



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

Distr.: General
19 October 2022

Original: English

Committee against Torture

**Decision adopted by the Committee under article 22 of the
Convention, concerning communication No. 905/2018*,****

<i>Communication submitted by:</i>	A and B, represented by The Journalists and Writers Foundation
<i>Alleged victims:</i>	The complainants
<i>State party:</i>	Azerbaijan
<i>Date of complaint:</i>	22 December 2018 (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 22 December 2018 (not issued in document form)
<i>Date of present decision:</i>	27 July 2022
<i>Subject matter:</i>	Expulsion of the complainants from Azerbaijan to Turkey
<i>Substantive issues:</i>	Risk of torture in the event of expulsion to country of origin (non-refoulement); prevention of torture
<i>Procedural issue:</i>	Admissibility – non-exhaustion of domestic remedies; manifestly unfounded
<i>Article of the Convention:</i>	3

1.1 The complainants are A and B, both nationals of Turkey. At the time of submission of the communication, A (“the first complainant”) was facing extradition from Azerbaijan to Turkey, and B (“the second complainant”) claimed that she could also be subjected to an expulsion to Turkey at a later time. They claim that if the State party were to proceed with their expulsion to Turkey, it would violate their rights under article 3 of the Convention. The State party has made the declaration pursuant to article 22 (1) of the Convention, effective from 4 May 2002. The complainants are represented by an NGO.

* Adopted by the Committee at its seventy-fourth session (12 – 29 July 2022).

** The following members of the Committee participated in the examination of the communication: Todd Buchwald, Claude Heller, Maeda Naoko, Ilvija Pūce, Ana Racu, Abderrazak Rouwane, Sébastien Touzé and Bakhtiyar Tuzmukhamedov. Pursuant to rule 109, read in conjunction with rule 15 of the Committee's rules of procedure, and article 10 of the guidelines on the independence and impartiality of members of the human rights treaty bodies (Addis Ababa Guidelines), Erdoğan İşcan did not participate in the examination of the communication.

1.2 On 24 December 2018, pursuant to rule 114 of its rules of procedure, the Committee, acting through its Rapporteur on new complaints and interim measures, requested the State party to refrain from returning the complainants to Turkey while the complaint was being considered.

Facts as submitted by the complainant

2.1 The first complainant graduated from Kafkas University, which was a Hizmet Movement (also known as Gülen Movement) affiliated university, and worked for Hizmet Movement affiliated Turkish schools – Çağ Educational Institutions, also known as ISTEK schools. The second complainant arrived in Azerbaijan in 2008 to work at ISTEK schools. The complainants got married in 2014.

2.2 Following the July 15, 2016 attempted coup in Turkey, the ISTEK schools in Azerbaijan were closed and the residence permits of the educators were cancelled. The teachers, including the complainants, applied for temporary residence permit three times to the State Migration Service (“SMS”), but their applications were refused.¹ The complainants contested the refusals to the domestic courts, however the courts upheld the decisions of the SMS.

2.3 As a last resort to avoid deportation and subsequent torture and ill-treatment in Turkey, the complainants registered as asylum-seekers with the UNHCR’s office in Azerbaijan. Around the time that the ISTEK schools were closed, the complainants had a daughter born on March 14, 2017. The complainants applied for the national identity card and the passport at the Turkish consulate in Baku. The consulate provided the daughter with an ID but denied her the Turkish passport. According to the consular officials, they could not provide consular services to them. The complainants tried to solve the problem by filing a petition with the Presidential Communication Center of Turkey (CIMER) but were referred back to the Turkish consulate in Baku. Even though the complainants feared abduction while inside the consulate, they nevertheless visited the consulate again but received a second refusal to the request for a passport for their daughter. While rejecting the request, consular officials clearly stated that their goal was to return the complainants to Turkey and offered to issue a travel document instead.

