United Nations CAT/C/66/D/845/2017

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

Distr.: General
25 June 2019
English
Original: French

Committee against Torture

Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 845/2017*, **

Communication submitted by:	Mustafa Onder (represented by counsel, El kbir Lemseguem)
Alleged victim:	The complainant
State party:	Morocco
Date of complaint:	17 October 2017
Document references:	Decision taken pursuant to rules 114 and 115 of the Committee's rules of procedure, transmitted to the State party on 20 October 2017 (not issued in document form)
Date of decision:	10 May 2019
Subject matter:	Extradition to Turkey
Procedural issues:	Exhaustion of domestic remedies
Substantive issues:	Risk of torture for political reasons upon extradition (non-refoulement)
Articles of the Convention:	3 and 22

1.1 The complainant is Mustafa Onder, a Turkish national born in 1985. He claims that his extradition to Turkey 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, El kbir Lemseguem.

1.2 On 18 December 2017, the State party informed the Committee that the complainant's extradition to Turkey had been suspended until the Committee issued its decision on the complaint.

The facts as submitted by the complainant

2.1 In 2013, the complainant, who is a teacher, moved with his wife and two children to Morocco, where he teaches in a private school. On 26 April 2017, the complainant and his

* 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. In accordance with rule 109 of the Committee's rules of procedure, Essadia Belmir did not take part in the consideration of the communication.

family applied for asylum with the Office of the United Nations High Commissioner for Refugees in Rabat. They are still awaiting a response.

2.2 On 22 June 2017, the Embassy of Turkey in Morocco informed the State party of the issue of a warrant for the complainant's arrest on the charge of belonging to an armed terrorist organization, namely, the Hizmet movement[1] deemed responsible for the attempted coup d'état in Turkey on 15 July 2016, and requested his extradition. On 28 July 2017, the complainant was arrested by the Moroccan police. On 29 July 2017, he appeared before the Tetouan public prosecutor, who informed him of the reasons for his arrest, referred the case to the Court of Cassation, which is responsible for ruling on extradition requests, and issued an order for his detention in Salé prison.

2.3 On 13 September 2017, the complainant appeared before the Moroccan Court of Cassation, assisted by his lawyer, and contested the request for his extradition to his country of origin. He invoked the political nature of the request, citing the lack of evidence in the file held by the Turkish judiciary, specifically with regard to his membership of the Hizmet movement, which is classified as a terrorist organization by the Government of Turkey. He also invoked the danger to which he would be exposed in Turkey, given the general human rights situation prevailing there, particularly after the attempted coup d'état on 15 July 2016 which was followed by a massive wave of arrests, trials and convictions. The complainant also submitted a document attesting to the asylum request that he had submitted to the Office of the United Nations High Commissioner for Refugees in Rabat.

2.4 On 19 September 2017, the Court of Cassation issued an opinion favourable to the complainant's extradition to Turkey. The Court ruled: (a) that the offence of which the complainant was charged fell under ordinary law and did not constitute a political offence; (b) that the Hizmet movement should be considered a terrorist organization since the law applicable in Turkey classified it as such; (c) that the Court could rule only on the lawfulness of the extradition procedure and the recognition, or otherwise, of offences of the kind imputed to the complainant in the Moroccan Criminal Code; and (d) that the international protection procedure was of a categorically different nature to the extradition procedure.

The complaint

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

3.2 The complainant recounts that, on 20 July 2016, in the aftermath of the attempted coup d'état on 15 July 2016, Turkey imposed a state of emergency throughout the country and that since then judges, journalists, lawyers and academics have been victims of arbitrary violations and suppression of their fundamental freedoms.[2] The political situation in Turkey since the attempted coup precludes any possibility of guaranteeing that the procedural norms of a legal State will be respected and that an extradition will be carried out in accordance with international standards. The complaint notes that, in a resolution of 25 April 2017, the Parliamentary Assembly of the Council of Europe expressed deep concern about the human rights situation in Turkey and noted that, eight months after the attempted coup, the situation had "deteriorated" and measures had gone "far beyond" what was "necessary and proportionate".[3] The Parliamentary Assembly also noted: that wide-scale purges had been conducted in the public administration;[4] that large numbers of persons had been arrested and were being kept in custody awaiting indictment;[5] that numerous civil servants had been dismissed; and that the measures taken against them,

[1] Also known as the Gülen movement or Gülen brotherhood.

