



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

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## Committee against Torture

### Communication No. 389/2009

#### Decision adopted by the Committee against Torture at its forty-ninth session (29 October–23 November 2012)

*Submitted by:* R.A. (represented by the Service d'Aide Juridique aux Exilé-e-s (SAJE))

*Alleged victim:* The complainant

*State party:* Switzerland

*Date of complaint:* 29 June 2009 (initial submission)

*Date of decision:* 20 November 2012

*Subject matter:* Expulsion of the complainant from Switzerland to Turkey

*Procedural issue:* Exhaustion of domestic remedies

*Substantive issue:* Risk of torture following expulsion

*Articles of the Convention:* 3 and 22, paragraph 5 (b)

## Annex

### **Decision of the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (forty-ninth session)**

concerning

#### **Communication No. 389/2009**

*Submitted by:* R.A. (represented by the Service d'Aide Juridique aux Exilé-e-s (SAJE))

*Alleged victim:* The complainant

*State party:* Switzerland

*Date of complaint:* 29 June 2009 (initial submission)

*The Committee against Torture*, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

*Meeting on 20 November 2012,*

*Having concluded* its consideration of complaint No. 389/2009, submitted to the Committee against Torture on behalf of R.A. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

*Having taken into account* all information made available to it by the complainant, his counsel and the State party,

*Adopts* the following:

#### **Decision under article 22, paragraph 7, of the Convention against Torture**

1. The complainant, R.A., a national of Turkey born in 1976 and currently residing in Switzerland, maintains that his return to Turkey would constitute a violation of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The complainant is represented by the Service d'Aide Juridique aux Exilé-e-s (SAJE).

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

2.1 The complainant is a Kurdish Alevi. He is originally from the Kurdish village of Tilkiler/Pazarcik, in eastern Turkey, which was annexed by the Turkish army in February 1994. The Kurdistan Workers' Party was active in the region and nearly all Kurdish inhabitants were suspected by the authorities of being in collusion with that party. The complainant and his family were harassed by the authorities. The complainant was also encouraged by the authorities to become a "village guardian", which involves keeping an eye on the inhabitants of the village and reporting them to the authorities if they engage in suspicious political activities. The complainant refused. Following the Turkish army's

attack on the village in 1994, the complainant, then aged 18, moved to Gaziantep with his family.

2.2 In August 1995, while the complainant was in a park, talking in Kurdish to three friends from the village, two police cars pulled up beside them. The police officers proceeded to search them and took their identity cards. When the officers realized that they were from Tilkiler, they hit them for no reason, arrested them, and drove them to the police station. In a room at the police station, they beat them with batons. The police officers had told them to wash their hands beforehand in cold water, apparently because this intensifies the pain.

2.3 Some members of the complainant's family have links with Kurdish resistance movements. In fact, a cousin of the complainant on his father's side, H.A., used to belong to the guerrilla movement and is currently in prison serving a life sentence following his arrest in 1995. Another of the complainant's cousins, on his mother's side, is a member of the guerrilla forces.

2.4 In October 1995, the complainant and his family were arrested again and questioned about H.A., but the family had not had any contact with him for a long time. Following this arrest, the complainant was severely beaten, tortured and held in custody at the police station for a day.

2.5 During his military service from 1996 to 1997, the complainant was ill-treated because he was a Kurd and an Alevi. At one point he was made to do forced labour and was placed in disciplinary detention for 10 days as a punishment for speaking Kurdish over the telephone to his mother, who speaks no Turkish.

2.6 In June 2000, during a military operation in the village, the complainant's father was arrested in his field. He had his lunch with him and was accused of taking food to a terrorist organization. When the complainant went to Pazarcik police station to find out what was going on, he was arrested and beaten. He was released the next day, but his father remained in custody.