2.4 Because of the risk of abduction or detention and subsequent illegal transfer to Turkey, the complainants decided that the second complainant would stay behind in Azerbaijan with their daughter, while the first complainant would try to leave Azerbaijan for international protection in a safe third country. On 3 November 2018, he travelled from Azerbaijan to Tbilisi (Georgia) and from there he was travelling through Minsk (Belarus) to Belgrade (Serbia) when the Belarus authorities did not approve his transit to Serbia, arbitrarily holding him at the Minsk airport. Eventually, the first complainant was returned to Azerbaijan.

2.5 On 20 December 2018, the first complainant received a call from the SMS inviting him to come for a meeting on the next day. The complainants immediately notified the UNHCR about the situation and the latter assigned a staff member to accompany the first complainant to the meeting. At the meeting on 21 December 2018, the first complainant was shown a document from INTERPOL Turkey, indicating that his passport (which was valid until December 2021), was cancelled by the authorities. He was further informed that he was on the INTERPOL’s wanted list and that the authorities would not release him unless a representative from the Turkish Consulate would visit the SMS Headquarters. Under this pretext, the immigration authorities held the first complainant during the entire day on December 21, 2018. The first complainant’s lawyer visited the SMS at 17:00 and insisted that the authorities had no legal grounds to hold him, as the complainants’ family members were asylum seekers living legally in Azerbaijan, based on documents provided by the United Nations. Their legal status was also confirmed by the SMS,² however, the first complainant was not released. The Azeri authorities also seized his passport and did not return it to his

[¹ Detailed description of the domestic proceedings was provided in the complainants’ later submission and the State party’s observations.]

² The complainants submit an earlier decision by the SMS dated 3 May 2018, which states that it was ascertained that the first complainant possessed UNHCR issued documents and it would be impossible to remove him from the country.

lawyer despite his formal request. At 20:30, the first complainant was taken to the Migration Refugee Detention Centre, where he was placed in a cell.

2.6 On 22 December 2018, the first complainant's lawyer was summoned to the Khatai District Prosecutor's Office. The Assistant Prosecutor told him that Turkey had requested the extradition of the first complainant and that the lawyer would be able to review the documents. According to the presented documents, an arrest warrant had been issued by the Ankara 5th Criminal Peace Court at the request of Republic Prosecutor Adem Akinchi on the same day that the first complainant was detained in Azerbaijan. The Khatai District Prosecutor's Office informed the lawyer that an extradition hearing would be scheduled for 24 December 2018.

2.7 At the time of the submission of this complaint, the first complainant was awaiting his extradition hearing.

Complaint

3.1 The first complainant claims that he was not aware of any arrest warrants against him, however, the fact that he is a former employee of the Cag Educational Institutions which are affiliated with the Hizmet Movement, having graduated from Kafkas University (Hizmet Movement-run university), being a former subscriber to the Zaman newspaper,³ having a bank account at Bank Asya,⁴ having his brother imprisoned and sentenced to 10 years in prison on similar fabricated charges is more than sufficient to assert that, if expelled to Turkey, he will be perceived as a supporter of the Hizmet Movement and will receive a lengthy prison sentence and subjected to torture and ill-treatment, including prolonged solitary confinement. The complainant notes that he is aware of at least six other cases where Turkish nationals, also perceived as supporters of the Hizmet Movement, were detained in Azerbaijan and illegally transferred to Turkey with reports of torture and ill-treatment used against them.⁵ He also notes that the Turkish authorities extensively use INTERPOL's Red Notices to detain political opponents, and that many European leaders have called on INTERPOL to prevent abuse of Red Notices by Turkey.⁶

3.2 The second complainant claims that as a former employee of a Hizmet Movement affiliated education entity she is also a target for the Turkish authorities. She submits that many of her former colleagues have already been imprisoned, including the accountant of her former school, and she too will be immediately taken into custody and imprisoned, should she be detained or abducted and returned to Turkey.