[2] European Democratic Lawyers and European Judges for Democracy and Liberty, "Le glas de la démocratie ne cesse de sonner en Turquie" ["The death knell continues to ring for democracy in Turkey"], joint press release, 25 March 2017.

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

[4] Ibid., para. 14.

[5] Ibid., para. 16.

which included cancellation of their passports, a ban on their ever working again in the public administration and the withdrawal of their access to the social security system, amounted to a "civil death" for the persons concerned.[6] The Parliamentary Assembly concluded that respect for fundamental human rights is not guaranteed in Turkey.[7] The complainant also refers to the notification received by the Council of Europe on 21 July 2016, in which Turkey announced its intention to derogate from the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), by virtue of article 15, and concludes that, in view of this combination of circumstances, he faces a personal risk of being subjected to torture if returned to his country.

3.3 The complainant also points out that the Greek Supreme Court refused to extradite eight Turkish soldiers on the grounds that the Greek courts could not in good conscience agree to extradite them to Turkey, a country where, according to the Court, there was a risk of the death penalty being reintroduced, where there was also evidence of degrading and inhuman treatment of political dissidents and, lastly, where there was no fair trial sensu stricto. The complainant also states that he provided the Court of Cassation with a document attesting to the asylum request that he had submitted to the Office of the United Nations High Commissioner for Refugees in Rabat.

3.4 The complainant maintains that the Turkish Government has accused the Hizmet movement of being at the origin of the attempted coup d'état of 15 July 2016 and classifies it as an armed terrorist organization. He denies belonging to this movement and argues that Turkey has failed to provide any direct, irrefutable evidence to implicate him in the offence of being a member of a terrorist organization.

3.5 In this connection, the complainant notes that the Turkish authorities accuse him of: (a) having worked for commercial companies founded and managed by the Hizmet movement; (b) having attended meetings with members of the movement in various hotels; (c) having travelled outside Turkey with members of the movement; and (d) having used the messaging app known as ByLock to communicate with other members of the movement. According to the complainant, this information was collected in the course of interviews with five of his former pupils, four of whom have become police officers. The fifth person questioned said, through a third party, that his confessions had been extracted during a "very forceful" interrogation. The complainant maintains that the information in his case file is unsubstantiated by any direct or indirect evidence, is vague and abstract, and has no legal merit. He affirms that he was an ordinary teacher working in commercial companies that the Turkish authorities believe to have been founded and managed by the Hizmet movement, and that, in the circumstances, he had no way of knowing the political views of his employers. He adds that his trips outside Turkey were purely for tourism purposes, as is confirmed by the testimonies included in his file. The complainant also asserts that his use of the messaging app known as ByLock cannot be considered evidence of his membership of the Hizmet movement, since the content he exchanged using this app was not of a criminal nature and ByLock is in any case a legal app available to members of the public.[8] The complainant adds that the provisions of article 721 of the Moroccan Code of Criminal Procedure give the Court of Cassation exceptional discretion to refuse an extradition request when there are doubts as to the request's substantiation, especially when the request is based on vague and abstract "evidence".[9] He believes that membership of an organization

[6] Ibid., para. 17.

[7] Ibid., para. 20.

[8] On 20 September 2016, in criminal case No. 225/2016 the Court of Appeal of Hatay (Turkey) unanimously refused to instigate criminal proceedings on charges of belonging to the Hizmet movement, as requested by the prosecution service, owing to a lack of evidence. The prosecution service had submitted a list of elements of evidence, including the complainant's use of ByLock. The Court ruled that use of this application cannot be considered evidence since it has not been proven that the content exchanged was of a criminal nature.

[9] Article 721 stipulates that extradition shall not be agreed when the offence for which extradition 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

responsible for an attempted coup – an act that was entirely politically motivated – must automatically be regarded as a political crime or offence.

State party's observations on admissibility and merits

4.1 The State party submitted its observations on the admissibility and merits of the complaint in notes verbales dated 19 December 2017 and 30 April 2018.

