



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

Distr.: General
13 June 2022
English
Original: French

Committee against Torture

Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 933/2019*, **

<i>Communication submitted by:</i>	A.H. and S.H. (represented by counsel, Martin Pradel and Marc Bailly)
<i>Alleged victim:</i>	H.
<i>State party:</i>	France
<i>Date of complaint:</i>	14 May 2019 (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 24 May 2019 (not issued as a public document)
<i>Date of adoption of decision:</i>	22 April 2022
<i>Subject matter:</i>	Repatriation from the Syrian Arab Republic
<i>Procedural issues:</i>	Admissibility – complaint manifestly ill-founded; standing; admissibility – <i>ratione personae</i>
<i>Substantive issues:</i>	Prevention of torture and other cruel, inhuman or degrading treatment or punishment
<i>Articles of the Convention:</i>	2, 16

1.1 The complainants, A.H. and S.H., are French nationals born in 1959 and 1962, respectively. They claim that the State party has violated the rights of their son, H., a French national born in 1990, who is currently detained in the Syrian Arab Republic. The State party made the declaration provided for in article 22 (1) of the Convention on 23 June 1988. The complainants are represented by counsel, Martin Pradel and Marc Bailly.

1.2 On 24 May 2019, the Rapporteur on new complaints and interim measures, acting on behalf of the Committee, decided not to accede to the complainants' request for interim measures. However, the Committee did ask the State party to take all measures at its disposal to safeguard H.'s life and security of person.

* Adopted by the Committee at its seventy-third session (19 April–3 May 2022).

** The following members of the Committee took part in the consideration of the communication: Todd Buchwald, Claude Heller, Erdogan Iscan, Liu Huawen, Maeda Naoko, Ilvija Pūce, Ana Racu, Abderrazak Rouwane and Bakhtiyar Tuzmukhamedov. Under article 109, read in conjunction with article 15, of the Committee's Rules of Procedure, and paragraph 10 of the Addis Ababa guidelines on the independence and impartiality of members of the human rights treaty bodies, Sébastien Touzé did not take part in the consideration of the communication.



Facts as submitted by the complainants

2.1 The complainants state that, in June 2016, in the context of the Syrian civil war, H., like a number of other French nationals, left France and travelled through Turkey on his way to the Iraqi-Syrian border area. As soon as he crossed the border from Turkey into the Syrian Arab Republic, H. was arrested by Kurdish forces, which control a large part of the north-eastern portion of the territory of the Syrian Arab Republic. In February 2018, the Kurdish forces transferred H. to Mezzeh Prison in Damascus, which is run by the Bashar Al-Assad Government. According to the complainants, it is probable that this transfer was authorized by the French authorities, who are in regular contact with the Kurdish forces. H. was then transferred to Adraa Prison in Damascus, where he remains to the present day. No legal proceedings have been held since his arrest. He has never been brought before a judge, nor has he ever been able to speak with a lawyer. The complainants are sporadically able to speak with him by telephone, but they have received little news of him and are concerned about the conditions under which he is being held.

2.2 The complainants refer to reports that “prisoners are systematically tortured or ill-treated in Syrian prisons” that “over 300 of them die each month” and that “in the centres controlled by the intelligence service, prisoners are constantly tortured and mistreated when they are being questioned, usually in order to force them to ‘confess’ or to extract other types of information or simply to punish them”.¹ Health conditions in the prisons run by the intelligence service are deplorable; the prisons are overcrowded, and food, drinking water and health care are intentionally withheld. Infestations of scabies and fleas are frequent, and diseases spread rapidly. The complainants assert that H. is at risk of death and irreversible physical and mental harm as a result of torture and ill-treatment in Syrian prisons.

