



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

Distr.: General
19 June 2019
English
Original: French

Committee against Torture

**Decision adopted by the Committee under article 22 of the
Convention, concerning communication No. 827/2017*, ****

<i>Communication submitted by:</i>	Ferhat Erdoğan (represented by counsel, El kbir Lemseguem)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Morocco
<i>Date of complaint:</i>	12 June 2017 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rules 114 and 115 of the Committee's rules of procedure, transmitted to the State party on 20 June 2017 (not issued in document form)
<i>Date of present decision:</i>	10 May 2019
<i>Subject matter:</i>	Extradition to Turkey
<i>Procedural issues:</i>	Exhaustion of domestic remedies; inadmissibility owing to non-substantiation
<i>Substantive issues:</i>	Risk of torture for political reasons upon extradition (non-refoulement)
<i>Articles of the Convention:</i>	3

* Adopted by the Committee at its sixty-sixth session (23 April–17 May 2019).

** The following members of the Committee participated in the examination of the communication: Felice Gaer, Abdelwahab Hani, Claude Heller Rouassant, Jens Modvig, Ana Racu, Diego Rodríguez-Pinzón, Sébastien Touzé, Bakhtiyar Tuzmukhamedov and Honghong Zhang. Pursuant to rule 109 of the Committee's rules of procedure, Essadia Belmir did not take part in the examination of the present communication.



1.1 The complainant is Ferhat Erdoğan, a Turkish citizen born on 22 November 1978. He is facing extradition to Turkey and considers that his return would constitute a violation by Morocco of article 3 of the Convention. Morocco ratified the Convention on 21 June 1993 and made a declaration recognizing the competence of the Committee under article 22 of the Convention on 19 October 2006. The complainant is represented by counsel.

1.2 On 20 June 2017, in application of rule 114 (1) of its rules of procedure, the Committee, acting through its Rapporteur on new complaints and interim measures, requested the State party to refrain from extraditing the complainant to Turkey while it considered his complaint. On 28 February 2018, the Committee decided to consider the admissibility at the same time as the merits of the communication.

The facts as presented by the complainant

2.1 The complainant, a businessman, is the president of a Turkish businessmen's organization in Uşak, Turkey, and is also a member of the Turkish Justice and Development Party. He is a member of the USIAD association, which is a branch of TUSKON, the Turkish Confederation of Businessmen and Industrialists, an association disbanded by the Turkish authorities under the state of emergency. The complainant organized promotion and marketing visits both inside and outside Turkey for educational institutions affiliated with the Hizmet movement. He also raised funds for social and charitable works for students and disadvantaged persons as part of the Hizmet movement's activities.¹ On an unspecified date in 2010, he moved with his wife and two children to Morocco, where he decided to invest.

2.2 On 13 October 2015 the Uşak Court of Major Jurisdiction initiated an investigation of the complainant. On 5 August 2016 the Court decided to indict him for forming and leading an armed terrorist organization, money-laundering of funds collected as a result of terrorist acts and financing of terrorism.

2.3 On 30 January 2017 the Turkish authorities filed a request for the complainant's extradition with the Moroccan authorities. On 12 April 2017 the complainant was arrested in Casablanca. On 13 April 2017 he was brought before the Casablanca court of first instance, which ordered that he be incarcerated pending extradition and that he be sent to the Salé prison pending extradition proceedings before the criminal division of the Court of Cassation.

2.4 On 23 May 2017 the complainant submitted an application for international protection with the local representative office of the Office of the United Nations High Commissioner for Refugees in Rabat.² He is still awaiting a response.

2.5 At a hearing at the Court of Cassation of Morocco on 24 May 2017, the complainant, with the assistance of his lawyers, denied the allegations in the Turkish case file, which were unfounded and based only on detailed "sworn" testimony, without objective criminal evidence. The complainant argued that the bulk of the evidence contained in the extradition file consisted only of personal notes found in a datebook, a video containing photographs of the Turkish President, Recep Tayyip Erdoğan, and his son, Necmettin Bilal Erdoğan, and an electronic Word file of a letter from the complainant to his business colleagues and friends, in which he described promising economic sectors in Morocco and invited them to go there to invest in the country.