2.7 The complainant is a supporter of the Democratic People's Party. He carried out propaganda activities and took part in its celebrations and meetings. In June 2001, he visited the Democratic People's Party premises in Antep for a meeting to commemorate the death of "brothers" in prison. This commemoration had been authorized. When he left, he was arrested by the civil police and taken to Akyol police station, where he was falsely accused of spreading Kurdistan Workers' Party propaganda. He was also searched, questioned, ill-treated and held in custody for a day. During the 2002 parliamentary elections, the complainant carried out activities on behalf of the Democratic People's Party and was followed by the police. One of his cousins was a Democratic People's Party candidate in the elections.

2.8 One night in March 2003, the complainant was called and asked to go visit a certain woman. He thought it was to do with his work as a fashion designer, but in fact it was a trap. He was beaten up by strangers. When the police finally arrived, he was bleeding and they took him to hospital, but he received no treatment. They then took him to Akyol police station where, without prior questioning, he was charged with harassing the woman in question and of being a "terrorist". Although injured, he was again beaten and had to spend the night in the police station. When, the following morning, he was able to prove to a judge that he had been called by this woman, he was finally released, with the help of a cousin who was a lawyer, and was cleared of any criminal charges. The woman's family then vowed to take revenge against the complainant, who went into hiding after his release. In June 2003, he moved to Istanbul, where he remained until October 2004.

2.9 The complainant left Turkey in November 2004. He initially filed an application for asylum in Germany, which was rejected in April 2007. He then applied for asylum in Switzerland on 1 October 2007. On 20 January 2009, the Federal Office for Migration dismissed the asylum application on the grounds that, under the Federal Asylum Act (art. 32, para. (2) (f)), there is no need to consider a request for asylum submitted by a person whose application has previously been denied by a European Union country, unless new events have occurred in the intervening period that might justify the granting of refugee status or temporary protection. The Federal Office for Migration deemed that, in the present case, there was no new evidence to justify a re-examination of the case, as the applicant had not returned to Turkey since leaving in 2004.

2.10 A late appeal was lodged by the complainant with the Federal Administrative Court, which found it inadmissible on 5 March 2009. The complainant submitted an application for review of the decision of the Federal Office for Migration on 12 March 2009; the application was accompanied by a number of documents aimed at establishing the danger faced by the complainant if he returned to Turkey. This evidence was intended to show what kinds of political activities members of his family had engaged in and to provide substantiation of that fact by showing that most of them have obtained asylum in Europe. The documents also dealt with the complainant's political activities in Germany and France. The application for review was dismissed on 28 April 2009 by the Federal Office for Migration on the grounds, *inter alia*, that the evidence should have been included in the file that had accompanied the first application submitted to the Federal Office for Migration, since its existence predated that application; that the testimonial evidence from the complainant's family was not conclusive; that there was no substantive evidence that the complainant was wanted by the Turkish police, especially as he had been acquitted in the only criminal proceedings brought against him; and that he lived for a year in Istanbul, where he was not wanted by the police. The Federal Office for Migration therefore concluded that he should be able to find a safe haven there from the alleged persecution of his family.

2.11 On 25 May 2009, the complainant lodged an appeal against this decision with the Federal Administrative Court. That appeal was dismissed by a single judge on 12 June 2009 on the grounds, *inter alia*, that the complainant could find a safe haven within Turkey in Istanbul and that he had not shown that he, personally, was wanted by the Turkish authorities. The Federal Administrative Court concluded that the events that he had described were related to particular circumstances and that the fact that he belonged to a family in which several members engaged in political activities was not sufficient to establish that he would run a real and personal risk. In support of his application to the Committee, the complainant provided further attestations indicating that he was an active member of the Democratic People's Party in Gaziantep and that the Turkish authorities suppress Kurdish activists.