State party's observations on admissibility

4.1 On 22 February 2019, the State party submitted its observations on admissibility of the complaint. It argues that the complaint is inadmissible for non-exhaustion of domestic remedies because the complainants have not brought any claims under article 3 of the Convention before the authorities in Azerbaijan. The State party notes that a number of domestic remedies appear available to the complainant, including the Prosecutor's Office and the Office of the Ombudsman. Most importantly, the State party argues, the complainants failed to raise the matter before the domestic courts and as such, the courts did not have any opportunity to examine the first complainant's case.

4.2 The State party further notes that the complaint should also be found inadmissible for being manifestly unfounded. It asserts that the complaint has been limited to vague and general statements, without any detailed account of events or evidence to substantiate their claims. Therefore, the State party submits that the complaint is inadmissible pursuant to Rule 113 (b) of the Committee's Rules of Procedure.

³ The newspaper was shut down by the Turkish government in 2016 for its ties with the Hizmet Movement.]

⁴ The bank was shut down by the Turkish government in 2016 for its ties with the Hizmet Movement.]

⁵ The complainant provides a list of these individuals and details about their detention.

⁶ <https://www.reuters.com/article/us-eu-turkey-election-idUSKCN1B00IP>

State party's observations on the merits

5.1 On 21 June 2019, the State party submitted its observations on the merits of the complaint. The State party informs the Committee that the first complainant was expelled to Turkey in accordance with national and international law. As regards the second complainant, the State party notes that she together with her daughter voluntarily left Azerbaijan to Federal Republic of Germany on 8 February 2019. Consequently, the State party submits that the second complainant is not a victim of an alleged violation of Article 3 of the Convention.

5.2 The State party rejects allegations stated in the complaint about illegal abduction and other illegal actions ostensibly applied by officials in Azerbaijan and considers them without evidence, unsubstantiated and of speculative character. With regards to the facts of the complaint, the State party submits that on 25 July 2017, both complainants applied for asylum with the SMS. On 25 October 2017, the SMS refused the complainants' application for asylum after it had reviewed and examined their cases. The complainants were interviewed by the SMS, during which they argued that they did not belong to any group in Turkey and had no information about their persecution by any Turkish Government representatives. After further examination of the complainants' case and taking into account all other relevant considerations, the SMS came into conclusion that there had been no substantial grounds for believing that the complainants would be in danger of being subjected to torture in Turkey.

5.3 The State party further notes that the complainants contested the decision of the SMS and applied to the Baku Administrative-Economic Court No. 1 asking to impose obligation on the SMS to grant them with the asylum. On 3 April 2018, the Baku Administrative-Economic Court No. 1 dismissed the complainants' claim. On 22 June 2018, upon the authors' appeal of the decision of 3 April 2018 of the Baku Administrative-Economic Court No. 1, the Baku Court of Appeal upheld the decision of the Baku Administrative-Economic Court No. 1, dismissing the complainants' appeal. On an unspecified date, the complainants lodged a cassation complaint with the Supreme Court of the Republic of Azerbaijan, which was dismissed on 4 September 2018. Meanwhile, on 18 April 2018, the first complainant applied to the SMS for work permit as a deputy head of a company "Umid Ltd". On 24 April 2018, the SMS refused the first complainant's application for work permit on the basis of Article 50.0.1 of the Migration Code, according to which the applications of foreigners and stateless persons for the issuance (prolongation) of a temporary residence permit on the territory of the Republic of Azerbaijan are rejected, and the previously issued permits are cancelled when they may damage the national security of the Republic of Azerbaijan and the public order.