2.6 The complainant also argued that the extradition request was of a political nature, based on the fact that he was a human rights activist who had adopted political opinions at variance with those of the authorities in Turkey and on the Turkish Government's political characterization of the Hizmet movement as a terrorist group. He also invoked the danger to

¹ The complainant points out that his wife was an active member of the Aktif Eğitim-Sen movement, a teachers' union affiliated with the Hizmet movement, whose members have nearly all been arrested. She was dismissed by a decision of the Turkish Government because of her activities in the Hizmet movement, where she served as president of the Kardelen Eğitimciler Derneği movement. The complainant's wife and children are currently in Germany, where they have the status of asylum seekers.

² His wife submitted an application for international protection on 5 April 2017.

which he would be exposed in Turkey, given the general human rights situation prevailing there, particularly after the attempted coup d'état of 15 July 2016, which was followed by a massive wave of arrests, trials and convictions. The complainant also submitted a certificate of his application for asylum with the Office of the United Nations High Commissioner for Refugees.

2.7 On 31 May 2017 the Court of Cassation of Morocco ruled in favour of the complainant's extradition to Turkey.

The complaint

3.1 The complainant maintains that his extradition to Turkey would result in the risk of torture by the Turkish authorities, in violation of article 3 of the Convention.

3.2 After the attempted coup d'état of 15 July 2016, Turkey on 20 July 2016 declared a state of emergency in its territory. Since then, judges, journalists, lawyers and academics face "arbitrary repression and the crushing of fundamental freedoms".³ The current political context in Turkey following the attempted coup does not allow for compliance with the procedural rules of a State based on the rule of law and is thus an obstacle to extradition in accordance with international standards. In a resolution of 25 April 2017, the Parliamentary Assembly of the Council of Europe expressed its deep concern about the human rights situation in Turkey and noted that "eight months after the attempted coup, the situation has deteriorated and measures have gone far beyond what is necessary and proportionate".⁴ The Parliamentary Assembly also stressed that large-scale purges have been carried out within the administration,⁵ that a vast number of persons have been arrested and kept in custody awaiting indictment,⁶ that many officials have been dismissed and that the measures taken against them, such as the cancellation of their passports, the definitive ban against them ever working in the public administration or the termination of their access to the social security system, constitute the "civil death" of the persons in question.⁷ In the view of the Parliamentary Assembly, respect for fundamental rights is not ensured in Turkey.⁸ On 21 July 2016 Turkey announced its intention to derogate from the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), in application of article 15 of the Convention. In view of all these circumstances, the complainant faces a personal risk of being subjected to torture if he returns to his country.

3.3 The complainant also points out that the Greek Supreme Court has refused to extradite eight Turkish military officers on the grounds that the Greek courts could not in good conscience agree to extradite them to Turkey, a country considered by the Court to face the threat of the restoration of the death penalty, where there is also evidence of degrading and inhuman treatment of political dissidents and, lastly, where there is no fair trial in the strict sense of the word.

3.4 The Turkish Government has accused the Hizmet movement of being behind the attempted coup d'état of 15 July 2016. In Turkey, any individual belonging to or suspected of belonging to the Hizmet movement – which is the case of the complainant – is exposed to a real risk of torture and ill-treatment. More than 50 suspicious deaths in prison of Hizmet movement members have been registered, and the complainant adds that every day there are new reports of acts of torture or ill-treatment committed against Hizmet movement members, sometimes going so far as the arrest of mothers who have recently given birth, which is prohibited by law. These violations are also the subject of condemnation from notable organizations such as Amnesty International and Human Rights Watch.

³ European Democratic Lawyers, and Magistrats Européens pour la Démocratie et les Libertés, "Le glas de la démocratie ne cesse de sonner en Turquie", joint press release, 25 March 2017.

⁴ Council of Europe, Parliamentary Assembly, "The functioning of democratic institutions in Turkey" [resolution 2156 (2017)], para. 7.

⁵ *Ibid.*, para. 14.

⁶ *Ibid.*, para. 16.

⁷ *Ibid.*, para. 17.

⁸ *Ibid.*, para. 20.

