



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

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**Committee against Torture**

**Communication No. 431/2010**

**Decision adopted by the Committee at its fiftieth session,  
6 to 31 May 2013**

<i>Submitted by:</i>	Y. (represented by counsel, Oliver Brunetti)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Switzerland
<i>Date of complaint:</i>	31 August 2010 (initial submission)
<i>Date of present decision:</i>	21 May 2013
<i>Subject matter:</i>	Deportation of the complainant to Turkey
<i>Substantive issue:</i>	Risk of torture upon return to the country of origin
<i>Procedural issue:</i>	Non-substantiation of claims
<i>Article of the Convention:</i>	3

## Annex

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

concerning

#### **Communication No. 431/2010\***

*Submitted by:* Y. (represented by counsel, Oliver Brunetti)

*Alleged victim:* The complainant

*State party:* Switzerland

*Date of complaint:* 31 August 2010 (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 21 May 2013,*

*Having concluded* its consideration of complaint No. 431/2010, submitted to the Committee against Torture by Oliver Brunetti on behalf of Y. 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, her counsel and the State party,

*Adopts* the following:

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

1.1 The complainant is Y., a Turkish national. She claims that her deportation to Turkey would constitute a violation by Switzerland of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. She is represented by counsel, Oliver Brunetti.

1.2 Under rule 114 (former rule 108) of its rules of procedure (CAT/C/3/Rev. 5), the Committee requested the State party, on 3 September 2010, to refrain from expelling the complainant to Turkey while her communication is under consideration by the Committee. The State party acceded to this request.

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

2.1 The complainant is a Turkish national of Kurdish origin, born in Istanbul. She started working for the Mesopotamia Cultural Centre (MCC) in Istanbul in 1997, where she

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\* The text of the individual (dissenting) opinion of Mr. Alessio Bruni, member of the Committee, is appended herewith.

gave folk-dance lessons. She comes from a family well known for its liberal pro-Kurdish political views and activities.

2.2 The complainant shares a remarkable physical resemblance with her elder sister, X. Her sister was very active politically and joined the Leninist Guerrilla Troops of the illegal Communist Labour Party of Turkey/Leninist. On this account, she was wanted by the police, who regularly searched for her at their home and threatened to arrest the complainant, in order to force X. to surrender. The complainant's sister was arrested in 1995 and was tortured by the police to make her disclose her activities for the Communist Labour Party of Turkey/Leninist. Since she refused to do so, the police began again to threaten the family in order to force X. to talk. The complainant was held under arrest for one day and beaten by the police in order to force her sister to testify.

2.3 In 2001-2002, the complainant's sister participated in a countrywide death-fast carried out by political prisoners and refused food for 180 days. She was released from prison on parole for six months, together with many other participants in the hunger strike, in order to restore her health. She had to commit to live at her parents' home, to cease the hunger strike and to return to prison after six months. Despite tight surveillance by the security authorities, the family managed to organise X.'s escape to Switzerland. She was granted asylum in Switzerland on 31 October 2003. In 2006, the Turkish police put her on the International Criminal Police Organization (INTERPOL) list. On 29 April 2008, after becoming aware that X. lived in Switzerland, the Turkish authorities requested her extradition; the request was refused by Switzerland based on the principle of non-refoulement.

2.4 Since the arrest of her sister in 1995, the complainant had visited her in prison at least once a week and during the hunger strike every day. During each visit, the complainant was detained by the prison guards. She was singled out at the end of the visit, was body searched, her face was palpated and her fingerprints were taken. Apparently the security personnel suspected that she might make use of her physical resemblance to her sister in order to replace her and allow her to leave the prison. The complainant was put under surveillance, she was regularly followed and her telephone was tapped, the authorities apparently suspecting her of engagement in the same activities as her sister and of having taken over her activities in the political underground movement. The fact that the complainant had begun to work for the MCC further increased their suspicion. The MCC is considered an institution of the Kurdish Workers Party (PKK) and is closely monitored by the Turkish security authorities.

2.5 On 1 February 1998, the police raided the complainant's house and arrested her. She was taken into custody for seven days, was blindfolded and was brutally mistreated, including in the area of her private parts, sexually harassed and deprived of food. She was indicted for possession of an illegal leaflet and for attending the funeral of a politically active person, but was released for lack of evidence. However, the persecution by police and security authorities continued. She was regularly arrested for short periods, interrogated and intimidated either during the visits to her sister in prison or at her workplace.

2.6 Following her sister's escape in August 2002, the police continued surveillance of the complainant. They were convinced that X. was hiding within the country and they evidently hoped that the complainant would lead them to her. They were also concerned that the complainant would make use of the physical resemblance with her sister to allow X. to move freely. In addition, the intimidation was a means to maintain pressure on X. to surrender. Also, the complainant herself had become highly suspicious to the authorities not only because of her close ties to X., but also for her own activities within the MCC. When they realized in 2006 that X. had fled Turkey, the surveillance intensified, since the complainant had become the only target and was suspected of having helped her sister to escape and of taking over her role in the political underground movement.

2.7 Due to this constant surveillance and intimidation and marked by her various arrests and mistreatments, the complainant developed severe mental health problems. She was afraid to leave the house, and each time she did so she feared that she might be arrested and mistreated again. In 2002 she had turned to the well-known TOHAV Rehabilitation Centre, which specializes in mental health treatment for torture victims, and followed their rehabilitation programme from 2002 to 2006. In 2006, she stopped the treatment for fear of being followed and arrested, since TOHAV, itself a prominent advocate of human rights and prevention of torture, was very exposed.

2.8 In spring 2008, the complainant felt no longer able to live under these circumstances, practically a prisoner in her own house under constant fear. A cousin of hers had been arrested by the police during a first of May demonstration in 2007 and was told by the police that their family should be exterminated. The complainant was strongly advised by her lawyer to leave the country for her own safety. She arranged her illegal departure for Switzerland, where she arrived on 11 September 2008. The complainant has been informed by her parents that since her escape the police had repeatedly searched for her at her parents' home.