4.2 The State party maintains that the Court of Cassation determined that membership of a terrorist group – the offence for which extradition was requested – is an ordinary offence, not a political offence. In this context, it believes that its domestic legislation contains sufficient provisions to guarantee compliance with the Convention. Article 721 of its Code of Criminal Procedure provides that extradition requests are inadmissible if the Moroccan authorities believe them to be related to a political offence. The accused person will not be extradited if the authorities believe that he or she may be subjected to persecution on the grounds of his or her race, religion, political opinion or personal circumstances. The same applies if the person may be in danger for any of these reasons.

4.3 The State party also notes that the complainant did not invoke the risk of torture before the Court of Cassation, and Turkey gave assurances that the complainant's rights would be respected, in conformity with the international instruments ratified by Turkey. Furthermore, since Turkey has accepted the individual applications procedure under article 34 of the European Convention on Human Rights, the complainant would have the possibility of filing a complaint with the European Court of Human Rights if he were to be subject to a violation of his rights.

4.4 The claims that the evidence provided by the Turkish authorities is not convincing were not sufficiently substantiated by the complainant. Furthermore, it is not within the Court of Cassation's competence to express an opinion as to the complainant's innocence or guilt. Responsibility for making such decisions, in full compliance with the rules of fair trial, lies with the competent judicial authorities of the State requesting extradition.

4.5 The Court of Cassation also considered the complainant's claim that the Hizmet movement cannot be deemed a terrorist organization. It recalled that Turkey is a sovereign State and that, according to its law, Hizmet is considered a terrorist movement accused of having organized the attempted coup of 15 July 2016. The State party also points out that the Court of Cassation is not competent to assess the lawfulness of this legislation: its authority is limited to determining the lawfulness of the extradition proceedings. It must thus ensure that the acts in respect of which extradition is requested constitute offences under the Criminal Code of Morocco.

4.6 The Court of Cassation found the claim that the extradition request was politically motivated to be unfounded. Article 27.1 of the agreement concluded between the Kingdom of Morocco and the Republic of Turkey on legal assistance in criminal matters and extradition stipulates that extradition cannot be agreed if the offence for which it is requested is regarded as a political offence or is connected with political issues. In this case, the purpose of the extradition request is to try the complainant on charges of membership of an armed terrorist group, which is not a political offence. The complainant failed to prove to the Court of Cassation that the underlying reasons for the extradition request were issues of race, religion, nationality or political opinion.

4.7 As for the complainant's claim to be an asylum seeker, the State party recalls that, as pointed out by the Court of Cassation, extradition proceedings are fundamentally different from proceedings for the expulsion of foreign nationals illegally present in the State party's territory. A State that does not recognize the principle of extradition does not thereby waive its right to expel foreign nationals in general. Expulsion proceedings initiated by the State in which the foreign national is residing are not conditional upon the existence of an agreement with the State to which the person will be expelled.

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."

4.8 As regards the complainant's claim that the evidence justifying the arrest warrant was based on testimonies obtained by coercion, the State party notes that the Court of Cassation is not permitted to express on opinion as to the innocence or guilt of the person whose extradition is requested and that the competent Turkish judicial authorities scrupulously comply with the rules of fair trial and international instruments. Accordingly, this claim was deemed inadmissible by the Court of Cassation.

Complainant's comments on the State party's submission

5.1 The complainant submitted his responses to the State party's observations on the admissibility and merits of the complaint on 26 May 2018. He clarifies the subject matter of his complaint, namely, that it rests on the legal opinion issued by the Court of Cassation and the extradition proceedings that followed. He believes that, given the circumstances, the State party failed to fulfil its obligations under article 3 of the Convention.

5.2 The complainant reiterates that he invoked his fear of being persecuted if extradited to his country of origin before the Court of Cassation and informed the Court of the asylum request that he had submitted to the Office of the United Nations High Commissioner for Refugees. In this context, he believes that the Court failed to obtain assurances that the extradition request was not politically motivated. In particular, the Court failed to consider the fact that the extradition request submitted by Turkey rested on evidence that provided insufficient grounds to charge the complainant with the serious offence of membership of an armed terrorist group. This failure to assess the evidence runs counter to the spirit of article 3 of the Convention.