2.3 The complainants state that they fall within the jurisdiction of the State party since they hold French nationality and are residents of France. They note that, in a case dealing with a request for the return of French nationals detained in the Syrian Arab Republic, the Administrative Court of Paris, to which a petition for an interim ruling was submitted, declined jurisdiction on the grounds that the matter did not concern an administrative responsibility of the State but rather an act of government that fell within the domain of diplomatic relations. According to the complainants, no French court is competent to rule on the position adopted by the State party regarding French nationals being detained in the Arab Syrian Republic. Even if a court were to instruct the authorities to implement protection measures, neither H. nor the complainants would have any legal means at their disposal to see to it that such a decision was acted upon, since only the Government of France can order the adoption of such measures. The complainants and their counsel have contacted the President of France, the Minister of Justice and the Minister for Europe and Foreign Affairs, but with no result.² The complainants claim that, consequently, no effective domestic remedy is available to them.

2.4 The complainants state that, in January 2019, the Minister of Internal Affairs of the State party announced that approximately 130 French nationals were to be repatriated from the Arab Syrian Republic. However, the French authorities then denied that there was any plan to repatriate French nationals being held in the Arab Syrian Republic or in Iraq. They criticize the inaction of the State party’s authorities, given their regular contacts with the authorities in Rojava and in view of the efforts made by judicial and prison authorities to

¹ Amnesty International, “L’enfer des prisons syriennes : torture et morts en détention”, press release, 18 August 2016, available at: www.amnesty.ch/fr/pays/moyen-orient-afrique-du-nord/syrie/docs/2016/torture-et-morts-massives-de-detenus.

² The complainants refer to a letter dated 1 February 2019 that was sent by their lawyers to the President of France. In that letter, they request the repatriation of a number of French women and children being held in camps run by Kurdish forces in the north-eastern region of the Arab Syrian Republic. They also state in that letter that there are a number of other French nationals in the Iraqi-Syrian zone whose precise location has not been divulged, including H., who they believe is probably being held in Mezzeh Prison in Damascus. They attach a response from the President’s Chief of Staff dated 26 February 2019 in which he denies their request for a meeting to discuss ways of repatriating French nationals being held in camps run by Kurdish forces.

organize repatriations and the recent repatriation of a number of French nationals who had been detained by Kurdish forces.

The complaint

3.1 The complainants claim a violation of article 2, read in conjunction with article 16, of the Convention. They maintain that the Committee's general comment No. 2 (2008) provides a basis for a broader understanding of the concept of jurisdiction in that it affirms that States parties should prevent violations of the rights of persons over whom they exercise jurisdiction, including personal jurisdiction. In addition, under article 2 of the Convention, the State party has an obligation to take such measures as may be necessary to put an end to any form of treatment of its nationals that is prohibited under the Convention; furthermore, article 5 (1) (c) of the Convention refers to the nationals of States parties.

3.2 The complainants assert that article 2 also covers the acts of cruel, inhuman or degrading treatment referred to in article 16 of the Convention. According to them, article 2 of the Convention encompasses the obligation to remove any and all legal obstacles that entail a risk of exposure to treatment prohibited by the Convention.

3.3 The complainants note that the Committee's general comment No. 2 (2008), paragraph 19, states that: "If a person is to be transferred or sent to the custody or control of an individual or institution known to have engaged in torture or ill-treatment, or has not implemented adequate safeguards, the State is responsible, and its officials subject to punishment for ordering, permitting or participating in this transfer." In the instant case, H. was arrested by Kurdish forces who handed him over to the Syrian authorities. In view of the regular contact between the Kurdish forces and the State party, and given the fact that H. is a French national, his transfer would not have been possible without the State party's authorization. In refusing to repatriate H., the State party's authorities have failed to take the necessary measures to protect him and have placed him in danger of being subjected to grave and irreparable violations of his rights under article 2, read in conjunction with article 16, of the Convention.

State party's observations on admissibility

4.1 In its observations dated 23 July 2019, the State party submits that the complaint is manifestly ill-founded and therefore inadmissible, as no evidence has been provided of the capture of H. by Kurdish forces, his transfer to the Syrian authorities, his detention in Damascus or the assertion that the State party has been informed of those allegations. The State party notes that the letter sent by the complainants' lawyers to the President of France mentions that H. is on a list of French nationals "whose precise location has not been divulged" and adds that H. is "probably" being held in Mezzeh Prison, which demonstrates that there is uncertainty as to his location.