3.5 The Hizmet movement and its members have been demonized in the media and in the speeches of Turkish officials. On 7 June 2017, at a Ramadan ceremony (iftar), President Recep Tayyip Erdoğan invited the Turkish people to “teach a lesson” to persons who had been released in the investigations into the Hizmet movement, specifying that they should not escape punishment so easily, even if they were not criminals. The complainant explains that his membership in the Hizmet movement is known to all in his city in Turkey and that there is therefore a real risk that he will be subjected to ill-treatment by the population, with no effective protection from the Government.⁹ Furthermore, the complainant’s posts on Twitter prove that he promoted the ideals of the Hizmet movement’s spiritual founder, Fethullah Gülen.

3.6 The complainant is wanted by the Turkish authorities in the context of investigations into the Hizmet movement in the city of Uşak. His relatives – his sister-in-law, his brother-in-law, and his wife’s uncle and his sons – are all in detention because of their membership in the Hizmet movement. A decision of the Minister of the Interior of Turkey, published in the Official Gazette of 10 September 2017 and containing 99 names, including the complainant’s, specifies that the Turkish Government intended to revoke the Turkish nationality of those persons if they did not return to Turkey within three months of the decision’s publication.¹⁰ The complainant therefore faces a foreseeable, personal, present and real risk of torture if extradited to Turkey.

State party’s observations on the admissibility

4.1 On 19 August 2017, the State party challenged the admissibility of the communication. It specifies that the Moroccan authorities received from the Turkish authorities – formally and through diplomatic channels – the request for the extradition of the complainant to Turkey on the basis of the provisions of the Agreement between the Kingdom of Morocco and the Republic of Turkey on Mutual Assistance in Criminal Matters and Extradition concluded on 15 May 1989. On 31 May 2017, the Court of Cassation issued a decision in favour of the extradition request, ruling that the request by the Turkish authorities was not only supported by an international arrest warrant, but also met the conditions of form and substance required by the Moroccan Code of Criminal Procedure and by the Agreement on Mutual Assistance. In court, the complainant fully benefited from his rights as guaranteed by the universally recognized principles and rules of the right to a fair trial.

4.2 Even if the decision of the Court of Cassation was not subject to any ordinary appeal, it could nevertheless be subject to an application for revocation, in accordance with articles 563 and 564 of the Code of Criminal Procedure.¹¹ The complainant has thus not exhausted all domestic remedies.

4.3 Secondly, with respect to the allegation that the extradition request is of a political nature, the Court of Cassation concluded that the acts for which the complainant has been charged in Turkey are criminal acts under Moroccan criminal law, as they are related to the establishment and direction of a terrorist organization and to money-laundering. Such acts can neither be considered to be political in nature or associated with a political offence nor be treated as a failure to carry out military obligations, just as they cannot be associated

⁹ The complainant points out that one person was tortured by a mob waiting for him at the door of the plane when extradited to Turkey from northern Cyprus, in plain view of police officers, but had been fortunate enough to escape without being lynched on the airport tarmac, which is supposed to be a high security zone.

¹⁰ <http://m2.shaber3.com/flas-yeni-vatandaslikan-cikarma-listesi-yayinlandi-haberi/1290163> (in Turkish only).

¹¹ Under article 563 the judgments of the Court of Cassation can be subject to an application for revocation in the following cases: (a) if a decision has been handed down on the basis of documents declared or recognized to be forgeries; (b) if it is necessary to correct judgments vitiated by an obvious material error and that can be remedied using material provided by the decision itself; (c) if the Court has failed to rule on a request presented in the context of the presentation of evidence or if the reasoning of the decision has not been specified; (d) and if a decision of inadmissibility or termination of a case has been issued for reasons arising from elements considered to be authentic, but which prove to be false following the submission of new documents that are equally authentic.

with motives or considerations relating to religion, race, nationality or political opinion. Furthermore, the Agreement on Mutual Assistance has adequate guarantees in relation to the non-extradition of persons for political reasons.

Complainant's comments on the State party's observations on admissibility

5.1 On 19 January 2018 the complainant argued that the application for revocation invoked by the State party was, as specified in the Code of Criminal Procedure, an exceptional remedy. It is not an ordinary appeal against a decision of a court of first instance or a court of appeal, but against a decision handed down by the Court of Cassation itself. Applications for revocation are therefore not brought before a higher court; they are brought before the very same Court of Cassation.