5.3 The complainant states that he would be in danger of being subjected to torture if extradited to Turkey and is of the view that, while the Court of Cassation may not be competent to assess the merit of the evidence contained in the extradition request, it should nevertheless consider whether there are hidden reasons for the request and should rule accordingly. Furthermore, the Court, being composed of judges, legal practitioners and legal experts, has the capacity to assess whether the law that classifies the Hizmet movement as a terrorist association respects the right to a fair trial and the right to a defence.

5.4 Decree-Law No. 667, establishing a state of emergency in Turkey, extended the maximum duration of police custody from 4 to 30 days, thereby increasing the risk of torture and ill-treatment in detention. Decree-Law No. 676 provides that the public prosecutor may prevent a suspect from speaking with his or her lawyer for up to five days. The complainant therefore believes that he has no hope of a fair trial in Turkey. The Office of the United Nations High Commissioner for Human Rights has highlighted that more than 4,200 judges have been dismissed by decree of the High Council of Judges and Prosecutors; that around 570 lawyers have been arrested; and that 34 bar associations have been shut down for allegedly being members of the Hizmet movement. The Office has also noted a tendency to persecute lawyers representing persons accused of belonging to this movement.[10]

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

5.6 The complainant refutes the State party's claim that the Court of Cassation is not competent to assess the human rights situation in the country requesting extradition, as it has a duty under article 3 of the Convention to consider whether there are substantial grounds for believing that a person would be in danger of being subjected to torture if he or she was extradited. 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 High Commissioner for Human Rights in its report of 20 March 2018.[11] The use of torture, arbitrary detention and arbitrary deprivation of the right to work and of freedom of

[10] Office of the United Nations High Commissioner for Human Rights, "Report on the impact of the state of emergency on human rights in Turkey, including an update on the South-East, January to December 2017", March 2018.

[11] Ibid.

movement, expression and association had already been denounced in the 2017 report.[12] The complainant also notes that the German authorities have criticized Turkey for misuse of the International Criminal Police Organization-INTERPOL since the 2016 attempted coup d'état. In his view, the national INTERPOL office in Turkey should have examined the notice issued against him more closely and should have dismissed it, in line with articles 2 and 3 of the Constitution of INTERPOL.[13]

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

Issues and proceedings before the Committee

Consideration of admissibility

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

6.2 The Committee recalls that, in accordance with article 22 (5) (b) of the Convention, it does not consider any complaint from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Committee notes the State party's claim that the complainant did not mention before the Court of Cassation the risk of torture in cases of extradition to Turkey. However, it also notes that when the complainant was brought before the Court of Cassation, he opposed his extradition by arguing, inter alia, that he would be in danger if he was extradited, that he was subject to political persecution and that he had applied for refugee status for these reasons. The Committee is of the view that the fact that the complainant made these arguments before the Court of Cassation is sufficient to consider that he did effectively invoke the risks in question and notes that the State party has not claimed that other domestic remedies were available to the complainant. Accordingly, the Committee considers that the author has exhausted all available domestic remedies.

6.3 As the Committee finds no further obstacles to admissibility, it declares the complaint admissible under article 22 of the Convention with respect to the alleged violation of article 3 and proceeds to consider it on the merits.

Consideration of the merits

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

7.2 In the present case, the issue before the Committee is whether the complainant's extradition to Turkey would constitute a violation of the State party's obligation under article 3 (1) of the Convention not to expel or return 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.[14] The principle of the non-refoulement of persons to States where there are substantial grounds for believing that they would be in danger of being subjected to torture, which is set out in article 3 of the Convention, is also absolute.[15]

[12] Office of the United Nations High Commissioner for Human Rights, "Report on the human rights situation in South-East Turkey, July 2015 to December 2016", February 2017.

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

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

[15] The Committee's general comment No. 4 (2017) on the implementation of article 3 of the Convention in the context of article 22, para. 9.