5.4 With regards to the first complainant's arrest and expulsion, the State party submits that on 21 December 2018, at around 9:00pm the first complainant was administratively arrested and placed at the Baku Detention Center for Illegal Migrants of the SMS. On 24 December 2018, according to the decision of the Khatai District Court, sentenced him to 30 days of arrest pending a possible decision on his extradition. On 28 December 2018, upon the first complainant's appeal, the Baku Court of Appeal re-examined the case and held that pursuant to Articles 155.1 – 155.3 of the Code of Criminal Proceedings there had been no procedural grounds for applying arrest as a restrictive measure against him. The court therefore upheld the first complainant's appeal and ordered his release from the courtroom. On 28 December 2018, the first complainant requested the SMS to place him on a voluntary basis at the Baku Detention Center for Illegal Migrants until he can return to Turkey as he did not have any place and means to live.⁷ On the same date, the SMS issued a decision granting the complainant's request to place him in the Detention Centre on a voluntary basis and he was placed at the Baku Detention Center for Illegal Migrants. On 28 December 2018, the SMS issued a decision to expel the first complainant from Azerbaijan and restrict his entry to Azerbaijan for 5 years.⁸ The decision was based on Articles 79.1.4 and 79.2 (decision on expulsion) of the Migration Code according to which the relevant executive power issues a decision on expulsion of foreigners and stateless persons in case of refusal to grant refugee status and their entry to Azerbaijan is restricted for up to 5 years in line with the decision on

[⁷ The State party provides a copy of the type written request allegedly signed by the first complainant.]

[⁸ The State party provides a copy of the decision (in Azeri language).]

expulsion. On 29 December 2018, the first complainant was expelled from Azerbaijan to Turkey.

5.5 The State party refers to the case of *A.M. v. France* decided by the European Court of Human Rights (ECtHR) concerning the applicant's planned deportation to Algeria after he was convicted in France in 2015 for participating in acts of terrorism and was permanently banned from French territory.⁹ The ECtHR concluded that the general situation as regards individuals linked to terrorism in Algeria did not, in itself, preclude the applicant's deportation. The ECtHR found, in conclusion, that A.M. had not provided any indications to show that, if he were returned to Algeria, he would be exposed to a real risk of treatment in breach of Article 3. It thus made a clear distinction between the general situation in Algeria and the applicant's personal situation. It also reiterated that the burden of proof for the establishment of a personal risk lies on the applicant. The State party notes that in the present case, the complainant have failed to submit any plausible evidence to suggest that they had faced real risk of ill-treatment upon their return to Turkey. The complainants did not produce sufficient arguments to demonstrate that they would be at risk of torture, inhuman or degrading treatment or punishment, or that they would be persecuted by the Turkish authorities on the basis of race, religion, nationality, belonging to a certain group or based on political opinion. The State party draws the Committee attention to the fact that the complainants' requests for asylum had been extensively examined both by the SMS and later during the proceedings in the domestic courts, which revealed that there had been no substantial grounds for believing that the complainants would be in danger of being subjected to persecution or torture in Turkey.

5.6 The State party submits that the Baku Administrative-Economic Court No. 1 in its decision of 3 April 2018 upheld the decision of the SMS in not granting the complainants the refugee status. Firstly, the court found that the complainants were not refugees as enshrined in Article 1.1.1 of the Law "On Status of Refugees and Internally Displaced Persons". Secondly, the court noted that that the interview with the complainants and further examination of the case revealed that there had been no substantial grounds for believing that they would be in danger of being subjected to persecution or torture in Turkey. The complainants failed to present any evidence in the domestic courts, which could show that there was a risk of them being tortured in Turkey. This decision was also examined and upheld both in appellate and cassation instances and became final on 4 September 2018. Subsequently, on 28 December 2018 the SMS issued a decision to expel the first complainant from Azerbaijan and restrict his entry for 5 years. According to the State party, the aforementioned shows that all procedural aspects have been complied with regard to the complainants' case and there is no evidence to suggest that it failed to comply with the requirement of the Convention.

Complainants' comments on the State party's observations on admissibility and the merits

6.1 On 29 December 2019, the complainants submitted their comments on the State party's observations. They reject the State party's assertion that the domestic remedies have not been exhausted. They note that their asylum applications have been examined both by the SMS and later during the proceedings in the domestic courts, which is reflected in the State party's own submissions.