2.9 The complainant applied for asylum on 15 September 2008. She attended an initial hearing with the Federal Office for Migration on 25 September 2008, and a second hearing on 22 June 2009. On that occasion she submitted documentary evidence in support of her allegations.<sup>1</sup> On 19 March 2010, the Federal Office for Migration rejected her application. It stated that, even though the complainant might have indeed suffered certain threats and intimidations, the intensity of the persecutions as reported by the complainant appeared exaggerated; it would not appear reasonable that the Turkish authorities would have persecuted her repeatedly over a period of many years for the same matter; rather, an indictment would surely have been issued had there really been a suspicion against her. The Federal Office stated that, if the complainant had really been suspected of aiding and abetting her sister's escape, a criminal case would have been initiated against her. Moreover, the allegation that she had been detained each time she visited her sister in prison seemed highly improbable, because such behaviour by the prison authorities would appear to be totally inefficient. The Federal Office further pointed to several inconsistencies in the complainant's allegations regarding the various periods of persecution by the authorities. It finally concluded that the intensity and persistence of the persecutions in the past and, as a consequence, the likelihood of persecution in the future, was not sufficiently credible.

2.10 Further, the Federal Office for Migration found the complainant's allegations of arrest and ill-treatment in 1998 credible and corroborated by significant evidence, however those events dated back too far to allow for the necessary causal link to her present asylum request. The Federal Office noted that, while persecution for one's own past illegal political activities and those of relatives was widespread in Turkey until the late 1990s, this was no longer the case, adding that the situation in Turkey had improved considerably since 2001 and since Turkey had issued new guarantees for criminal proceedings in 2005. Therefore, it stated that, even though it might still be conceivable that a person suspected of having contact with a wanted person or who engaged with illegal organizations might be exposed to police measures, such measures in the majority of cases would no longer qualify as persecutions warranting asylum. The Federal Office considered the events of 1998 and some persecution in the past as credible, but found not credible the claim that the

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<sup>1</sup> She submitted, inter alia, newspaper clippings on arrests of MCC members; the transcript of the arrest, house search and confiscation report; the transcript of her interrogation by the anti-terrorist department; the indictment by the Supreme State Prosecutor of the State Security Court of Istanbul; newspaper articles on her release.

complainant would still suffer persecution as intensely as alleged. Finally, the Federal Office concluded that there was no evidence that upon her return to Turkey the complainant would, with significant probability, face treatment contrary to article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

2.11 On 21 April 2010, the complainant filed an appeal with the Federal Administrative Tribunal, and submitted additional documents in support of her allegations. She stressed that the persecution had various phases, in parallel with the procedures against her sister and her own engagement with the MCC. Accordingly, the police had various reasons for engaging in the surveillance, intimidation, arrest and ill-treatment, such as to put pressure on her sister to surrender and then to talk; to prevent the complainant from covering for her sister by taking advantage of their physical resemblance and from taking over her sister's illegal activities; to pressure her for her activities within the PKK linked with the MCC; and to punish her for the illegal activities of her sister and her escape from the country. As to the fact that she had not been arrested for helping her sister to escape in 2002, the complainant pointed out that blame for her sister's to escape had been placed on her because her resemblance had allowed her sister to move freely and thus to escape. Obviously this was not a criminal offence that could lead to an indictment.

2.12 Regarding the inefficiency of detaining her each time she visited her sister in prison, the complainant recalled that the purpose of these measures was to prevent her from replacing her sister in prison and thus letting her escape. She also put forward various arguments to explain that there were no inconsistencies in her allegations, contrary to the claims of the Federal Office for Migration. As to the causal link between the uncontested traumatic events of 1998 and her escape in 2008, the complainant stressed that she had clearly not based her asylum request on these events alone but rather on the continuous intimidations, surveillance, arrests and molestations by security forces from the time her sister had started her illegal activities until the complainant finally fled Turkey in 2008.

2.13 In her appeal the complainant also rejected the view of the Federal Office for Migration that the human rights situation in Turkey had improved considerably and that the risk of persecution for one's own past activities or those of close relatives was unlikely, and referred to the recent case law of the Federal Administrative Tribunal (for example, its decision of 8 September 2005, EMARK 2005/21), according to which the relevant legislative changes that had been implemented recently in Turkey in reality had not materialized; the security forces of Turkey continued to crack down on members of Kurdish organizations; torture was still so widespread that it must even be considered standard official practice; and family members of suspected Kurdish activists continued to be at risk of severe repression. She also made reference to numerous recent reports of international and domestic organizations on the human rights situation in Turkey and submitted as supporting documentation reports by Amnesty International (2009),<sup>2</sup> Human Rights Watch (2010)<sup>3</sup> and the Swiss Refugee Council (2008).<sup>4</sup>

2.14 The complainant also indicated in the appeal that, since her arrival in Switzerland, she had had several breakdowns. She finally argued that, in view of the severe persecution, intimidation, arrests and mistreatment she had suffered until her escape from Turkey for her own and her sister's activities, the zeal demonstrated by the Turkish authorities to get hold of her sister through her, the fact that since her escape the police had continued to search for her at her parents' home and the still critical human rights situation in Turkey, in

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<sup>2</sup> "Turkey", in *Amnesty International Report 2009: The State of the World's Human Rights*.

<sup>3</sup> Human Rights Watch, "Turkey", in *World Report 2010*, pp. 455-459.

<sup>4</sup> Swiss Refugee Council, country report on Turkey (2008).

particular for Kurdish activists and their relatives, she would be at high risk if returned to Turkey, and her forced return would also severely damage her very fragile mental health.