5.2 Moreover, the application for revocation procedure is futile and without effect in the present case. First, the complainant has no new elements that would be decisive in the examination of his appeal by the very same court that issued the ruling in favour of his extradition. Secondly, in similar cases, applications for revocation have not been effective.¹² Lastly, an application for revocation does not have suspensive effect. This being the case, the complainant cannot be required to initiate such an appeal and to await its outcome while constantly facing the risk of being extradited and exposed to irreversible harm.

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

State party's observations on the merits

6.1 On 19 December 2017, the State party submitted observations on the merits. First, it described the procedural details of the complainant's arrest in Morocco pursuant to the extradition request submitted by the Turkish authorities. The arrest was carried out in accordance with article 29 of the Agreement on Mutual Assistance concluded between the two countries.

6.2 Next, the State party referred to the procedure before the Court of Cassation, which held that the acts for which the complainant had been charged in his country of origin were crimes under ordinary law – crimes of terrorism – that were also crimes under the Moroccan Criminal Code, and that such crimes could not be considered political in nature or associated with political crimes. During the proceedings, the complainant fully benefited from all guarantees of a fair trial, including access to a lawyer. The State party systematically refuses extradition requests when the conditions set by article 721 of the Code of Criminal Procedure¹³ are met. The provisions of the national legislation adequately implement the principles of the Convention. The complainant has not been subjected to any acts of torture or ill-treatment in the territory of the State party.

6.3 As an extradition court, the Court of Cassation is not competent to hand down a ruling on the scope of the evidence contained in the extradition request. The Court considered that the extradition request was not of a political character, as the complainant was involved in terrorism and the financing of terrorism. In essence, extradition and refoulement are two completely different legal procedures.

¹² The complainant refers to the case of *Alhaj Ali v. Morocco* (CAT/C/58/D/682/2015), where the complainant submitted an application for revocation of the decision of the Court of Cassation, without success.

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

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

7.1 On 26 May 2018 the complainant submitted his comments. He clarifies the subject of his complaint, specifying that it does not relate to the arrest procedure in the State party, nor to the terms of mutual legal assistance between Morocco and Turkey, but to the legal opinion issued by the Court of Cassation and the extradition proceedings that would follow from it. The State party has failed to meet its obligations under article 3 of the Convention.

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

7.3 While the Court of Cassation is not competent to assess the essential legal value of the evidence contained in the extradition request, it is still fully legally capable and competent to assess it in relation to the other elements of the case, in accordance with the provisions of article 721 of the Code of Criminal Procedure and article 3 of the Convention. The Court of Cassation has the right to call into question the hidden reasons behind the application for the complainant's extradition and to take real and concrete steps to make an informed decision.

7.4 The State party does not explain how it was able to conclude that the complainant was involved in the acts for which he has been charged by Turkey while at the same time maintaining that the Court of Cassation cannot assess the merits of the case linked to the extradition request. According to the testimony of a person who knows the complainant, he is a religious moderate, a far cry from the description of him provided by his country's Government.

7.5 In addition, on 6 January 2017, the Turkish Government adopted three decree-laws under the state of emergency, including Decree-Law No. 680, which gives the authorities the power to revoke the citizenship of persons under investigation and who remain abroad. A wanted for return notice published on 10 September 2017 in the Official Gazette by the Turkish Ministry of Justice contained the complainant's name as well. The objective of Decree-Law No. 680, namely the revocation of the complainant's citizenship in a discriminatory manner and as punishment for political dissent, is arbitrary deprivation of nationality, which is specifically prohibited under the Turkish Constitution and international human rights law. Furthermore, the arbitrary deprivation of nationality of the complainant is further evidence that the extradition request is of a purely political nature.

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

7.7 Lastly, the complainant refers to paragraph 6 of the Committee's general comment No. 1 (1997) on the implementation of article 3 of the Convention in the context of article 22,¹⁴ arguing that the Committee interpreted article 3 of the Convention as a provision that imposes on the State party the obligation to assess whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture if expelled, returned or extradited. All legal means in assessing the risk of torture are legitimate and must be explored, including the assessment of the general human rights situation in Turkey. The extension of the state of emergency in Turkey has led to grave human rights violations, including acts of torture, as reported by the Office of the United Nations High

¹⁴ This general comment was replaced in 2017 by general comment No. 4 (2017) on the implementation of article 3 of the Convention in the context of article 22.