6.2 With regard to the facts of the complaint, the complainants submit the following. When on the morning of 24 December 2018, the first complainant was brought to the Khatai District Court, it was noted that there was no formal request for his extradition. Instead, the prosecutor presented before the court only an arrest warrant issued by the Ankara Criminal Peace Court. Despite the lack of any formal extradition request, the court decided to place the first complainant in one-month pre-extradition detention. Following the ruling, the first complainant's lawyer submitted an appeal before the Baku Court of Appeal. On 28 December 2018, the lawyer was initially told by his working level contacts at the Baku Court of Appeal that the court would be on a holiday recess from 28 December 2018 until 3 January 2019, however at 13:00 he received a call from a court assistant informing him that the appeal

⁹ Application No.12148/18, judgment of 29 April 2019.

would be heard at 15:00 on the same day. When the first complainants' lawyers arrive at the court, they were told by court employees that several SMS agents were also present and waiting for the hearing to start. The lawyers immediately suspected that the authorities had already prepared the abduction scenario as in other similar cases.¹⁰ During the hearing, the lawyers made their interventions, however the prosecutor chose not to provide any counterarguments, including to the lawyers' request to quash the decision of the Khatai District Court and to release the first complainant. In view of the arguments, the presiding judge ruled to quash the decision of the Khatai District Court with regard to the first complainant's arrest and ordered his immediate release. However, instead of releasing the first complainant, the authorities¹¹ told the lawyers that he would be released only after the judge's decision would be given to them in writing. They took the first complainant away from his lawyers through the back door, and as it would be known later, he was transferred to the Migration Camp in Kurdexani. The second complainant tried to locate her husband in the building of the court, approaching the guards and pleading with the deputy prosecutor who was still in the courtroom, to no avail.¹²

6.2 The complainants submit that on 29 December 2018, the first complainant was secretly driven to the Baku International Airport and put on a plane to Ankara. After he arrived in Ankara, the Turkish president praised Azerbaijan for its "cooperation" in his abduction and transfer.¹³ According to the complainants, the first complainant was brought to a police department, where an officer, referred to as "Inspector" by other police officers, began shouting and insulting him, also slapping and beating him in the head. He then cuffed his hands on the back and made the first complainant walk outside and back into the building while video recording this. The video was later distributed to various media reporting the first complainant's arrest.¹⁴ The first complainant was then taken upstairs where he was further beaten and insulted by the "Inspector". The "Inspector" also threatened the first complainant with legal action against his family. He noted that the first complainant's brother was arrested on FETÖ terrorism charges; that his brother-in-law, who was in the military, was also arrested; that his father had been dismissed from his job; and that his sister was detained on accusations of using Bylock app. In the end, the "Inspector" threatened him with the abduction of his wife, the second complainant, saying that they can bring her to Turkey, put her in jail and give his daughter to the child protection agency. During the next six days, the first complainant was interrogated four times by the Chief Inspector, often under psychological pressure. When he would told the interrogator that he wouldn't speak without his lawyer present, he was threatened to be taken to the special military team who would force him to speak within one hour. He was only allowed to see a lawyer for 15 minutes in the evening of 29 December 2018. On 4 January 2019, the first complainant was taken to the 7th Criminal Court of Peace in Ankara, where he was indicated on the following charges: being a member of an armed terrorist organization by being part of Hizmet Movement in Azerbaijan, using ByLock, studying at Hizmet Movement associated university, staying in dormitories belonging to the organization, teaching in schools in Azerbaijan allegedly affiliated with Hizmet, donating money to Hizmet under the name of Himmet and following Fetullah Gülen's call to continue depositing in Bank Asya following the government's shut down of its business. On these charges he risks 15 years imprisonment.

6.3 The complainants note that the first complainant was returned to Turkey despite the Committee's 24 December 2018 request to Azerbaijan to refrain from such action. The complainants regret that the State party not only blatantly disregarded the request of the Committee, but also failed to make any reference in their submission to the Committee on

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https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session84/A_HRC_WGAD_2019_10.pdf

[¹¹ Not specified.]