2.15 On 5 August 2010, the Federal Administrative Tribunal issued its judgement on the merits of the case, upholding the decision of the Federal Office for Migration. It confirmed the view of the Federal Office, finding credible the events of 1998 and some intimidation incidents the complainant had suffered afterwards. However, it found not credible the persecutions that had allegedly occurred after 2002 as it appeared very unlikely that the Turkish authorities would have continued to persecute the complainant for many years without finding out prior to 2008 that her sister had obtained asylum in Switzerland. The fact that no indictment had been issued against the complainant for allegedly helping her sister to escape demonstrated that the Turkish authorities considered her blameless with respect to this event. The Tribunal considered that the complainant had invented essential elements of her persecution in order to support her asylum request, and concluded that neither her allegations nor the documents available indicated that she would face a real risk of treatment contrary to article 3 of the European Convention on Human Rights or article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment upon her return to Turkey. Finally, it stated that the complainant did not suffer from any disease that could impede the execution of the removal order.

2.16 On 9 August 2010, the Federal Office for Migration requested the complainant to leave Switzerland by 6 September 2010.

2.17 The complainant states that following her departure from Turkey she suffered several breakdowns. In June 2010 she consulted a psychiatrist and followed the prescribed psychotherapy. After learning of the judgement of the Federal Administrative Tribunal, she suffered a mental health crisis and the psychiatrist adapted her therapy to crisis intervention. According to a medical report of 23 August 2010, the complainant suffers from depressive episodes with somatic syndromes, dissociative convulsions and a suspected (the diagnosis was still ongoing at the time of submission of the complaint) post-traumatic stress disorder. The report considered that the then condition of the complainant would not allow for her return to Turkey. Her fear that she would be arrested and mistreated again upon return led to dissociative convulsions. Her return to Turkey would lead to further deterioration of her state of health with a serious risk of suicide. On 26 August 2010, the medical report was submitted to the Basel cantonal office for migration in charge of the enforcement of the deportation order, together with a request to suspend her deportation for medical reasons.

### **The complaint**

3.1 The complainant claims that her deportation to Turkey would be in violation of article 3 of the Convention. She maintains that, upon return, she would be detained, interrogated, intimidated and mistreated by the police. She could also be subjected to the same system of constant surveillance, persecution, detentions and intimidation she had suffered in the past, which had led to severe mental health problems.

3.2 In support of her allegations, the complainant recalls that: (a) she had been arrested and severely mistreated for seven days in 1998, a fact not contested by the Swiss migration authorities; (b) she had been arrested repeatedly for short periods of time when visiting her sister in prison; (c) she has been under tight surveillance with regular intimidation and short-term detentions ever since her sister engaged in illegal pro-Kurdish activities; (d) she has worked for many years for the MCC, an organization considered by the Turkish authorities closely linked to the PKK; (e) her sister has been sentenced to lifelong imprisonment for illegal pro-Kurdish activities and for the alleged murder of a policeman, and her extradition from Switzerland had been refused based on the principle of non-refoulement; (f) the Turkish authorities know or would know upon the complainant's re-

entry into Turkey that she has been in Switzerland with her sister, where she had sought asylum; (g) numerous international organizations as well as the recent case law of the Federal Administrative Tribunal confirm that the human rights situation in Turkey has remained largely unchanged, particularly for Kurds, and that arbitrary arrests, mistreatment and torture of persons accused of pro-Kurdish activities or their close relatives are still to be considered standard procedure; (h) she has suffered from mental illness for many years, has been treated by the TOHAV torture rehabilitation centre in Istanbul for four years and is under treatment with a psychiatrist who has confirmed that she would not be able to cope with another arrest by the Turkish authorities.

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

4.1 By note verbale of 16 February 2011, the State party submitted its observations. It provides a brief summary of the facts of the complainant's case and of her allegations in the context of the asylum proceedings which reflects the information supplied by the complainant in paragraphs 2.1-2.8 above. The State party notes that the complainant claims before the Committee that she would be arrested and ill-treated upon return to Turkey, in violation of article 3 of the Convention. She further claims that she suffers from mental health problems and that, in case of return, she runs a serious risk of suicide. The State party submits that, with the exception of the allegation concerning her mental health problems, the complainant relies on the same facts and claims as have been submitted before national authorities, and provides no new information that would call into question the decision of the Federal Office for Migration of 19 March 2010 and the judgement of the Federal Administrative Tribunal of 5 August 2010.

4.2 The State party submits that, according to article 3 of the Convention, States parties are prohibited from expelling, returning or extraditing a person to another State where there exist substantial grounds to believe that he or she would be subjected to torture. To determine the existence of such grounds, the competent authorities must take into account all relevant considerations, including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights. The State party recalls the criteria established by the Committee in its general comment No. 1 (1997) on the implementation of article 3 of the Convention in the context of article 22<sup>5</sup> which require the complainant to prove that he or she runs a personal, present and substantial danger of torture if deported to his or her country of origin. The existence of such a risk must be assessed on grounds that go beyond mere theory or suspicion; the alleged facts need to demonstrate that such a risk is serious. The State party recalls that paragraph 8 of the Committee's general comment requires, inter alia, that the following information be taken into account when assessing the risk of expelling someone: evidence of the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights; allegations of torture or ill-treatment in the recent past as well as the existence of evidence from independent sources in this regard; the complainant's political activities in and outside his or her country of origin; existence of evidence as to the credibility of the complainant; and existence of relevant factual inconsistencies in the complainant's claim.