4.2 The State party submits that the complaint is also inadmissible because the complainants lack standing. They have not proved that they are H.'s parents or that he has empowered them to represent him even though they say that they are in contact with him.

4.3 The State party argues, furthermore, that the complaint is inadmissible for lack of jurisdiction. It contends that the Committee must verify that the person whose rights have allegedly been violated, rather than the complainants, falls within the State party's jurisdiction. The State party notes that States have undertaken to respect the rights set forth in international human rights instruments, of which the Convention against Torture is one, only in the case of situations which fall within their jurisdiction and over which they exercise sovereignty and effective control. It is not possible, according to the State party, for a State party to be responsible for the implementation of international human rights instruments in situations to which it has not given rise and over which it has no effective control simply by attributing to it the actions of other States or non-State actors. The Committee should bear in mind, on the one hand, what States have undertaken to do when they assume the obligation of adopting legislative, administrative, judicial and other measures to prevent the commission of acts of torture in any territory under their jurisdiction and, on the other hand, the consubstantial links between the concepts of jurisdiction and effective control. Nor does it

seem possible to artificially expand the concept of jurisdiction and thus the scope of the Convention beyond what States understood it to have at the time that they ratified it.

4.4 The State party notes that, in public international law, the concept of jurisdiction is primarily a territorial one; it is only in exceptional circumstances – i.e. when a State exercises effective control over a person located in another territory – that a State may exercise jurisdiction beyond its borders under the Convention.³ The State party notes that the Committee has, on these grounds, found other complaints dealing with acts committed outside the territory of a State party by agents of another State to be inadmissible *ratione personae*.⁴

4.5 The State party notes that the European Court of Human Rights has found that a State party may exercise effective control over an area situated beyond its borders either directly through its armed forces or indirectly through a local subordinate administration.⁵ However, in order for a State to bear responsibility for a human rights violation committed in a territory that is not its own, it must be established that the State wields so decisive an influence over the administration of that territory that it does indeed exercise effective control and that, without its support, the local administration could not function.⁶ The International Court of Justice has developed a similar concept of extraterritorial jurisdiction based on effective control.⁷ In *Djamel Ameziane v. United States*, the Inter-American Commission on Human Rights found that extraterritorial jurisdiction could be present when a State party, through the acts of its agents abroad, exercised total and exclusive control over the persons whose rights were at issue.⁸

4.6 The State party submits that, in the light of this jurisprudence, the complainants' argument that the State party has an obligation under the Convention to protect H. by virtue of his French nationality is not in accordance with either the letter or the spirit of the Convention. According to the State party, general comment No. 2 (2008) indicates only that States bear responsibility for the acts and omissions of their officials, on the one hand, and, on the other, that States parties should take effective measures to prevent acts of torture not only on their "sovereign territory" but also "in any territory under [their] jurisdiction". The State party also contends that the objective of article 5 (1) (b) of the Convention is the punishment of the violations covered by article 4 and the provision of a remedy for the victim but that it does not extend the jurisdiction of a State party within the meaning of article 2 of the Convention to all its nationals located outside its territory or all its nationals located in a territory under its effective control.

³ Vienna Convention on the Law of Treaties, art. 29; European Court of Human Rights, *Banković and others v. Belgium and others*, Application No. 52207/99, decision on admissibility, 12 December 2001, para. 59 et seq.; European Court of Human Rights, *Al-Skeini and others v. the United Kingdom*, Application No. 55721/07, judgment, 7 July 2011, para. 138 et seq. The State party notes that the Inter-American Commission on Human Rights adopted a similar approach; see Inter-American Commission on Human Rights, report No. 17/12, Case No. P-900-08, *Djamel Ameziane v. United States*, decision on admissibility, 20 March 2012, para. 30. See also general comment No. 2 (2008) of the Committee against Torture, para. 16; joint general comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child, para. 12; general comment No. 31 (2004) of the Human Rights Committee, para. 10.

⁴ See *Z. v. Australia*, (CAT/C/53/D/511/2012); *Agiza v. Sweden* (CAT/C/34/D233/2003); *Roitmann Rosenmann v. Spain* (CAT/C/28/D/178/2000 and CAT/C/28/D/176/2000/Corr.1), para. 6.6.