Commissioner for Human Rights (OHCHR) in its report of 20 March 2018.¹⁵ The use of torture, arbitrary detention and arbitrary deprivation of the rights to work and to freedom of movement, expression and association had already been denounced in the 2017 report.¹⁶ The complainant also notes that the German authorities have criticized Turkey for misuse of the International Criminal Police Organization-INTERPOL since the attempted coup d'état in 2016. In the complainant's view, the INTERPOL National Central Bureau in the State party should have examined the notice issued against him more closely and should have ignored it, in line with articles 2 and 3 of the Constitution of INTERPOL.¹⁷

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

Issues and proceedings before the Committee

Consideration of admissibility

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

8.2 The Committee recalls that, in accordance with article 22 (5) (b) of the Convention, it shall not consider any complaint from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. It notes that the State party argues that the complainant has not exhausted all available domestic remedies, invoking the possibility of an extraordinary remedy – the application for revocation. The Committee also notes the complainant's argument, which the State party does not contest, regarding the special nature of this remedy, which does not have suspensive effect and therefore provides no guarantee of satisfaction. Indeed, the Committee notes the very exceptional nature of this remedy, which, according to article 563 of the Moroccan Code of Criminal Procedure, *inter alia*, makes it possible to challenge decisions of the Court of Cassation in the following cases: (a) if the decision has been handed down on the basis of documents recognized to be forgeries; (b) to correct obvious material errors; (c) to overturn a court decision for lack of reasoning in the judgment; and (d) to quash decisions when they are based on grounds that were considered authentic, but which prove to be false. In this regard, the Committee recalls that the suspensive effect of a remedy is one of the essential procedural guarantees in expulsion proceedings, since its aim is to prevent possible violations of the principle of non-refoulement and thus to ensure the full implementation of article 3 of the Convention.¹⁸

8.3 The Committee refers to its jurisprudence and recalls that in the present case, in accordance with the principle of exhaustion of domestic remedies, the complainant was only required to apply for remedies that are directly related to the risk of being subjected to torture in Turkey.¹⁹ The Committee notes that the State party has not specified how an application for revocation of the Court of Cassation's decision of 31 May 2017 could affect the complainant's extradition to Turkey, as it has not indicated whether that remedy has suspensive effect. The Committee also notes that the State party has not refuted the complainant's allegation that applications for revocation do not have suspensive effect. The Committee recalls that in several of the cases brought before it, an extradition order was signed by the Head of Government even before the Court of Cassation had ruled on an

¹⁵ OHCHR, "Report on the impact of the state of emergency on human rights in Turkey, including an update on the South-East, January–December 2017", March 2018, paras. 7, 77, 81 and 83.

¹⁶ OHCHR, "Report on the human rights situation in South-East Turkey, July 2015 to December 2016", February 2017.

¹⁷ INTERPOL, Constitution of the International Criminal Police Organization-INTERPOL (I/CONS/GA/1956 (2017)).

¹⁸ Committee's general comment No. 4 (2017), paras. 13, 18 (e) and 34.

¹⁹ *Gharsallah v. Morocco* (CAT/C/64/D/810/2017), para. 7.4, and *Kalinichenko v. Morocco* (CAT/C/47/D/428/2010), para. 14.3. See also the Committee's general comment No. 4 (2017), para. 34.

application for revocation.²⁰ Considering that Moroccan law does not specify whether this remedy has suspensive effect, that the State party cites no examples of applications filed for revocation and cites no specific examples of jurisprudence clarifying the suspensive nature of an application for revocation,²¹ the Committee is not in a position to conclude that the fact that the complainant did not submit an application for revocation prevents him from submitting his complaint to the Committee. In the circumstances of the present case, the Committee finds that article 22 (5) (b) of the Convention does not preclude it from declaring the communication admissible.