### **The complaint**

3.1 The complainant contends that he has exhausted all domestic remedies in Switzerland. He notes that the Swiss courts dismissed his asylum application on the grounds that he had previously initiated proceedings in Germany. He claims that the State party has therefore failed to fulfil its obligations under article 2 of the Convention. He notes that the Federal Office for Migration waited over a year after the hearings before handing down its decision and that the deadline of five working days to lodge an appeal against its decisions is difficult to meet, given the complexity of the present case, and that he was therefore deprived of sufficient procedural safeguards to allow him to properly defend his case.

3.2 The complainant describes his political activities in Turkey and the close supervision that he was under, primarily due to the well-known activism of members of his family. For these reasons, if he returned to Turkey he would face a personal, real and serious risk of being tortured. His forced repatriation would constitute a violation by Switzerland of article 3 of the Convention against Torture.

#### **State party's observations on the merits**

4.1 On 7 January 2010, in its comments on the merits, the State party notes that, in his comments to the Committee, the complainant merely repeats the same arguments that he made to the national authorities. He provides no new information, other than three recent attestations, his birth certificate, family record book or identity card, to challenge the decisions of the Federal Office for Migration of 20 January and 28 April 2009 and the rulings of the Federal Administrative Court of 5 March and 28 April 2009. He fails to provide the Committee with evidence of the existence of any politically motivated criminal case against him or documents corroborating his allegations of ill-treatment; nor does he give any reason why he was able to live and work in Istanbul for a year without having any problems with the authorities.

4.2 Recalling the wording of article 3, the State party refers to the criteria established by the Committee in its general comment No. 1 (1996) on the implementation of article 3 of the Convention in the context of article 22, in particular paragraph 6 and subsequent paragraphs, which concern the need for there to be a personal, present and serious risk of being subjected to torture in the event of expulsion to the country of origin. The State party notes that the Committee has considered communications on many occasions in which complainants claimed to be at risk of being subjected to torture if they were returned to Turkey. The Committee has observed that the human rights situation in Turkey is a major concern, particularly with regard to the fate of Kurdistan Workers' Party activists, who are frequently tortured by law enforcement officers, and that this practice is not limited to any particular area of the country.<sup>1</sup>

4.3 In those cases, when the Committee has reached the conclusion, in respect of article 3 of the Convention, that the complainants were in personal and present danger of being subjected to torture if returned to Turkey, it has done so when it had been established that they were politically associated with the Kurdistan Workers' Party and had been detained and tortured prior to leaving Turkey or when their allegations of torture had been substantiated by independent sources by means of, for example, medical certificates.<sup>2</sup> In two communications involving Switzerland, however, the Committee decided that the return of the complainants to Turkey would not expose them to any real risk of torture because the complainants' collaboration with the Kurdistan Workers' Party had not been established.<sup>3</sup>

4.4 In the present case, on several occasions the complainant told the domestic authorities that he was a supporter of the People's Democracy Party and Democratic People's Party. However, he has told the Committee that he is a member of both parties, which would mean that his name is known to the police and that he would run the risk of

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<sup>1</sup> The State party cites communication No. 97/1997, *Orhan Ayas v. Sweden*, Views adopted on 12 November 1998, para. 6.4.

<sup>2</sup> Ibid., para. 6.5; see also communication No. 101/1997, *Halil Haydin v. Sweden*, Views adopted on 20 November 1998, para. 6.7.

<sup>3</sup> The State party refers to communication No. 112/1998, *H.D. v. Switzerland*, Views adopted on 30 April 1999, para. 6.5; and communication No. 107/1998, *K.M. v. Switzerland*, Views adopted on 16 November 1999, para. 6.6.

being recognized if he were to return. There is nothing in the present case to suggest that the complainant is wanted in Turkey. Quite to the contrary, he has told the Swiss authorities that he is not wanted by the Turkish authorities. Moreover, the Turkish authorities would not have released the complainant in March 2003 after remanding him in custody if he had really been on the wanted list. This would be all the more surprising in view of the fact that several members of his family had already obtained refugee status in Germany by that time.