4.3 In order to assess whether there are serious grounds to believe that a complainant would be at risk of torture in case of forcible removal, the Committee must take into account all pertinent considerations, in particular the existence of a consistent pattern of gross, flagrant or mass violations of human rights in the receiving State. The purpose of the

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<sup>5</sup> *Official Records of the General Assembly, Fifty-third Session, Supplement No. 44 (A/53/44 and Corr.1)*, annex IX.

assessment is however to determine whether the complainant would face a personal risk of being subjected to torture in the country of return. The existence of gross, flagrant or mass violations of human rights is not in itself a sufficient ground for believing that an individual would be subjected to torture upon his or her return to his or her country of origin, and additional grounds must exist for the risk of torture to qualify, within the meaning of article 3, as *foreseeable, real and personal*.<sup>6</sup> Conversely, as the Committee has reiterated in its decisions, 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>7</sup>

4.4 The State party submits that the Committee has already had the opportunity to examine communications in which complainants of Kurdish origin claimed that they would be exposed to torture should they be returned to Turkey. On that occasion, the Committee noted that the situation of human rights in Turkey was of concern, particularly for PKK militants. However, the Committee has concluded that a particular complainant would face a real and personal risk of torture upon return to Turkey only where additional individual elements could have been established, in particular, the importance of political activities in favor of the PKK, the possible politically motivated criminal charges against a complainant, and the question whether a complainant had been subjected to torture in the past.<sup>8</sup> With regard to political activities or former acts of persecution, the Committee gave considerable weight to whether they occurred in the recent past or not.<sup>9</sup>

4.5 The State party claims that the complainant has not demonstrated that she would face a foreseeable, real and personal risk of torture if returned to Turkey. The torture or ill-treatment allegedly suffered by her in the past is one of the elements to be taken into account when assessing the risk of torture or ill-treatment in case of return. The complainant claims that she was ill-treated by Turkish authorities during her one-week detention in February 1998. While the 1998 arrest of the complainant was not contested by the Swiss authorities, they noted that more than 10 years had passed since the event. Thus, after examining the current situation of the complainant, the Swiss authorities have found that she has not established a causal link between the events of 1998 and her alleged escape from the country in 2008, and have concluded that there is no current risk of persecution in case of return to Istanbul. In addition, the State party recalls the practice of the Committee that possible ill-treatment in the past does not prove the current risk of torture for a complainant if returned, in particular when such acts have not occurred in the recent past.<sup>10</sup>

4.6 The State party submits that the complainant claimed that she would be persecuted because of her sister's past political activities and her sister's escape to Switzerland. She also declared that she had been suspected of supporting the PKK because of her work at the MCC in Istanbul, which also led to persecution. The competent Swiss authorities did not contest the complainant's detention in 1998. Similarly, they found credible her allegations of persecution because of her sister's activities.

4.7 The Federal Office for Migration noted that the complainant contradicted herself regarding the period of time during which she had been harassed by the Turkish authorities.

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<sup>6</sup> Emphasis as appears in the original submission.

<sup>7</sup> Reference is made to communication No. 356/2008, *N.S. v. Switzerland*, decision adopted on 6 May 2010, para. 7.2.

<sup>8</sup> Reference is made to communications No. 373/2009, *Aytulun and Güclü v. Sweden*, decision adopted on 19 November 2010, paras. 7.6-7.7; No. 281/2005, *Pelit v. Azerbaijan*, decision adopted on 1 May 2007, paras. 2.3, 7.3 and 11; No. 135/1999, *S.G. v. Netherlands*, decision adopted on 12 May 2004, para. 6.5; No. 214/2002, *M.A.K. v. Germany*, decision adopted on 10 September 2002, para. 13.6.

<sup>9</sup> Reference is made to *N.S. v. Switzerland*, para. 7.4; and *M.A.K. v. Germany*, para. 13.7.

<sup>10</sup> Reference is made to general comment No. 1, para. 8 (c) [sic], and communication No. 326/2007, *M.F. v. Sweden*, decision adopted on 14 November 2008, para. 7.6.



The Federal Office has considered, inter alia, that it was unlikely that the complainant was arrested “each time” she visited her sister in prison because of their physical resemblance. In the circumstances, the Turkish authorities would have had an interest in taking measures to avoid such confusion; more so that during certain periods the complainant had visited her sister in prison daily.

4.8 Other allegations of the complainant were also deemed exaggerated and less realistic. She has also claimed that, over a period of seven years, she had been arrested about once a week. In addition, she had been harassed, threatened and subject to surveillance for years. She claimed that she had been followed almost every day and that the harassment had not stopped even after the police had learned that her sister was abroad. The Swiss authorities considered that it seemed illogical that the police would intimidate the complainant for the same reason for many years, with the frequency and persistence she had alleged.

4.9 The State party sees no reason to depart from the Federal Administrative Tribunal finding that it seems unrealistic that the Turkish authorities have invested so much in the surveillance and monitoring of the complainant, especially noting that her sister had already left Turkey in 2002. During the hearing of 22 June 2009, the complainant alleged that in March 2008 she and her family had informed the police that her sister had fled the country. It seems likely that, by claiming uninterrupted surveillance, the complainant is trying to create a link between the events of 1998 and her departure for Switzerland in 2008.

4.10 With regard to the complainant’s allegation that she was suspected of having helped her sister to escape, the Swiss migration authorities have rightly pointed out that the complainant cites statements of fact which would normally lead to a criminal charge. However, no criminal proceedings have been initiated against her. The Swiss migration authorities have finally considered that no sufficient causal link between the problems and persecution suffered by the complainant in 1998 and her alleged reasons for fleeing the country in 2008 had been established. The persecution that the complainant was able to substantiate before the Swiss authorities in fact dates back to more than 10 years before her departure. Therefore, the Federal Administrative Tribunal concluded that the problems the complainant had encountered in the 1990s were no longer relevant to her asylum claim. The Federal Office for Migration pointed out, inter alia, that the human rights situation in Turkey has improved considerably in the past years, especially in view of the accession negotiations with the European Union. For these reasons, the Federal Office and the Tribunal have not considered it likely that the complainant would currently be subject to persecution in Istanbul.