8.4 The Committee also notes that the State party has challenged the admissibility of the complaint on the grounds of insufficient substantiation, since the complainant alleges that the extradition request from Turkey was of a political nature. The State party indicates that the complainant fully benefited from all fair trial guarantees and that the Court of Cassation has not found that the extradition request submitted by the Turkish authorities is of a political nature. The Committee observes that the complainant, for his part, argues that he faces a risk if extradited, as a person related to the Hizmet movement, which was described as a terrorist group by the Turkish Government. The Committee therefore finds that the complainant has sufficiently substantiated his complaint for the purposes of admissibility.

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

Consideration of the merits

9.1 In accordance with article 22 (4) of the Convention, the Committee has considered the present complaint in the light of all the information made available to it by the parties.

9.2 In the present case, the issue before the Committee is whether the extradition of the complainant to Turkey would constitute a violation of the State party's obligation under article 3 (1) of the Convention not to expel or return ("refouler") a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture. The Committee recalls, first and foremost, that the prohibition against torture is absolute and non-derogable and that no exceptional circumstances may be invoked by a State party to justify acts of torture.²² The principle of "non-refoulement" of persons to another State where there are substantial grounds for believing that they would be in danger of being subjected to torture is similarly absolute.²³

9.3 In assessing whether there are substantial grounds for believing that the alleged victim would be in danger of being subjected to torture, the Committee recalls that, under article 3 (2) of the Convention, States parties must take into account all relevant considerations, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights in the State of return. In the present case, however, the Committee must determine whether the complainant runs a personal risk of being subjected to torture if he is extradited to Turkey. The existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient reason for determining that the complainant would be in danger of being subjected to torture on extradition to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk.²⁴ Conversely, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.²⁵

²⁰ *R.A.Y. v. Morocco* (CAT/C/52/D/525/2012), paras. 6.3 and 6.4.

²¹ *Ibid.*, para. 6.3.

²² Committee's general comment No. 2 (2007) on the implementation of article 2 by States parties, para. 5.

²³ Committee's general comment No. 4, para. 9.

²⁴ *Alhaj Ali v. Morocco*, para. 8.3, *R.A.Y. v. Morocco*, para. 7.2, and *L.M. v. Canada* (CAT/C/63/D/488/2012), para. 11.3.

²⁵ *Kalinichenko v. Morocco*, para. 15.3.

9.4 The Committee recalls its general comment No. 4 (2017) on the implementation of article 3 of the Convention in the context of article 22, according to which the non-refoulement obligation exists whenever there are “substantial grounds” for believing that the person concerned would be in danger of being subjected to torture in a State to which he or she is facing deportation, either as an individual or a member of a group which may be at risk of being tortured in the State of destination, and its practice of considering that “substantial grounds” exist whenever the risk is “foreseeable, personal, present and real”.²⁶ The Committee also recalls that the burden of proof is upon the complainant, who has to present an arguable case – i.e., to submit circumstantiated arguments showing that the danger of being subjected to torture is foreseeable, personal, present and real. However, when the complainant is in a situation where he or she is unable to elaborate on his or her case, the burden of proof is reversed and the State party concerned must then investigate the allegations and verify the information on which the complaint is based.²⁷ The Committee gives considerable weight to findings of fact made by the organs of the State party concerned; however, it is not bound by such findings and will make a free assessment of the information available to it, in accordance with article 22 (4) of the Convention, taking into account all the circumstances relevant to each case.²⁸

9.5 In the present case, the Committee takes note of the complainant’s argument that, in the event of extradition to Turkey, he faces a serious risk of torture because of his perceived membership of the Hizmet movement. In this regard, the Committee notes that the complainant is the subject of an arrest warrant for membership of this movement, while according to the reports placed on file, the use of torture and ill-treatment against persons with his profile is commonplace during their detention. The Committee notes the complainant’s argument that the Court of Cassation has not applied article 721 of the Code of Criminal Procedure and has not verified whether the request for the complainant’s extradition is of a political nature. The Committee also notes that, according to the State party, Moroccan criminal law is in conformity with the Convention, since it establishes that no person may be extradited if it is likely that he or she will be subjected to persecution for reasons of race, religion, or his or her political or personal situation, or if that person may be in danger for any such reasons.