4.5 The torture or ill-treatment allegedly suffered by the complainant in the past is one factor to be taken into account in assessing the complainant's risk of being subjected to torture or ill-treatment if returned to his country. The complainant points out that he was repeatedly ill-treated by the Turkish authorities. He has not, however, supplied any evidence to support his claims, either to the domestic authorities or to the Committee.

4.6 Regarding the complainant's political activities, in his communication he alleges that he was an active member of the People's Democracy Party and/or Democratic People's Party in Turkey. During the hearings held by the Federal Office for Migration, however, he failed to mention any involvement in the People's Democracy Party. As for the Democratic People's Party, on two occasions the complainant stated that he was simply a party supporter and not a member. The statements made during the hearings also show that he held no specific position or function within the People's Democracy Party or the Democratic People's Party. It is also well known that persons prominently involved in a Kurdish political party are always brought before the courts. Yet, the complainant failed to mention a single "political" criminal case. The only criminal proceedings against him related to morality issues; their non-political nature is confirmed by the fact that they were dealt with by the Gaziantep criminal court, which has no authority to rule in political cases. Moreover, in the event, the court acquitted the complainant.

4.7 In addition, there is no indication in the file that the complainant is wanted by the national (or even regional) authorities in Turkey. First, he clearly admitted that he was not wanted at the hearing on 6 December 2007. Second, as already mentioned by the State party, it would make no sense for the police, having remanded him in custody in connection with the above-mentioned criminal proceedings, to release him if he had been wanted.

4.8 The complainant makes particular mention of his political activities in Switzerland and Germany. As he is not known to the Turkish authorities, or wanted by them in connection with his political activities in Turkey, his participation in and/or involvement in the organization of demonstrations in Switzerland is unlikely to attract the attention of the Turkish authorities. Furthermore, these alleged activities were only mentioned at a late stage in the aforementioned proceedings and then only in vague terms.

4.9 The State party points out some inconsistencies in the complainant's allegations and in connection with his credibility. As is clear from the decision issued by the Federal Office for Migration on 20 January 2009, the complainant admitted that he had lied about fleeing the country. Initially, he had claimed to have lived in Istanbul until 27 September 2007, that is, a few days before his arrival in Switzerland. Confronted with the results of inquiries made by the Federal Office for Migration in neighbouring countries, he had to admit that he had concealed his stay in Germany between 2004 and 2007. This has damaged his credibility.

4.10 The State party notes that the complainant's application for asylum was rejected by the German authorities on 16 April 2007. Although some members of his family have obtained refugee status in Germany, the complainant did not appeal against that decision, apparently preferring to move to Switzerland to reapply for asylum on 1 October 2007. In its second decision of 28 April 2009, the Federal Office for Migration concluded that the complainant's claims that he was being sought by the authorities were unconvincing. This conclusion was based, *inter alia*, on the following facts: the absence of any police or

judicial documents concerning the initiation of criminal proceedings against the complainant, the latter's acquittal, his own statements at the 6 December 2007 hearing, and the fact that the complainant lived and worked for a year in Istanbul without having any problems with the authorities. At the 6 December 2007 hearing, the complainant actually stated that he was not wanted by the Turkish authorities but that he feared that one of the families in his village had a vendetta against him because he had visited the home of a married woman on the evening of 20 March 2003 while her husband was away. It also remains unclear why the complainant, after openly living and working in Istanbul, could not return there.

4.11 The State party adds that the complainant also argues in his communication that the Swiss authorities never considered his case on the merits. It is true that the Federal Office for Migration dismissed the complainant's asylum application and the Federal Administrative Court upheld that decision. What is decisive in terms of article 3 of the Convention, however, is not the question of whether a substantive review of the asylum application as such was carried out, but whether a reasoned review was conducted of the legality of returning the applicant to his country in the light of the requirements of article 3 of the Convention. Such a review was, in fact, carried out. The Federal Office for Migration carefully weighed the relevant factors to assess the legality of the complainant's return to Turkey in its decisions of 20 January and 28 April 2009. In its first decision, it referred to the outcome of the asylum proceedings in Germany, a country which had granted refugee status to the complainant's family members but not, after considering his case, to him. The State party does not know why the complainant did not challenge that refusal in the German courts.