¹² The second complainant submits a link to the video where she can be seen calling for help in front of the Baku Court of Appeal after her husband was taken away, available at <https://twitter.com/kronoshaber/status/1079156518786867200>

¹³ <https://www.dailymotion.com/video/x753odl>

¹⁴ <https://twitter.com/BOLDmedya/status/1079978089004916736>. Also, <https://www.dailysabah.com/investigations/2018/12/29/turkish-intelligence-captures-wanted-feto-terror-group-member-in-azerbaijan>

the interim measures request. They note that in similar cases the Committee has unequivocally held that in accordance with rule 114 of the Committee's rules of procedure, the State party should comply with the Committee's request for interim measures under rule 108, in good faith, and that non-compliance is considered a violation of Article 22 of the Convention.

6.4 The complainants reject the State party's assertion that the second complainant is not a victim of an alleged violation of Article 3 of the Convention. They note that she too, as the first complainant, was at imminent risk of removal to Turkey if not for international protection received through UNHCR. The complainants submit that at least nine other Turkish nationals with ties to Hizmet Movement affiliated Turkish schools, despite being asylum-seekers, were illegally returned to Turkey and consequently subjected to torture and ill-treatment, including prolonged solitary confinement.¹⁵ They note that after the first complainant was returned to Turkey and the video of him at the police headquarters in Ankara, as well as the video of the second complainant's crying in front of the Baku Court of Appeal, were circulated by many Turkish channels and news websites, many comments were made on social media calling for the second complainant to be brought to Turkey similarly to her husband. While in detention in Turkey, the first complainant was shown documents tying the second complainant to Hizmet Movement affiliated Turkish schools, to Bank Asya, money transfers from her brother and so on, and was threatened that she should also be transferred from Azerbaijan to Turkey if necessary. The complainants argue that if not for the urgent action by the UNHCR and the Swiss government, which granted international protection to the second complainant and her daughter, she would not be able to leave Azerbaijan and would have eventually suffered the same fate as her husband.¹⁶

6.5 The complainants further reject the State party's submission that their request for asylum was rejected, in part because they argued that they did not belong to any group in Turkey and had no information about their persecution by any Turkish Government representatives. They note that during their application procedure at the SMS, they claimed that they had well-founded fear of persecution as perceived Gulenists. They refer to the decisions of the SMS dated 25 October 2017 and of the Baku Administrative-Economic Court No. 1 dated 3 April 2018, which clearly state that they had had a well-founded fear of persecution in Turkey because of their perceived links to the Hizmet Movement.

6.6 With regard to the State party's argument that the complainants' residence permits were cancelled due to national security and public order concerns, the complainants submit that the State party has failed to take into account the principle of proportionality. They note that the first complainant was not in the military but rather a school teacher who lived since 2004 in Azerbaijan without any criminal record, thus he was not a threat to the public order and national security of Azerbaijan or any other country.

6.7 The complainants reiterate that the facts presented by the State party in relation to the first complainant's arrest and expulsion to Turkey are incorrect. They categorically reject the State party's submission that the first complainant submitted a written statement to the SMS requesting to place him on a voluntary basis at the Baku Detention Centre for Illegal Migrants until he can return to Turkey as he did not have any place and means to live. They insist that the first complainant neither saw nor signed such document, and it would be illogical for him to do so, especially immediately after appealing his illegal detention and being released from detention by the Baku Court of Appeal. Therefore, the complainants submit that the SMS's approval of the first complainant's request to place him in detention, which appears in the State party's submission, is a fictitious document, drafted after the illegal transfer of the first complainant to Turkey in an attempt by the State party to justify his abduction and illegal transfer.

¹⁵ The complainants provide a list of these Turkish nationals.

¹⁶ The second complainant was granted international protection by Switzerland through UNHCR. She left Azerbaijan on an unspecified date soon after her husband's expulsion.