9.6 The Committee must take into account the current situation of human rights in Turkey, including the impact of the state of emergency (which was lifted in July 2018, but whose restrictive measures have been prolonged by the adoption of a series of legislative measures). The Committee notes that successive prolongations of the state of emergency in Turkey have led to serious violations of the human rights of hundreds of thousands of people, including arbitrary deprivation of the right to work and freedom of movement, torture and ill-treatment, arbitrary detention and violations of the rights to freedom of association and expression.²⁹ In this regard, the Committee recalls its concluding observations on the fourth periodic report of Turkey (CAT/C/TUR/CO/4), in which it noted with concern, in paragraph 9, the significant disparity between the high number of allegations of torture reported by non-governmental organizations and the data provided by the State party in its periodic report (see paras. 273–276 and annexes 1 and 2), which suggested that not all allegations of torture had been investigated during the reporting period. In the same concluding observations, in paragraph 19, the Committee highlighted its concern about recent amendments to the Code of Criminal Procedure, which gave the police greater powers to detain individuals without judicial oversight during police custody. In paragraph 33, the Committee expressed regret about the lack of complete information on suicides and other sudden deaths in detention facilities during the period under review.

9.7 The Committee notes that, according to the complainant, the state of emergency declared in Turkey on 20 July 2016 increased the risk that persons accused of belonging to terrorist groups would be subjected to torture while in detention. The Committee recognizes that the concluding observations in question were issued prior to the declaration of the state

²⁶ Committee’s general comment No. 4 (2017), para. 11.

²⁷ *Ibid.*, para. 38.

²⁸ *Ibid.*, para. 50.

²⁹ OHCHR, “Report on the impact of the state of emergency on human rights in Turkey, including an update on the South-East: January – December 2017”, March 2018.

of emergency. However, it recalls that, following the attempted coup d'état of July 2016, it expressed concern about the situation in Turkey in a follow-up letter sent to the State party on 31 August 2016,³⁰ and it also notes that since the declaration of the state of emergency, reports issued on the human rights situation in Turkey and the prevention of torture have indicated that the concerns raised by the Committee remain relevant.³¹

9.8 In the present case, the Committee notes that the complainant has mentioned the risk of being persecuted on account of his political activities, as he is perceived to be a member of the Hizmet movement, which is considered responsible for the attempted coup d'état of July 2016. The Committee observes that, according to its 2018 report, OHCHR had access to reliable information indicating that torture and ill-treatment were used during pretrial detention, in the context of the Turkish authorities' response to the attempted coup d'état of July 2016.³² In the same report, OHCHR states that it has documented the use of various forms of torture and ill-treatment in detention, including beatings, threats of sexual assault, sexual assault, electric shocks and simulated drowning. Such torture generally had the purpose of extracting confessions or coercing denunciations of other individuals as part of the investigation of acts related to the attempted coup d'état.³³ In his report on his mission to Turkey, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment notes that the use of torture was widespread in the aftermath of the attempted coup.³⁴ The Special Rapporteur also notes that the low number of investigations and prosecutions initiated in response to allegations of torture or ill-treatment seemed grossly disproportionate to the alleged frequency of the violations, indicating insufficient determination on the part of the Turkish authorities to take such cases forward.³⁵

9.9 With regard to the direct impact of the state of emergency declared on 20 July 2016, the Committee takes note of the concern expressed by OHCHR about the harmful effects of the measures introduced in that context on safeguards against torture and ill-treatment. In particular, the Office makes reference to the restrictions that may be imposed on contacts between detainees and their lawyers, the increase in the maximum permitted duration of police custody, the closure of certain independent mechanisms for the prevention of torture and the excessive use of pretrial detention.³⁶ After successive extensions declared by the Turkish authorities, the state of emergency formally ended on 19 July 2018. In a letter dated 8 August 2018, the Turkish authorities informed the Council of Europe that the state of emergency had terminated on 19 July 2018 at the end of the deadline set by Decision No. 1182 and that, accordingly, the Government of the Republic of Turkey had decided to withdraw the notice of derogation from the European Convention on Human Rights.³⁷ However, a series of legislative measures have been adopted that extend the application of the restrictive measures introduced during the state of emergency, such as the possibility of prolonging police custody for up to 12 days.³⁸

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

³⁰ https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/TUR/INT_CAT_FUL_TUR_25040_E.pdf.