4.12 In its ruling of 5 March 2009, in which it dismissed the complainant's appeal on grounds of late submission, the Federal Administrative Court nevertheless considered the various arguments put forward by the complainant to challenge the legality of his expulsion. In its review, the Federal Administrative Court explained its reasons for considering as unfounded the complainant's claims about his risk of being subjected, upon his return, to treatment contrary to article 3 of the European Convention on Human Rights, which provides a level of protection equivalent to that afforded by article 3 of the Convention. The Federal Administrative Court's reasons included the fact that the complainant had stated that he lived for over a year in Istanbul, during which time he had no problems with the authorities; that he had then confirmed that he was not wanted by the authorities of his country of origin; that, if he had been in any danger in Istanbul, he would not have waited for over a year before leaving the city; that asylum proceedings in Germany lasted almost three years and that there is nothing to suggest that the complainant was unable to exercise his rights in Germany, particularly as four of his brothers were granted refugee status in that country and their complete file is therefore in the hands of the German authorities; that the proceedings held by the Federal Office for Migration lasted for over a year, during which time the complainant did not produce any evidence, such as depositions from his brothers who are refugees in Germany; and that the documents submitted to the Federal Administrative Court do not suggest that the Turkish authorities would be aware of the complainant's activism in France and Germany. In response to an appeal lodged as part of the application for review, the Federal Administrative Court once again carried out a risk assessment in its ruling of 12 June 2009. A substantive administrative and judicial review of the risks that the complainant might face in the event of his return to Turkey was thus carried out on several occasions.

4.13 The State party therefore concludes that there is nothing to indicate that there are substantial grounds for fearing that the complainant would run a present and personal risk of being subjected to torture in the event of his return to Turkey.

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

5.1 On 16 March 2010, the complainant challenged the State party's argument that he was not wanted by the Turkish authorities. In support of his comments, the complainant cites some of the facts listed in his initial submission (see paragraphs 2.5–2.7).

5.2 The complainant adds that his brother, S.A., a statutory refugee in Germany, who has since become a German citizen, provided a written deposition on 27 January 2009 in which he stated that he had gone to Turkey in May 2008 to attend the burial of one of the male members of the family. The police had searched the house and asked about the complainant. When the brother had remained silent, the police had arrested and questioned him. His passport had been temporarily confiscated. The complainant adds that, in support of his asylum application, he had provided a number of documents, including the Gaziantep Criminal Court's judgement and his remission of sentence, three newspaper articles showing that his brother had been detained in Turkey,<sup>4</sup> documents showing that the complainant is active in the People's Democracy Party in Switzerland, and various photographs of the complainant taken during political demonstrations in Germany and France. The complainant adds that a number of his relatives and close friends from the Pazarcik region had fled Turkey and been granted asylum in Switzerland, Germany and the United Kingdom.

5.3 All of these documents show that the complainant was politically active in Turkey and, in particular, that he was close to the guerrilla movement because of the area he comes from and his family ties. The complainant refers to all the times that he was arrested because of his family connections and his active participation in the People's Democracy Party/Democratic People's Party. The complainant is therefore known to the police, with whom he had personal dealings and by whom he was ill-treated. The complainant recalls that he is still politically active in Switzerland and that, due to his prolonged absence from Turkey, he runs the risk of being targeted by the Turkish authorities, who would be keen to question him about his activities abroad and his links with various Kurdish groups in Europe.