Issues and proceedings before the Committee

Consideration of admissibility

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

7.2 In accordance with article 22 (5) (b) of the Convention, the Committee shall not consider any communication 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 complainants have failed to exhaust domestic remedies because they have not brought any claims under article 3 of the Convention before the authorities in Azerbaijan, including the domestic courts, the Prosecutor's Office and the Office of the Ombudsman. However, the Committee observes from the decision of the SMS dated 25 October 2017, that the complainants reason for applying for asylum was precisely their fear of returning to Turkey after the 2016 coup d'état attempt because they feared to be arrested and prosecuted similarly to some of their family members and colleagues. The Committee further observes that the complainants' appeals were heard by the domestic courts, and the Supreme Court of the Republic of Azerbaijan dismissed their cassation appeal on 4 September 2018.

7.3 The Committee notes that the State party has not explained how the other mentioned remedies, namely the Prosecutor's Office and the Office of the Ombudsman, would have provided effective remedy to the complainants, including if appeals to those bodies would have a suspensive effect. 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.

7.4 The State party further notes the State party's argument that the complaint should also be found inadmissible for being manifestly unfounded because it is limited to vague and general statements, without any detailed account of events or evidence to substantiate their claims. Therefore, the State party submits that the complaint is inadmissible pursuant to Rule 113 (b) of the Committee's Rules of Procedure. The Committee observes that the complainants, for their part, argue that they face expulsion as persons related to the Hizmet Movement, which is described as a terrorist group by the Turkish Government. The Committee, therefore, finds that the complainants have sufficiently substantiated their complaint for the purposes of admissibility.

7.5 The Committee notes the second complainant's claim that as a former employee of a Hizmet Movement affiliated education entity she is also a target for the Turkish authorities. However, the Committee observes that on unspecified date the second complainant left the State party after receiving international protection in Switzerland. Accordingly, the Committee finds that the claim with regard to the second complainant is not sufficiently substantiated for the purpose of admissibility.

7.6 As the Committee finds no further obstacles to admissibility, it declares the claims under article 3 of the Convention admissible and proceeds with its consideration of the merits.

Consideration of the merits

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

8.2 In the present case, the issue before the Committee is whether the first complainant's expulsion to Turkey constituted a violation of the State party's obligation under article 3 (1) of the Convention not to extradite 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.

8.3 The Committee must evaluate whether there are substantial grounds for believing that the complainant was personally at risk of being subjected to torture upon return to Turkey. In assessing that risk, the Committee must take into account all relevant considerations, pursuant to article 3 (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 the 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 the individual would be returned. It follows that 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 a particular person would be in danger of being subjected to torture on return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. 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

8.4 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. 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 complainant’s ethnic background; the political affiliation or political activities of the complainant and/or the complainant’s family; previous torture; incommunicado detention or other form of arbitrary and illegal detention in the country of origin; and clandestine escape from the country of origin owing to threats of torture.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

8.5 In assessing the risk of torture in the present case, the Committee notes the first complainant’s claim that his expulsion would expose him to substantial risks of torture in detention in Turkey because of his perception as a supporter of the Hizmet Movement. In this regard, the Committee observes that the first complainant is a former employee of a Hizmet Movement affiliated school and a graduate of a Hizmet Movement-run university, whose brother was sentenced to 10 years in prison on charges of being a supporter of the Hizmet Movement, and who himself is the subject of an arrest warrant issued by the Ankara 5th Criminal Peace Court on 21 December 2018. The Committee also notes the State party’s submission that the complainants were interviewed by the SMS, during which they argued that they did not belong to any group in Turkey and had no information about their persecution by any Turkish Government representatives, which led the SMS to a conclusion that there had been no substantial grounds for believing that the complainants would be in danger of being subjected to torture in Turkey. Therefore, according to the State party the first complainant was expelled in accordance with national and international law.

8.6 The Committee must take into account the human rights situation in Turkey at the time of the first complainant’s expulsion, 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

¹⁷ See, e.g., *E.T. v. the Netherlands* (CAT/C/65/D/801/2017), para. 7.3., *Y.G. v. Switzerland* (CAT/C/65/DR/822/2017), para. 7.3.

¹⁸ 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.

2016, in which it noted with concern, in paragraph 9, a 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 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.