³¹ OHCHR, "Report on the impact of the state of emergency on human rights in Turkey, including an update on the South-East, January–December 2017", March 2018; *ibid.*, "Report on the human rights situation in South-East Turkey, July 2015 to December 2016", February 2017; and A/HRC/37/50/Add.1.

³² OHCHR, "Report on the impact of the state of emergency on human rights in Turkey, including an update on the South-East: January–December 2017", March 2018, para. 7.

³³ *Ibid.*, para. 77.

³⁴ A/HRC/37/50/Add.1, para. 26.

³⁵ *Ibid.*, paras. 70–73.

³⁶ OHCHR, "Report on the impact of the state of emergency on human rights in Turkey, including an update on the South-East: January–December 2017", March 2018, para. 83.

³⁷ Council of Europe, reservations and declarations for Treaty No. 005, Convention for the Protection of Human Rights and Fundamental Freedoms, 12 June 2019, available at: www.coe.int/en/web/conventions/search-on-treaties/-/conventions/treaty/005/declarations.

³⁸ Human Rights Watch, "Turkey: Events of 2018", available at: www.hrw.org/world-report/2019/country-chapters/turkey.

2016, in particular for persons who, like the complainant, have some perceived or actual membership of the Hizmet movement. The Committee notes that the authorities of the State party have merely ascertained that the form and substance of the extradition request for the complainant by the Turkish authorities is in conformity with the Agreement on Mutual Assistance concluded between the two countries on 15 May 1989, which predates the ratification of the Convention by the State party on 21 June 1993, and without assessing the risk of torture that the complainant would face if extradited to Turkey from the standpoint of article 3 of the Convention. The Committee also notes that the Turkish authorities have included the complainant's name on a list of persons whose Turkish nationality it has threatened to revoke. The Committee recalls that the primary aim of the Convention is to prevent torture, not to redress torture once it has occurred.³⁹

9.11 In the light of the above, and having regard to the complainant's profile as a member – perceived or real – of the Hizmet movement, the Committee is of the view that it was for the State party to conduct an individualized assessment of the real and personal risk to which the complainant would be exposed in Turkey, particularly bearing in mind the documented treatment by the Turkish authorities of persons related to this movement, rather than to base its decision on the assumption that an extradition request had been made in accordance with an agreement between the two countries and that the crimes for which the complainant had been accused are crimes under ordinary law, also covered by Moroccan criminal law. The Committee also considers that article 721 of the Moroccan Code of Criminal Procedure does not specifically mention the risk of torture and ill-treatment in the event of extradition, but only the risk of worsening the personal situation of individuals who are the subject of extradition requests, on the grounds of their race, religion, nationality or political opinions, if the offence in respect of which extradition is requested is considered by the State party to be a political offence or to be connected with such an offence.⁴⁰ In the present case, on the basis of the findings of the Court of Cassation sitting as a court of extradition, the Committee cannot conclude that the Court gave consideration to the arguments that there was a present, foreseeable, real and personal risk that the complainant would be subjected to torture if extradited to Turkey. The Committee thus concludes that the extradition of the complainant to Turkey would constitute a violation of article 3 of the Convention.

10. The Committee, acting under article 22 (7) of the Convention, concludes that the complainants' extradition to Turkey would constitute a breach of article 3 of the Convention.

11. The Committee is of the view that, in accordance with article 3 of the Convention, the State party is required to:

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

(b) Refrain from extraditing the complainant to Turkey and consider the request for the complainant's extradition to Turkey in the light of its obligations under the Convention – which entails an assessment of the risk of torture and ill-treatment in the event of extradition – and of this decision, all the more so as the complainant filed an application for international protection with the Office of the United Nations High Commissioner for Refugees in Rabat, on 23 May 2017. Given that the complainant has been held in pretrial detention for almost 2 years, the State party is under an obligation to release him.⁴¹

12. In accordance with rule 118 (5) of its rules of procedure, the Committee invites the State party to inform it, within 90 days from the date of the transmittal of the present decision, of the steps it has taken to respond to the above observations.

³⁹ *Alan v. Switzerland* (CAT/C/16/D/21/1995), para. 11.5.

⁴⁰ See footnote 13.

⁴¹ *Alhaj Ali v. Morocco*, para. 9.