4.11 The State party recalls that there are no criminal proceedings pending against the complainant. Moreover, she has not indicated that members of her immediate family – including her parents living in Istanbul – are being persecuted. It is only before the Committee that she claims that the police have searched for her at her parents’ home since her escape in 2008. The State party observes that the complainant does not claim to have been politically active in Switzerland or to have cooperated with members of the PKK, either in Turkey or in Switzerland. Finally, the State party cannot exclude that the complainant would be questioned by the Turkish authorities upon return to Istanbul. However, even if this were the case, there is no indication that she would be subject to ill-treatment or torture.

4.12 The State party recalls that the principle of non-refoulement within the meaning of article 3 of the Convention is applicable only in cases where a person risks, in a case of expulsion or extradition, being subjected to torture as defined in article 1 of the Convention.

Any other treatment a person might suffer abroad, even inhuman or degrading treatment, does not fall within the scope of article 3.<sup>11</sup> In view of the foregoing, and in the light of the Committee's practice in other cases involving deportations to Turkey, the State party is of the view that the complainant cannot be considered a person who would face a real and personal risk of torture within the meaning of article 1 of the Convention if she were to be returned to Istanbul.

4.13 As to the complainant's allegation that she suffers from mental health problems, in particular from depression with somatic syndrome, that there is a suspicion of post-traumatic stress disorder and that she would be at serious risk of suicide if forcibly returned to Turkey, the State party finds it surprising that she has not invoked her mental health problems during the asylum proceedings. During the hearing of 22 June 2009, she clearly stated that she did not have any health problems. Furthermore, the alleged cause/origin of the complainant's mental problems is by no means proven; a suspected post-traumatic stress disorder cannot be considered as an important indication of her persecution in Turkey. In any event, the mere fact that the complainant suffers from mental health problems today cannot be considered a sufficient reason not to proceed with the deportation. The State party recalls the Committee's position that the aggravation of a person's state of physical or mental health owing to his or her deportation is generally insufficient, in the absence of additional factors, to amount to degrading treatment that would be in violation of the Convention. This practice was confirmed in several decisions. The Committee has rejected communications in which the complainants had been able to establish that they had suffered from severe post-traumatic problems caused by past ill-treatment, as well as communications in which a risk of suicide in case of return had been substantiated.<sup>12</sup>

4.14 In the light of the Committee's practice, the complainant's sufferings do not reach the threshold required to prevent the enforcement of the deportation, especially since treatment is available in her home country and adequate and accessible medical facilities exist in Istanbul. The State party finally indicates that in case of risk of suicide the Swiss authorities take the necessary measures to ensure the safety of the person concerned, such as, for example, expulsion accompanied by a doctor. Taking into account the complainant's health condition, Federal Office for Migration had, for example, decided to delay her deportation.

4.15 In the light of the foregoing, the State party submits that there are no substantial grounds for believing that the complainant would face a real and personal risk of torture upon return to Turkey. Her allegations do not permit to conclude that the deportation would expose her to a foreseeable, real and personal risk of torture. Therefore, her deportation to Turkey would not constitute a violation of article 3 of the Convention.

#### **The complainant's comments on the State party's observations**

5.1 On 20 April 2011, the complainant provided her comments. As regards the summary of facts given by the State party, she clarifies that the severe ill-treatment she suffered during her seven days under arrest in 1998 has been corroborated by strong evidence and that both the Federal Office for Migration and the Federal Administrative Tribunal have

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<sup>11</sup> Reference is made to communication No. 201/2002, *M.V. v. Netherlands*, views adopted on 2 May 2003, para. 6.2.

<sup>12</sup> Reference is made to communications No. 228/2003, *T.M. v. Sweden*, views adopted on 18 November 2003, paras. 2.6, 2.8, 3.2 and 6.2; No. 220/2002, *R.D. v. Sweden*, decision adopted on 2 May 2005, paras. 3.3, 5.1 and 7.2; and No. 227/2003, *A.A.C. v. Sweden*, decision adopted on 16 November 2006, para. 7.3.

expressly accepted the described events as proven. She further clarifies that her fear in case of return is twofold: first, it must be expected that she would be detained by the police immediately upon her entry into Turkey and would be interrogated, intimidated and mistreated; second, it must be expected that she would be put under the same system of constant surveillance, persecution, detentions and intimidation she had suffered before escaping from Turkey and which had led to her severe mental health problems. As to the State party's reference to the criteria set out in the Committee's general comment No. 1, she notes that the criterion in paragraph 8 (c) refers not only to whether there exists independent proof of torture – as outlined by the State party – but also to whether the torture had any after-effects. This clarification is important as she suffered such after-effects.

5.2 With respect to the State party's observations on the human rights situation in Turkey and the reference to the Committee's case law on returns to Turkey (see paras. 4.3–4.4 above), the complainant reiterates the individual elements contributing to the real risk as outlined in her complaint. In addition, she recalls again the case law of the Federal Administrative Tribunal, which was confirmed in a judgment of 25 October 2010 (E-6587/2007), that persecution of relatives of politically active persons (hereinafter "family persecution") continued to be applied by the Turkish authorities and that such repression could be the basis for serious risk in the sense of article 3 of the Swiss Asylum Act. The Tribunal further stated that the probability of becoming exposed to such family persecution was particularly high in cases where the politically active family members were wanted by the police and the authorities had cause to believe that the relative in question had close contact with the wanted family member. The Tribunal, quoting numerous reports by international organizations, confirmed that the human rights situation in Turkey had essentially remained unchanged since 2005. Based on the above, the complainant claims that in her case the Tribunal has not complied with its own case law, according to which she runs a risk of being persecuted if returned to Turkey.