5.4 The complainant considers that the fact that Kurdish political activists and their families are subject to repression is confirmed by reports on the human rights situation in Turkey. First, minorities face systematic repression, and people who defend the rights of minorities are particular targets for persecution and harassment by the courts and others. Persons who publicly assert their Kurdish cultural identity are at risk of harassment and persecution.<sup>5</sup> The report issued by the United States Department of State on 25 February 2009, to which the complainant refers at length, also indicates that an overwhelming majority of torture victims are Kurds and that People's Democracy Party members do not carry their party membership cards on them in case they are arrested. As an active member of this organization and having lived for a number of years in Europe, the complainant is therefore particularly at risk.

<sup>4</sup> These newspaper articles have not been considered by the Federal Office for Migration, as they date back to 1995 and 1999, i.e., prior to the first asylum application. Pursuant to article 66, paragraph 3, of the Federal Act on Administrative Procedure, the Swiss authorities are not obliged to consider such evidence. In the event, the Federal Office for Migration nevertheless stated that those documents were unlikely to influence the results of the analysis previously carried out by those authorities. The arguments put forward by the Federal Office for Migration were confirmed by the Federal Administrative Court in its ruling of 12 June 2009.

<sup>5</sup> The complainant cites the report of the United States Department of State on human rights practices in 2008, published on 25 February 2009.

5.5 The complainant notes that in December 2009, the Turkish Constitutional Court dissolved the Democratic Society Party (a political group which had succeeded the People's Democracy Party after its dissolution in Turkey). This shows that people with close ties to the Kurdistan Workers' Party continue to be watched and to suffer from repression, as do members of the dissolved People's Democracy Party. The Constitutional Court's decision has caused unrest in Istanbul. The situation remains tense.

5.6 In response to the State party's proposal concerning a possible safe haven in Istanbul, the complainant replies that the security situation in the city remains uncertain. The complainant's family lives in Europe, and he therefore no longer has any connections in Turkey, to say nothing of Istanbul, where, even before leaving, he had no social or family network. The conditions under which an internal safe haven could be a solution, which must be such that the complainant would have an opportunity to resettle and live in dignity, are not present. In addition, the Turkish authorities practise repression throughout the country, including Istanbul.

5.7 The complainant also notes that he would have to return through an airport, where he would automatically be checked by the authorities, who would see that he is the cousin of a Kurdistan Workers' Party member who is currently serving a life sentence in prison. It is therefore highly likely that he would be arrested and held indefinitely. The questioning in itself would amount to persecution, which could also put other family members of the complainant in danger. Hence, there is a real risk of the complainant being subjected to torture if returned to Turkey.

5.8 On 1 June 2010, the complainant informed the Committee that he had submitted an application for review to the Federal Office for Migration on 31 May 2010. This application for review is based on the testimony given by the head of the village of Tilkiler on 26 March 2010, in which he talks about the trap into which the complainant is said to have fallen when he went to the home of a married woman (see paragraph 2.8 above).

#### **Additional observations by the State party**

6. In a note verbale of 16 July 2010, the State party informed the Committee about the application for review which the complainant had submitted to the Federal Office for Migration on 31 May 2010. According to the State party the Federal Office for Migration dismissed this application on 14 June 2010, and the dismissal was confirmed by the Federal Administrative Court on 9 July 2010. Under the circumstances, the State party informs the Committee that, as an exceptional measure, it is not challenging the admissibility of the communication, since domestic remedies have again been exhausted.

#### **Additional observations by the complainant**

7. On 9 July 2012, the complainant provided the Committee with a copy of a ruling of the Federal Administrative Court dated 18 June 2012 concerning a fourth application for review, which had been filed on 23 December 2010 when the case was already before the Committee. On 12 January 2011, the Federal Office for Migration denied this application, which was based on a medical report that stated that the complainant's state of health had deteriorated. Its grounds for doing so were that applicants often become distraught when their applications for asylum are denied, but that it was the duty of medical personnel to help the applicant to accept the fact that he was to return to Turkey and that, once there, appropriate medical follow-up would be available. The Federal Administrative Court had upheld that denial on 18 June 2012, and domestic remedies were therefore exhausted at that point.