⁵ European Court of Human Rights, *Al-Skeini and others v. the United Kingdom*, Application No. 55721/07, judgment, 7 July 2011, para. 139.

⁶ European Court of Human Rights, *Ilascu and others v. the Republic of Moldova and the Russian Federation*, Application No. 48787/99, judgment, 8 July 2004, para. 392; European Court of Human Rights, *Mozer v. the Republic of Moldova and the Russian Federation*, Application No. 11138/10, judgment, 23 February 2016, para. 110.

⁷ International Court of Justice, Advisory Opinion of 9 July 2004 on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, para. 109–112.

⁸ Inter-American Commission on Human Rights, report No. 17/12, Case No. P-900-08, *Djamel Ameziane v. United States*, decision on admissibility, 20 March 2012, para. 30.

4.7 The State party submits that H. is not under the control or authority of French officials or agents; nor is he in a territory under the State party's effective control. If H. is being held in Adraa Prison in Damascus, he is under the exclusive control of the Syrian authorities. Moreover, the complainants' allegations that H. was handed over to the Syrian authorities by Kurdish forces and that the French authorities purportedly gave their consent for that transfer are mere suppositions that are not backed up by any document or tangible evidence.

Comments by the complainants on the observations of the State party regarding admissibility

5.1 In their comments dated 26 August 2019, the complainants note that the French authorities repatriated several orphans in 2019 and that French military personnel had entered the camps in question. They contend that the announcement of the repatriation of 12 French combatants from the Arab Syrian Republic to Iraq by the President of Iraq at a press conference held with the President of France and the fact that it was carried out in the presence of French officials show that that transfer could not have taken place without the State party's authorization. They affirm that those repatriations show that the authorities of the State party have the power to determine the fate of their nationals in the Arab Syrian Republic.

5.2 The complainants argue that, under rule 113 of the Committee's rules of procedure, they are allowed to submit a complaint on behalf of H. without having to prove their kinship because H. is unable to submit the complaint in person or to designate them to represent him. They provide a copy of H.'s birth certificate to prove that they are his parents and state that he has verbally authorized them to act on his behalf before the Committee. In any event, requiring documentary consent would constitute an insurmountable obstacle to the submission of a complaint, which would be in violation of both the letter and the spirit of the Convention.

5.3 The complainants contest the State party's interpretation of the jurisprudence of the European Court of Human Rights. They argue that it is necessary to distinguish between two types of situations: the extraterritorial application of jurisdiction based on an extraterritorial State act, and its extraterritorial application based on an act of a purely national nature by a State that concerns a given person and that has a direct impact on that person's legal situation.⁹ They submit that the jurisprudence shows that a State's jurisdiction "can be involved because of acts of [its] authorities producing effects outside [its] own territory."¹⁰ The Court has never held to the criterion of effective control as a *sine qua non* for the extraterritorial exercise of jurisdiction; it has instead preferred a broader approach based on the concept of "decisive influence", which does not entail control over the local authority or the direct participation of agents of the State party.¹¹ The Court found that: "The fact that the local administration survives as a result of the Contracting State's military and other support entails that State's responsibility for its policies and actions."¹² The complainants assert that, in the instant case, the State party exercises just such an influence over the northern region of the Arab Syrian Republic owing to its military intervention in the form of Operation Chammal, which has been very effective in assisting the Syrian Democratic Forces (SDF) to drive Da'esh from the region, and to the fact that it is partnering with SDF to stabilize liberated areas and set up a governance structure. They refer to a press release of the Office of the President of France dated 15 March 2019 in which the Minister for Europe and Foreign Affairs thanked SDF for its cooperation in repatriating several orphans and referred to the commitment of France to combating Da'esh. According to the complainants, the State party

⁹ Marko Milanovic, *Extraterritorial application of human rights treaties: Law, principles and policies* (Oxford, Oxford University Press, 2011), p. 8.