5.3 With regard to the State party's argument about the lack of a sufficient causal link between her arrest in 1998 and her escape from Turkey in 2008, the complainant recalls that her asylum request was not based only on the events of 1998, but also on the continued persecution and intimidation she suffered until she left Turkey in 2008, as well as on the risk of family persecution she runs because of her close relationship with her sister. Therefore, the events in 1998 mark one important element among others in establishing the risk of torture in case of return to Turkey and must be seen in the context of ongoing persecution she suffered until the recent past and the significant risk of family persecution she is running. Accordingly, the State party's reference to the case of *M.F. v. Sweden* does not seem warranted, as in that case the Committee had no information, other than the ill-treatment suffered by the complainant six years earlier, on why the complainant should have been of interest to the authorities.

5.4 The complainant notes that the State party in principle admits the key elements on which the complaint is based, that is, the severe mistreatment in 1998, her subsequent harassment by the Turkish authorities (although it contests the intensity and duration of such harassment) and the political activities of her sister leading to significant risk of family persecution. She contests the State party's argument about contradictions regarding the periods of time during which she had been harassed by the Turkish authorities, claiming that no such discrepancies exist, as she has already explained in detail in her appeal against the negative decision of the Federal Office for Migration.

5.5 In response to the State party's observations that her claims of repeated detention and harassment seem unlikely (para. 4.8 above), that it would appear improbable that the Turkish authorities would persecute her for years and then be informed in 2008 by her own family about the fact that her sister had actually left Turkey (para. 4.9), and that she was not indicted for having helped her sister flee Turkey (para. 4.10), the complainant reiterates the

arguments put forward in her appeal against the decision of the Federal Office for Migration (see para. 2.11 above), and adds that it does not seem improbable at all that the prisons guards would have detained, searched and harassed her after each of her visits to her sister in prison, since such measures would make sense from the prison guards' view only if carried out without exception.

5.6 The complainant submits that neither the Federal Office for Migration nor the Federal Administrative Tribunal provide any evidence as to the alleged improvements of the human rights situation in Turkey, nor do they comment in any way on the numerous reports stating the contrary. She further recalls that the views taken by the State party on this point contradict the Tribunal's own case law, as outlined above, and refers to the reports by Amnesty International, Human Rights Watch and the United States Department of State supplied as evidence.<sup>13</sup> She also refers to the concluding observations issued by the Committee in November 2010, where it again expressed serious concerns on the human rights situation in Turkey.<sup>14</sup>

5.7 The complainant contests the State party's argument that she claimed that the police had continued to search for her at her parents' home after she left Turkey in the summer of 2008 only before the Committee, since this fact was brought to the attention of the Federal Administrative Tribunal in her appeal. In response to the State party's contention that, even though she might be questioned by the police upon return, there is no indication that this would lead to ill-treatment or torture, the complainant reiterates her arguments put forward in paragraphs 3.1 and 3.2 above.

5.8 The complainant submits that she did not mention her health problems upon arrival in Switzerland because she was hopeful that they would disappear. Moreover, her mental health problems are of a nature that makes it difficult for her to talk about them and she would not easily disclose them when asked in a general way, as was the case during the hearing with the Swiss authorities. As to the State party's argument that the origin of her health problems is not proven, she refers to the medical report issued by her psychiatrist on 23 August 2010, which indicates that she had developed mental health problems around 2000, after she had been visiting her sister in prison for years and had been regularly detained and intimidated, and following her detention and severe ill-treatment in 1998. At that time she suffered from dissociative convulsions, muscle tension and loss of consciousness which required emergency hospitalizations. The report also refers to her treatment at the TOHAV centre from 2002 until 2006 and mentions that, as a result of the increased surveillance and persecution by the police after 2006, she almost completely withdrew to her home, which further increased her mental health problems and ultimately made her leave Turkey in 2008. In Switzerland she felt useless, helpless and depressed, and was plagued with memories of the humiliation of the police detentions and the torture she had suffered. She also felt unable to bear any further negative experiences, and feared that she would harm herself in such a case. Based on these observations by the psychiatrist, the complainant considers it established that her mental health problems are caused by her treatment by the Turkish authorities in the past.

5.9 The complainant submits that the mental health problems are one of several elements on which her claim under article 3 is based, and therefore the Committee's decisions quoted by the State party, according to which a person's state of health is

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<sup>13</sup> "Turkey", in *Amnesty International Report 2010: The State of the World's Human Rights*; Human Rights Watch, "Turkey" (footnote 3 above); United States Department of State, "2010 human rights report: Turkey".

<sup>14</sup> The complainant appears to refer to the Committee's concluding observations on Turkey (CAT/C/TUR/CO/3).

generally insufficient, in the absence of additional factors, to amount to degrading treatment and thus prevent the deportation, are not relevant to her case. She does not contest that, in principle, adequate medical treatment is available in Turkey. The real problem is, however, that a return into the sphere of surveillance and intimidation by the State authorities which were the very cause of the mental health problems would fundamentally prevent adequate treatment in Turkey.

5.10 The complainant rejects the State party's conclusion that no serious reasons exist to believe that she would face a real and personal risk of torture if returned to Turkey. She considers that there are multiple elements establishing such a risk both with respect to her personally and individually and with respect to the human rights situation in Turkey generally. The complainant refers to the documentation submitted in support of the existence of a real risk of torture upon return, and notes that the State party has not commented on some of these documents, for example (a) the letter dated 1 April 2010 in which her lawyer confirmed the severe persecution experienced by her until her escape from Turkey and that her life and safety would be in danger if she were to be returned; (b) the letter from TOHAV centre confirming that she received treatment from 2002 to 2006; and (c) the various reports by international organizations on the human rights situation in Turkey. She reiterates her allegations that her deportation to Turkey would constitute a violation of article 3 of the Convention.