## Issues and proceedings before the Committee

### *Consideration of admissibility*

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

8.2 Although the State party initially challenged the admissibility of the communication under article 22, paragraph 5 (b), of the Convention on the ground that the complainant had submitted an application for review of his asylum application on 31 May 2010, the State party subsequently acknowledged that the decision of the Federal Administrative Court of 9 July 2010 to dismiss this new application had again signalled the exhaustion of domestic remedies. The fourth application for review, to which the complainant makes reference in his additional observations, does not appear to render the communication inadmissible either, since that application has been dismissed. Given that all the admissibility criteria, including the exhaustion of domestic remedies, have been met, the Committee finds the communication admissible and proceeds with the consideration of the merits.

### *Consideration of the merits*

9.1 The issue before the Committee is whether returning the complainant to Turkey would constitute a violation of the State party's obligation, under article 3 of the Convention, not to expel or return (refouler) a person to a State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

9.2 In assessing whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture if returned to Turkey, the Committee must take account of all relevant considerations, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights in Turkey. However, the question that needs to be determined is whether the complainant runs a personal risk of being subjected to torture in the country to which he would be returned.

9.3 The Committee recalls its general comment on the implementation of article 3 of the Convention, in which it states that the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. Although the risk does not have to be shown to be highly probable, the Committee recalls that the burden of proof normally falls on the complainant, who must present an arguable case establishing that he runs a "foreseeable, real and personal" risk. The Committee also recalls that, as indicated in its general comment No. 1 (1996),<sup>6</sup> while it gives considerable weight to the findings of the State party's bodies, the Committee may freely assess the facts of each case in the light of the particular circumstances.

9.4 In the present case, the Committee considers that the facts as presented do not permit it to conclude that the complainant would personally and currently run a real, foreseeable risk of torture in the event of his return to Turkey. Although the Swiss Federal Office for Migration decided not to consider his case because the complainant's application for asylum had already been considered in Germany (Dublin II Regulation), the complainant's claims that he would run the risk of being subjected to torture were examined by the Federal Office for Migration and subsequently by the Federal Administrative Court. However, the complainant has not made an arguable case that he would run a "foreseeable,

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<sup>6</sup> *Official Records of the General Assembly, Fifty-third Session, Supplement No. 44 (A/53/44).*

real and personal” risk if he were to return to Turkey owing to his ties to an organization that supports the Kurdistan Workers’ Party and his family’s links with persons connected to the Kurdistan Workers’ Party.

9.5 The Committee notes that the complainant has not produced any evidence that he would run a personal risk, such as the existence of any politically motivated criminal proceedings against him, since there is nothing to show that the criminal proceedings which were brought against him in Turkey, and which ended in an acquittal, were politically motivated. The complainant has also failed to document his claims of ill-treatment in the course of his reported arrests in Turkey, or at any rate to provide detailed information on that score, or to explain how he managed to live and work in Istanbul for a year without encountering problems with the Turkish authorities; nor has he furnished evidence to support the idea that the Turkish authorities would be aware of the militant activities of the complainant in France and Germany and that these activities might endanger him in his country of origin. The Committee further considers that the arguments adduced by the complainant regarding the situation of the Democratic Society Party (a political group which succeeded the People’s Democracy Party) and the Kurdish population in general are not sufficient to establish that he would run a personal risk.

9.6 Taking into account all the information made available to it, the Committee considers that the complainant has failed to provide sufficient evidence to demonstrate that he would face a foreseeable, real and personal risk of being subjected to torture if returned to his country of origin.

10. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, therefore concludes that the return of the complainant to Turkey would not constitute a breach of article 3 of the Convention.

[Adopted in French, Spanish and Russian, the French text being the original version. Subsequently to be issued also in Arabic and Chinese as part of the Committee’s annual report to the General Assembly.]