. In particular, OHCHR makes reference to the restrictions that may be imposed on contacts between detainees and their lawyers, the increase in the maximum permitted duration of police custody, the closure of certain independent mechanisms for the prevention of torture and the excessive use of pretrial detention.<sup>39</sup> After successive extensions declared by the Turkish authorities, the state of emergency was formally ended on 19 July 2018. In a letter dated 8 August 2018, the Turkish authorities informed the Council of Europe that the state of emergency was terminated on 19 July 2018 at the end of the deadline set by Decision No. 1182 and that, accordingly, the Government of the Republic of Turkey had decided to withdraw the notice of derogation from the European Convention on Human Rights.<sup>40</sup> However, a series of legislative measures have been adopted that extend the application of the restrictive measures introduced during the state of emergency, such as the possibility of prolonging police custody for up to 12 days.<sup>41</sup>

7.10 In the case of the complainant, the Committee notes that, in authorizing his extradition, the Court of Cassation made no assessment of the risk of torture that this would entail for him in view of the situation prevailing in Turkey since the attempted coup d'état

<sup>33</sup> See [https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/TUR/INT\\_CAT\\_FUL\\_TUR\\_25040\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/TUR/INT_CAT_FUL_TUR_25040_E.pdf).

<sup>34</sup> OHCHR, *Report on the impact of the state of emergency on human rights in Turkey, including an update on the South-East: January–December 2017*, March 2018; OHCHR, *Report on the human rights situation in South-East Turkey, July 2015 to December 2017*, February 2017; and A/HRC/37/56/Add.1.

<sup>35</sup> OHCHR, *Report on the impact of the state of emergency on human rights in Turkey, including an update on the South-East: January–December 2017*, March 2018, para. 7.

<sup>36</sup> *Ibid.*, para. 77.

<sup>37</sup> A/HRC/37/50/Add.1, para. 26.

<sup>38</sup> *Ibid.*, para. 70 to 73.

<sup>39</sup> OHCHR, *Report on the impact of the state of emergency on human rights in Turkey, including an update on the South-East: January–December 2017*, March 2018, para. 83.

<sup>40</sup> See Council of Europe, reservations and declarations for Treaty No. 005, Convention for the Protection of Human Rights and Fundamental Freedoms, 12 June 2019. Available at: [www.coe.int/fr/web/conventions/search-on-treaties/-/conventions/treaty/005/Declarations](http://www.coe.int/fr/web/conventions/search-on-treaties/-/conventions/treaty/005/Declarations).

<sup>41</sup> Human Rights Watch, *Turkey: Events of 2018*. Available at <https://www.hrw.org/world-report/2019/country-chapters/turkey>.

of July 2016, in particular for persons who, like the complainant, are perceived to be, or actually are, members of the Fethullah terrorist organization/Parallel State Structure. The Committee notes that the authorities of the State party merely ascertained that the form and substance of the request for the complainant's extradition received from the Turkish authorities is in conformity with the Agreement on Mutual Assistance signed by the two countries on 15 May 1989, prior to the ratification of the Convention by the State party on 21 June 1993, without assessing the risk of the complainant being subjected to torture if extradited to Turkey from the standpoint of article 3 of the Convention. The Committee recalls that the primary aim of the Convention is to prevent torture.<sup>42</sup>

7.11 In the light of the above, and having regard to the complainant's profile as a member – whether perceived or real – of the Fethullah terrorist organization/Parallel State Structure, the Committee is of the view that the State party should have conducted an individualized assessment of the real and personal risk to which the complainant would be exposed in Turkey, particularly bearing in mind the documented treatment by the Turkish authorities of persons associated with this movement, rather than basing its decision on the assumption that the extradition request had been made in accordance with an agreement between the two countries and that the offences of which the complainant was accused were offences under ordinary law that are also offences under Moroccan criminal law. The Committee also considers that article 721 of the Moroccan Code of Criminal Procedure does not specifically mention the risk of torture and ill-treatment in the event of extradition, but only the risk of worsening the personal situation of individuals who are the subject of extradition requests for reasons linked to their race, religion, nationality or political opinions, when the offence for which their extradition is requested is considered by the State party to be a political offence, or an offence related to a political offence.<sup>43</sup> In the present case, on the basis of the findings of the Court of Cassation sitting as a court of extradition, the Committee cannot conclude that the Court gave consideration to the argument that there was a present, foreseeable, real and personal risk of the complainant being subjected to torture if extradited to Turkey.<sup>44</sup>

8. The Committee, acting under article 2 (7) of the Convention, therefore concludes that the complainant's extradition to Turkey would constitute a breach of article 3 of the Convention.

9. The Committee is of the view that,<sup>45</sup> in accordance with article 3 of the Convention, the State party is required to:

(a) Refrain from extraditing the complainant to Turkey and consider the request for his extradition in the light of its obligations under the Convention. Given that he has been in pretrial detention for more than two years, the State party is also under an obligation to release him;<sup>46</sup>

(b) Ensure that similar violations do not occur in the future by carrying out individual assessments of the real risk of torture and ill-treatment – including by taking into consideration the general human rights situation in the country of return – every time it considers an extradition request under an agreement or an extradition procedure.

10. Pursuant to rule 118 (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.

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<sup>42</sup> *Alan v. Switzerland* (CAT/C/16/D/21/1995), para. 11.5.

<sup>43</sup> See footnote 14.

<sup>44</sup> *Erdoğan v. Morocco*, para. 9.11; *Onder v. Morocco* (CAT/C/66/D/845/2017), para. 7.11; and *Ayden v. Morocco* (CAT/C/66/D/846/2017), para. 8.11.

<sup>45</sup> *Erdoğan v. Morocco*, para. 11; *Onder v. Morocco*, para. 9; and *Ayden v. Morocco*, para. 10.

<sup>46</sup> See *Alhaj Ali v. Morocco*, para. 9.