### **Issues and proceedings before the Committee**

#### *Consideration of admissibility*

6.1 Before considering a claim contained in a complaint, the Committee 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.

6.2 In the present case, the Committee notes that the State party has not contested the admissibility of the present complaint on any grounds. The Committee considers that the complainant's allegation under article 3 has been sufficiently substantiated, declares the complaint admissible and proceeds to its examination on the merits.

#### *Consideration of the merits*

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

7.2 The issue before the Committee is whether the removal of the complainant to Turkey would constitute a violation by the State party of its obligation under article 3 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 must evaluate whether there are substantial grounds for believing that the complainant would be personally in danger of being subjected to torture upon return to Turkey. In assessing this risk, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the Committee recalls that the aim of such determination is to establish whether the individual concerned would be personally at a foreseeable and real risk of being subjected to torture in the country to which he or she would return.

7.3 The Committee recalls its general comment No. 1, according to which “the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. However, the risk does not have to meet the test of being highly probable” (para. 6), but it must be personal and present. In this regard, in previous decisions, the Committee has determined that the risk of torture must be foreseeable, real and personal.<sup>15</sup> The Committee further recalls its general comment No. 1, according to which the burden to present an arguable case is on the complainant (para. 5). In the present case, the Committee notes that the complainant’s claim that she would run a risk of being tortured if she is returned to Turkey is based on the following: she had been detained and tortured in 1998; she had been subjected to short-term arrests when visiting her sister in prison; ever since her sister had fled the country in 2002, she had been under surveillance and subjected to harassment, intimidation and detention because of her sister’s political activities and because of suspicion that she had made use of her physical resemblance to facilitate her sister’s escape from Turkey; her own activities within the Mesopotamia Cultural Centre in Istanbul; and the risk of family persecution she runs on account of her close family relationship with her sister.

7.4 The Committee notes that, while the complainant’s arrest and ill-treatment in 1998 is uncontested, the State party argues that the complainant failed to establish a link between those events and her departure from Turkey in 2008. Furthermore, the State party finds exaggerated the alleged uninterrupted harassment and surveillance by Turkish authorities for years, including after the complainant’s sister fled the country in 2002, and argues that the authorities would have taken other measures had she been of interest to them.

7.5 The Committee recalls that under the terms of its general comment No. 1, it gives considerable weight to findings of fact that are made by organs of the State party concerned,<sup>16</sup> while at the same time it is not bound by such findings and instead has the power, provided by article 22, paragraph 4, of the Convention, of free assessment of the facts based upon the full set of circumstances in every case.

7.6 In assessing the risk of torture in the present case, the Committee takes note of the complainant’s arrest and ill-treatment in 1998 and of the allegation that she suffers from mental health problems because of ill-treatment in the past and the continuous harassment and persecution by the Turkish authorities. In this regard, the Committee observes that the complainant submits as documentary evidence a confirmation by the TOVAH Rehabilitation Centre that she has been under treatment from 2002 to 2006, as well as a medical report dated 23 August 2010 issued by a Swiss psychiatrist who, inter alia, refers to a suspected post-traumatic stress disorder. The Committee further notes the State party’s arguments that the complainant has not invoked her mental health problems during the asylum proceedings, that the alleged origin of these problems is not proven, that a suspected post-traumatic stress disorder cannot be considered an important indication of her persecution in Turkey, and that treatment for her condition is available in Turkey.

7.7 The Committee recalls that the ill-treatment or torture suffered in the past is only one element to be taken into account, the relevant question before the Committee being whether the complainant currently runs a risk of torture if returned to Turkey. While it is accepted that she was tortured in the past, it does not necessarily follow that, 15 years after the events occurred, she would still be at risk of being subjected to torture if returned to

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<sup>15</sup> See, inter alia, communications No. 203/2002, *A.R. v. Netherlands*, views adopted on 14 November 2003, para. 7.3; No. 285/2006, *A.A. et al. v. Switzerland*, decision adopted on 10 November 2008, para. 7.6; No. 322/2007, *Njamba and Balikosa v. Sweden*, decision adopted on 14 May 2010, para. 9.4.

<sup>16</sup> See, inter alia, *N.S. v. Switzerland*, para. 7.3.

Turkey in the near future.<sup>17</sup> In this regard, the Committee observes that the complainant claims to have been subjected to continuous surveillance, harassment, short-term arrests and persecution until her escape to Switzerland in 2008, but has failed to provide elements which would show that this would amount to torture. Moreover, although she claims that authorities “apparently” suspected her of having taken over her sister’s activities in the political underground movement, she has not presented any evidence that she has ever been summoned for interrogation or has been indicted for such suspected involvement with the PKK; neither has she supplied any evidence corroborating her claim that the police has searched for her at her parents’ home since her escape to Switzerland. The Committee also notes that the complainant has never claimed that her family members living in Istanbul are being persecuted in connection with her sister’s and her own escape to Switzerland. Furthermore, it is uncontested that the complainant herself has not been sentenced, prosecuted for, or accused of, any crime in Turkey; that she has not been politically active in Switzerland; and that she has not been cooperating with members of the PKK either in Turkey or in Switzerland.

7.8 The Committee takes note of the information submitted by the parties on the general human rights situation in Turkey. It notes the information presented in recent reports that, overall, some progress was made on observance of international human rights law, that Turkey pursued its efforts to ensure compliance with legal safeguards to prevent torture and mistreatment through its ongoing campaign of “zero tolerance” for torture<sup>18</sup> and that the downward trend in the incidence and severity of ill-treatment continued.<sup>19</sup> Reports also indicate that disproportionate use of force by law enforcement officials continues to be a concern<sup>20</sup> and cases of torture continue to be reported.<sup>21</sup> However, the Committee notes that none of these reports mention that family members of PKK militants are specifically targeted and subjected to torture. As to the complainant’s allegation that she would be arrested and interrogated upon return, the Committee recalls that the mere risk of being arrested and interrogated is not sufficient to conclude that there is also a risk of being subjected to torture.<sup>22</sup>

7.9 In the light of the above considerations, the Committee considers that the facts as presented do not permit it to conclude that the complainant’s return to Turkey would expose her to a foreseeable, real and personal risk of torture within the meaning of article 3 of the Convention. Accordingly, the Committee concludes that her removal to Turkey would not constitute a breach of article 3 of the Convention.