¹⁰ European Court of Human Rights, *Drozdz and Janousek v. France and Spain*, Application No. 12747/87, judgment, 26 June 1992, para. 91; European Court of Human Rights, *Sejdovic v. Italy*, Application No. 56581/00, judgment, 1 March 2006.

¹¹ European Court of Human Rights, *Ilascu and others v. the Republic of Moldova and the Russian Federation*, Application No. 48787/99, judgment, 8 July 2004, para. 392.

¹² European Court of Human Rights, *Catan and others v. Republic of Moldova and the Russian Federation*, Application Nos. 43370/04, 8252/05 and 18454/06, judgment, 19 October 2012, para. 106; *Sargsyan v. Azerbaijan*, Application No. 40167/06, judgment, 16 June 2015, para. 128.

is therefore fully cognizant of the situation of the Da'esh combatants being held by the Kurdish forces and, a fortiori, those of its own nationals among them.

5.4 The complainants note that, in *Stephens v. Malta (No. 1)*,¹³ the European Court of Human Rights was of the opinion that the extradition request issued by Malta had given rise to a jurisdictional link between the requesting State and the person named in that request, inasmuch as the applicant's deprivation of liberty had its "sole origin" in the measures taken by the Maltese authorities. Furthermore, the European Commission of Human Rights has stated that the national of a State is partially subject to its jurisdiction wherever he or she is.¹⁴ In the instant case, when H. was arrested by Kurdish forces, they must have informed the authorities of the State party so that those authorities could take charge of the situation, given the numerous occasions on which senior Syrian Kurd officials have called for the repatriation of the foreign nationals being held in their camps and in view of their close ties with the State party's authorities, as illustrated by the support they provide for the management of those detainees. In view of the repatriations which the State party decided should be carried out in March and June 2019 and the transfer of 12 French combatants to Iraq, it is beyond doubt that the authorities of the State party have the power to determine the fate of its nationals who are being held in the Arab Syrian Republic. Consequently, it is out of the question that the Kurdish forces could have transferred H. to a prison run by the Syrian Government without the prior consent of the State party. With regard to the press release issued by the Special Rapporteur on extrajudicial, summary or arbitrary executions of 12 August 2019 concerning the State party's role in the transfer of seven French nationals to Iraq,¹⁵ it must be considered that the State party may well have been the "sole origin" of H.'s transfer to Damascus. According to the complainants, the decision to carry out his transfer has given rise to a jurisdictional link between the State party and H.

5.5 The complainants reiterate their allegation of a violation under article 2, read in conjunction with article 16, of the Convention. They also reiterate their allegation that the persons held in the prisons run by the Syrian authorities are systematically tortured and that the detention of H. in such a prison places him in danger, on a daily basis, of death or irreversible physical and mental harm. They provide a copy of confirmation from Adraa Prison that H. is being held there.

State party's additional observations on admissibility and the merits

6.1 In a note verbale dated 26 November 2019, the State party argues that it exercises its jurisdiction with regard to H. on the basis of decisions taken on its territory. It notes that, in *Al-Skeini and others v. the United Kingdom*, the European Court of Human Rights found that a contracting State's jurisdiction may extend to acts of its authorities which produce effects outside its own territory as a specific case in which the contracting State exercises its authority and control through one of its agents (*ratione personae*), not as a distinct exception to the general rule of territorial jurisdiction. Moreover, the notion that anyone adversely affected by an act imputable to a contracting State automatically falls within the jurisdiction of that State has been rejected by the European Court of Human Rights.¹⁶ The State party disputes the relevance of the jurisprudence invoked by the complainants in the present case.

6.2 The State party also rejects the notion that public international law recognizes a link between jurisdiction and nationality. It submits that the complainants are confusing the concept of the personal jurisdiction of the State – i.e. the powers that the State exercises over its nationals abroad by reason of their nationality – with the notion of extraterritorial jurisdiction. With regard to the legal power whereby a State can legitimately take action in

¹³ European Court of Human Rights, *Stephens v. Malta*, Application No. 11956/07, judgment, 21 April 2009.

¹⁴ European Commission of Human Rights, *Cyprus v. Turkey*, Applications Nos. 6780/74 and 6950/75, decision, 26 May 1975, para. 8.