7.3 In assessing whether there are substantial grounds for believing that the alleged victim would be in danger of being subjected to torture, the Committee recalls that, under article 3 (2) of the Convention, States parties must take into account all relevant considerations, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights in the requesting State. However, in the present case, 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 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.[16] 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.[17]

7.4 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 to be expelled, either as an individual or as a member of a group that may be at risk of being tortured in the State of destination. The Committee's practice in this context has been to determine that "substantial grounds" exist whenever the risk of torture is "foreseeable, personal, present and real".[18] Indications of personal risk may include, but are not limited to, the political affiliation or political activities of the complainant or members of his family, and the existence of an arrest warrant without guarantee of fair treatment and a fair trial.[19] The Committee also recalls that it gives considerable weight to findings of fact made by organs of the State party concerned; however, it is not bound by such findings and will make a free assessment of the information available to it in accordance with article 22 (4) of the Convention, taking into account all the circumstances relevant to each case.[20]

7.5 In the present case, the Committee notes the complainant's allegation that his extradition would expose him to substantial risks of torture in detention in Turkey because he is believed to be a member 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, although he denies being a member, and that, 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 also notes that, according to the State party, no person will be extradited if he or she is likely to be subjected to persecution on grounds of his or her race, religion, political opinion or personal situation or if he or she may be in danger for any of these reasons. Lastly, the Committee notes that, in the present case, the State requesting the extradition has provided assurances that the complainant's rights would be respected.

7.6 The Committee must take into account the current human rights situation in Turkey, including the impact of the state of emergency (which, although lifted in July 2018, entailed restrictive measures that have been extended through the adoption of a series of legislative measures). It notes that the successive extensions of the state of emergency in Turkey have led to serious human rights violations against hundreds of thousands of people, including arbitrary deprivation of the right to work and of freedom of movement, torture and ill-treatment, arbitrary detention and violations of the rights to free association and expression.[21] In this regard, the Committee recalls its concluding observations on the fourth periodic report of Turkey (CAT/C/TUR/CO/4), in 2016, in which it noted with concern, in paragraph 9, a significant disparity between the high number of allegations of torture

[16] *Alhaj Ali v. Morocco* (CAT/C/58/D/682/2015), para. 8.3; *R.A.Y. v. Morocco* (CAT/C/52/D/525/2012), para. 7.2; and *L.M. v. Canada* (CAT/C/63/D/488/2012), para. 11.3.

[17] *Kalinichenko v. Morocco* (CAT/C/47/D/428/2010), para. 15.3.

[18] The Committee's general comment No. 4, para. 11.

[19] Ibid., para. 45.

[20] Ibid., para. 50.

[21] Office of the High Commissioner for Human Rights, "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.

reported by non-governmental organizations and the data provided by the State party in its fourth periodic report (see CAT/C/TUR/4, paras. 273–276 and annexes 1 and 2), suggesting that not all allegations of torture had been investigated during the reporting period. In the same concluding observations, the Committee highlighted, in paragraph 19, its concern about recent amendments to the Code of Criminal Procedure, which gave the police greater powers to detain individuals without judicial oversight during police custody. In paragraph 33, the Committee expressed regret about the lack of complete information on suicides and other sudden deaths in detention facilities during the period under review.

7.7 The Committee notes that, according to the complainant, the state of emergency established in Turkey on 20 July 2016 has increased the risk of persons accused of belonging to a terrorist group being subjected to torture while in detention. The Committee also recognizes that the aforementioned concluding observations predated the start of the state of emergency. However, it observes that, according to reports on the human rights situation in Turkey and the prevention of torture published since the imposition of the state of emergency, the concerns raised by the Committee remain pertinent.[22]

7.8 In the present case, the Committee notes that the complainant claims to have been persecuted on account of his political activities, in that he was believed to be a member of the Hizmet movement deemed responsible for the attempted coup d'état in July 2016. The Committee notes that, according to the report issued in 2018, the Office of the United Nations High Commissioner for Human Rights had access to reliable information indicating that torture and ill-treatment were used during pretrial detention as the Turkish authorities responded to the attempted coup d'état.[23] In the same report, the Office claims to have documented the use of various forms of torture and ill-treatment in custody, including severe beatings, threats of sexual assault and actual sexual assault, electric shocks and simulated drownings. The aim of these acts of torture was generally to extract confessions or to elicit denunciations of other persons as part of the investigations into events surrounding the attempted coup d'état.[24] 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 coup.[25] The Special Rapporteur also notes that "the low number of investigations and prosecutions initiated in response to allegations of torture or ill-treatment seemed grossly disproportionate to the alleged frequency of the violations, indicating insufficient determination on the part of the responsible authorities to take such cases forward".[26]