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

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

<sup>17</sup> See, for example, communication No. 245/2004, *S.S.S. v. Canada*, decision adopted on 16 November 2005, para. 8.4.

<sup>18</sup> United States Department of State, “Turkey 2012 human rights report”, p. 5.

<sup>19</sup> European Commission, “Turkey 2012 progress report” (10 October 2012), p. 19. Available from [http://ec.europa.eu/enlargement/pdf/key\\_documents/2012/package/tr\\_rapport\\_2012\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/tr_rapport_2012_en.pdf).

<sup>20</sup> *Ibid.*, pp. 19 and 72.

<sup>21</sup> See United States Department of State, “Turkey 2012 human rights report”.

<sup>22</sup> Communication No. 57/1996, *P.Q.L. v. Canada*, views adopted on 17 November 1997, para. 10.5.

## Appendix

### **Individual opinion of Committee member Mr. Alessio Bruni (dissenting)**

It is my opinion that the forced removal of the complainant would constitute a breach by the State party of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, for the following reasons:

(a) It appears from the information submitted to the Committee that the complainant belongs to a family well known in Turkey for its pro-Kurdish political views and activities considered illegal by the Government. The complainant's sister was arrested for her political activities in favour of the illegal Communist Labour Party in 1995 and accused of the killing of a policeman in a shooting during her arrest. She was tortured and imprisoned for life. When she was released on parole for six months, in 2002, she escaped to Switzerland where she was granted asylum in 2003. Turkey requested her extradition, but Switzerland refused it on the principle of non-refoulement;

(b) The fact that the complainant belongs to a family of persons wanted by the Turkish police authorities and that she is the sister of a person whose extradition was refused by the State party on the principle of non-refoulement is an element of personal, real and foreseeable risk for the complainant of being subjected to mistreatment, if she is returned to Turkey. She would be arrested and interrogated and most probably exposed to treatment contrary to article 1 of the Convention to obtain information on her family members and their activities abroad. She had been threatened already when the police was looking for her sister in 1995 and in 2002;

(c) The State party argues that the complainant's parents living in Istanbul have not been persecuted. This can be easily explained by the fact that they live in Istanbul and, therefore, they have no useful first-hand information to give to police authorities with regard to other family members' activities abroad;

(d) The complainant would attract the interest of the Turkish police authorities also because:

(i) She is suspected of having used her extraordinary resemblance to her sister to help her in her evasion. It should be noted, in this connection, that because of her resemblance, she had been briefly arrested several times when she had visited her sister in prison. The reasons for these arrests would have been to prevent her from replacing her sister in prison and allowing her sister to escape. The State party argues that the suspicion by police authorities that the complainant could have used the resemblance to her sister to help her escape from prison should have led to a criminal charge against the complainant. This was not necessary while the complainant was still under surveillance by the police, which was trying to intercept her contacts with her sister, but this could be the case if she is returned to Turkey;

(ii) In Turkey, from 1997 to 2004, the complainant worked for the Mesopotamia Cultural Center (MCC), an institution allegedly belonging to the PKK and subjected to close monitoring by security authorities;

(iii) Following her sister's escape, in August 2002, the complainant was allegedly kept under surveillance by the police for four years;

(iv) On 1 February 1998 the complainant was arrested, detained for seven days and tortured for her illegal activities and then released for lack of evidence. These



events, as well as subsequent persecution suffered by the complainant, are considered credible by the State party. However, in the State party's view, there is no sufficient causal link between these events and her departure for Switzerland in 2008. On the contrary, it appears that a clear causal link emerges from the following elements: her arrest and mistreatments in 1998 and the constant surveillance and intimidation of her from 2002 to 2006 are the root cause of her mental problems, as medically reported. No other causes for those problems emerge from the information submitted to the Committee by the complainant or the State party. In this connection, it should be noted that she was treated in the TOHAV Rehabilitation Centre, which is specialized in the mental health treatment of torture victims, from 2002 to 2006, and by a psychiatrist, in 2010. For the reasons indicated above, she had to find a country in which she could live without constant fear. That country, for her, was evidently Switzerland where her sister had found asylum;

(e) It should be noted also that a medical report, dated 23 August 2010, issued by a Swiss psychiatrist refers to a suspected post-traumatic stress disorder. The psychiatrist considered that the then condition of the complainant would not allow for her return to Turkey;

(f) The State party is of the view that the health status is not an important indication of persecution in Turkey, but it does not exclude it. This element added to the other elements listed above make the complainant extremely fragile and currently expose her to severe mistreatment or even torture if she is returned to her country;

(g) It may be recalled, in this connection, that general comment No. 1 of the Committee provides that "the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. However, the risk does not have to meet the test of highly probable" (para. 6). It appears that the elements listed above go beyond mere theory or suspicion and that the risk for the complainant is personal, real and foreseeable although the degree of probability cannot be measured.

The reported cases of torture and impunity of its perpetrators, referred to in the concluding observations on the third periodic report of Turkey considered by the Committee against Torture in November 2010 (CAT/C/TUR/CO/3) and in the concluding observations of the Human Rights Committee on the initial report of Turkey considered in October 2012 (CCPR/C/TUR/CO/1) corroborate, among others, the situation of risk in which the complainant would find herself if she is returned to her country.

[Signed] Alessio **Bruni**

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

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