¹⁵ Office of the United Nations High Commissioner for Human Rights, "UN expert urges efforts from France for the return of seven nationals awaiting execution in Iraq", press release, 12 August 2019.

¹⁶ European Court of Human Rights, *Banković and others v. Belgium and others*, Application No. 52207/99, decision on admissibility, 12 December 2001, para. 75; European Court of Human Rights, *Chagos Islanders v. The United Kingdom*, Application No. 35622/04, decision, 11 December 2012, para. 65.

respect of its nationals abroad in such ways as issuing instructions, resolving a matter of personal status or making other arrangements on their behalf, personal jurisdiction may be exercised without impinging upon the territorial jurisdiction of the State where the person in question is located. Thus, H. does not fall within the jurisdiction of the State party simply by virtue of his nationality.

6.3 In addition, confounding nationality with jurisdiction would give the national of a State party who is located outside his or her country of origin a form of protection which non-nationals would not enjoy outside their countries, which would run counter to the purpose of the Convention, which is to afford protection to individuals regardless of their nationality. The jurisprudence cited by the complainants confirms that extraterritorial jurisdiction is exercised over nationals outside their own country to the extent that representatives of the State have authority over those persons.¹⁷ However, the concept of jurisdiction espoused by the complainants would open the way for universal jurisdiction such that any State would be liable if it refused to take action when requested to do so by a citizen regarding a possible violation of the Convention committed in or by any other State. Such a concept exceeds the scope of the application of the Convention as it was understood by the State party at the time of its ratification and would mean that States would be subject to a positive obligation to take action to put an end to human rights violations in other States upon demand, which runs counter to the principle of State sovereignty.

6.4 In the alternative, the State party maintains that it has not taken any decision that would result in H. falling within its jurisdiction. It notes that the complainants have not furnished any evidence to show that H. was captured and detained by the Syrian Democratic Forces (SDF), that he was transferred, or that the State party authorized any such transfer. The mere existence of contacts between the State party and the Kurdish forces does not demonstrate the existence of any such authorization, and the press release of the Special Rapporteur on extrajudicial, summary or arbitrary executions does not concern the case of H. His detention is not the result of any action taken by the State party but is instead the outcome of his choice to travel to the Arab Syrian Republic. The State party denies having a decisive influence over SDF but also notes that, in any event, H. is not being held by SDF.

6.5 As to the merits of the communication, the State party recalls that the complainants have not put forward any evidence of its participation in the supposed transfer of H. or any evidence to show that it was informed of his arrest. The State party observes that the request for his repatriation sent to the President of France is dated 1 February 2019, which is a substantial amount of time after his alleged detention by SDF. Thus, the State party cannot be held responsible for not having repatriated him while he was in the custody of SDF.

6.6 According to the State party, a failure to repatriate H. from prisons run by the Syrian authorities does not constitute a violation of the Convention. First, the complainants have not furnished any detailed or substantiated description of the specific situation of H. or of the conditions under which he is being held. Second, the Convention does not place a positive obligation upon States parties to repatriate nationals who may be at risk of cruel, inhuman or degrading treatment; such an obligation would infringe State sovereignty and would exceed the obligations which States sought to assume upon their ratification of the Convention. Such an obligation would also be at odds with the flexible approach adopted by the Committee in recognizing States parties' discretionary faculty in assessing the situation of their nationals.¹⁸ Third, such an obligation would be no more than an obligation of conduct entailing the need to differentiate between territorial and extraterritorial cases while maintaining respect for the principle of State sovereignty, since the State party could not arrange for the return of H. without the consent of the Syrian authorities. And yet, the State party no longer has a representative in Damascus. Fourth, the State party has not denied any request for the repatriation of H.; the letter addressed to the President of France requests the repatriation of "several French women being held with their young children in camps run by Kurdish forces in north-eastern Syria". H. is mentioned only as one of "a number of other French nationals

¹⁷ European Commission of Human Rights, *Cyprus v. Turkey*, Applications Nos. 6780/74 and 6950/75, decision, 26 May 1975, para. 8.