7.9 With regard to the direct impact of the state of emergency imposed on 20 July 2016, the Committee takes note of the concern raised by the Office of the United Nations High Commissioner for Human Rights about the adverse effects of the resulting measures on safeguards against torture and ill-treatment. In particular, the Office refers 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.[27] After successive extensions decreed by the Turkish authorities, the state of emergency officially 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

[22] Office of the United Nations High Commissioner for Human Rights, "Report on the human rights situation in South-East Turkey, July 2015 to December 2016", February 2017; Office of the United Nations High Commissioner for Human Rights, "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; and A/HRC/37/50/Add.1.

[23] Office of the United Nations High Commissioner for Human Rights, "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.

[24] Ibid., para. 77.

[25] A/HRC/37/50/Add.1, para. 26.

[26] Ibid., paras. 70–73.

[27] Office of the United Nations High Commissioner for Human Rights, "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.

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.[28] However, a series of legislative measures have been adopted that extend the application of the restrictive measures introduced during the state of emergency, including the possibility of prolonging police custody for up to 12 days.[29]

7.10 In the complainant's case, the Committee observes that, when authorizing the extradition, the Court of Cassation of Rabat 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 in July 2016, particularly for persons who, like the complainant, are thought to be members, or actually are members, of the Hizmet movement. The Committee notes that, according to the State party, Turkey gave assurances that the complainant's rights would be respected, in accordance with the international instruments that it has ratified. However, no explanation was given as to how the State party had assessed the risk of torture that the complainant might face, as was needed to guarantee that he would not be subjected to treatment contrary to article 3 of the Convention upon his return to Turkey.

7.11 The Committee also notes that article 721 of the Moroccan Code of Criminal Procedure does not specifically mention the risk of torture or ill-treatment that a person whose extradition is requested might face, but rather only the risk of his or her personal situation being aggravated for reasons of race, religion, nationality or political opinion, where the State party deems the offence in respect of which extradition is requested to be a political or related offence.[30] In the present case, on the basis of the assessments of the Court of Cassation, sitting as an extradition court, the Committee cannot conclude that the Court considered the argument that the complainant faces a present, foreseeable, real and personal risk of torture in the event of his extradition to Turkey. In view of the complainant's profile as a perceived or actual member of the Hizmet movement, the Committee concludes that, in this case, assurances are insufficient to dispel the argument that a foreseeable, real and personal risk of the complainant being subjected to torture if extradited to Turkey, in violation of article 3 of the Convention, can be said to exist.

8. The Committee, acting under article 22 (7) of the Convention, therefore concludes that the complainant's extradition to Turkey would constitute a violation of article 3 of the Convention.

9. The Committee is of the opinion that, in accordance with article 3 of the Convention, the State party has a duty to:

(a) Ensure that similar violations do not occur in the future by conducting an individual assessment of the real risk of torture and ill-treatment, including by taking account of the general human rights situation in the country of return, whenever it receives an extradition request under an extradition agreement or in relation to extradition proceedings;

(b) Refrain from extraditing the complainant to Turkey and examine the request for his extradition to Turkey in the light of its obligations under the Convention, which include the obligation to carry out an assessment of the risk of torture and ill-treatment in the event of extradition, and under the present decision, especially since the complainant filed a request for international protection with the Office of the High Commissioner for Refugees in Rabat on 23 May 2017. As the complainant has been in preventive detention for more than two years, the State party is under an obligation to free him.[31]

10. The Committee urges the State party, in accordance with rule 118 (5) of its rules of procedure, to inform it, within 90 days of the date of transmittal of this decision, of the steps taken in response to this decision.

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[28] 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 the following address: www.coe. Int/fr/web/conventions/search-on-treaties/-/conventions/treaty/005/declarations.

[29] Human Rights Watch, World Report 2019, "Turkey: Events of 2018". Available at the following address: https://www.hrw.org/world-report/2017/country-chapters/turkey.

[30] See footnote 9.

[31] *Alhaj Ali v. Morocco*, para. 9.