¹⁸ *Roitman Rosenmann v. Spain*, para. 6.7.

in the Iraqi-Syrian zone whose precise location has not been divulged” and the letter says that he is “probably” being held in Mezzeh Prison in Damascus.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 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.

7.2 The Committee notes that the State party has contested the admissibility of the complaint on the grounds of a lack of authorization. It notes, however, that the complainants have submitted a copy of H.’s birth certificate to prove that they are his parents, and stated that H. gave his verbal consent for them to act before the Committee on his behalf. Consequently, in view of the fact that the circumstances in which H. appears to find himself would not afford him a realistic opportunity to provide written authorization, the Committee is of the view that it is not prevented by rule 113 (a) of its rules of procedure from considering the present communication.

7.3 The Committee takes note of the State party’s submission that the complaint is inadmissible because the State party lacks jurisdiction over H. It also takes note of the State party’s argument that, under the Convention and public international law in general, it has jurisdiction only over persons located within its territory or under its effective control and that, in the present case, H. is neither within the State party’s territory nor under the control and authority of French officials or agents or within a territory that is under the State party’s effective control. The Committee also notes that the State party contends that H. is under the exclusive control of the Syrian authorities and that no evidence whatsoever has been advanced to show that French authorities consented to his transfer by Kurdish forces to the Syrian authorities.

7.4 The Committee notes that the complainants argue that effective control is not a *sine qua non* for the establishment of extraterritorial jurisdiction, which can also be based on the existence of a “decisive influence”. It also notes that the complainants contend that the State party is the “sole origin” of H.’s transfer to the Syrian authorities, given its military and political influence in the northern region of the Arab Syrian Republic and in the light of the State party’s repatriation of children from camps in that region and of H.’s French nationality.

7.5 In order to determine whether H. may be considered to fall within the jurisdiction of the State party within the meaning of article 22 (1) of the Convention and for the purpose of establishing its obligations under article 2 of the Convention, the Committee notes that in its general comment No. 2 (2008), it recalls that article 2 (1) of the Convention directs each State party to take effective measures to prevent acts of torture not only in its own territory but also “in any territory under its jurisdiction”.¹⁹ In the instant case, the Committee notes that, in order to determine whether H. may be considered to fall within the jurisdiction of the State party within the meaning of article 22 of the Convention, it is therefore necessary to consider whether the State party exercises lawful control or authority over him.²⁰ In that regard, the Committee considers that the jurisprudence invoked by the complainants and their reference to article 5 (1) (c) of the Convention does not establish a lower threshold or a different basis on which to determine whether H. falls within the jurisdiction of the State party.²¹

7.6 In that connection, the Committee takes note of the absence of concrete evidence that the State party exercises control over H.’s situation. It finds that the State party’s activities in the northern region of the Arab Syrian Republic cannot be regarded as supporting the

¹⁹ Committee against Torture, general comment No. 2 (2008), para. 16.

²⁰ *V.K. and U.K. v. Sweden* (CAT/C/72/D/1027/2020), para. 8.3.

²¹ See, among others, Human Rights Committee general comment No. 31 (2004), para. 10, and European Court of Human Rights, *Al-Skeini and others v. the United Kingdom*, Application No. 55721/07, judgment, 7 July 2011.

complainants' contention that the State party has or had jurisdiction over H., especially since he is being held in Adraa Prison in Damascus, which is apparently under the control of the Syrian authorities. The Committee also notes that the complainants have not submitted any tangible evidence to support their contention that the State party authorized H.'s presumed transfer to the Syrian authorities. Nor have they established that the letter which their lawyers sent to the President of the State party on 1 February 2019, which states that H. could be held in Mezzeh Prison, and the fact that the State party did not then proceed to repatriate H., have placed him under the jurisdiction of the State party.

8. In the light of the foregoing, the Committee is of the view that H. does not fall within the jurisdiction of the State party.

9. Accordingly, the Committee decides:

- (a) That the communication is inadmissible under article 22 (1) of the Convention;
and
 - (b) That this decision shall be transmitted to the complainants and to the State party.
-