8.7 The Committee recognizes that the concluding observations in question were issued prior to the declaration of the state 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 2016.²² It also notes that reports on the human rights situation and the prevention of torture issued since the declaration of the state of emergency in Turkey have indicated that the concerns raised by the Committee remain relevant.²³

8.8 In the present case, the Committee notes that the first complainant claims to be at risk of being persecuted on account of his political activities, as he is perceived to be a member of the Hizmet Movement 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 2016.²⁴ 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, actual sexual assault, electric shocks and simulated drowning. These acts of torture were generally intended to extract or coerce confessions or force denunciations of other individuals as part of the investigation of acts connected with the attempted coup d'état.²⁵ In his report on his mission to Turkey, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment expresses the view that the use of torture was widespread following the attempted coup d'état.²⁶ 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 Turkish authorities to investigate the allegations made.²⁷

8.9 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 adverse effects of the measures on safeguards against torture and ill-treatment. In particular, OHCHR 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.²⁸ After successive extensions declared by the Turkish authorities, the state of emergency was 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 was terminated on 19

²² See https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/TUR/INT_CAT_FUL_TUR_25040_E.pdf.

²³ 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; OHCHR, *Report on the human rights situation in South-East Turkey, July 2015 to December 2017*, February 2017; and A/HRC/37/56/Add.1.

²⁴ 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.

²⁵ *Ibid.*, para. 77.

²⁶ A/HRC/37/50/Add.1, para. 26.

²⁷ *Ibid.*, para. 70 to 73.

²⁸ 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.

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.²⁹ 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.³⁰

8.10 In the present case, the Committee notes the State party's argument that the first complainant voluntarily asked to be put in the Baku Detention Center for Illegal Migrants until he can return to Turkey because he did not have any place and means to live in Azerbaijan. The Committee notes that this argument is rejected by the first complainant himself who claims that he neither saw nor signed such document, and that it would be illogical for him to do so, especially immediately after appealing his illegal detention and being released from detention by the Baku Court of Appeal. According to him, it is a fictitious document, drafted after the illegal transfer of the first complainant to Turkey in an attempt by the State party to justify his abduction and illegal transfer. The Committee observes that the complainants' claim is supported by an abundance of evidence as many Turkish media outlets reported about the abduction of the first complainant from Azerbaijan and his transfer to Turkey, and even the Turkish president openly praised Azerbaijan for its "cooperation" in the case.

8.11 In the light of the above, and having regard to the first complainant's profile as a member – whether perceived or real – of the Hizmet Movement, the Committee is of the view that the State party should have conducted an individualized assessment of the real and personal risk to which the first complainant would be exposed in Turkey, particularly bearing in mind the documented treatment by the Turkish authorities of persons associated with this movement. Taking into consideration the foregoing, the Committee concludes that, in the present case, the State party's removal of the first complainant to Turkey constituted a violation of article 3 of the Convention.

9. The Committee, acting under article 22 (7) of the Convention, therefore, concludes that the State party's removal of the first complainant to Turkey constituted a violation of article 3 of the Convention. Regarding the State party's lack of compliance with the Committee's request of 24 December 2018 for interim measures for the complainants not to be returned to Turkey, and its reiteration on 28 December 2018, the Committee regrets that despite its repeated requests, the State party expelled the first complainant to Turkey on 29 December 2018 and has not provided any explanation for its failure to respect the Committee's requests. In view of the above, the Committee, acting under article 22 (7) of the Convention, decides that the facts before it constitute a violation by the State party of article 22 of the Convention due to a lack of cooperation with the Committee in good faith, which prevented the Committee from considering the present communication effectively.³¹ The Committee also notes that the State party failed to provide sufficiently specific detail as to whether it has engaged in any form of post-expulsion monitoring of the first complainant, and whether it has taken any steps to ensure that the monitoring is objective, impartial and reliable.

10. The Committee considers that the State party has an obligation to provide redress for the first complainant, including adequate compensation of non-pecuniary damage resulting from the physical and mental harm caused. It should explore ways and means of monitoring the conditions of the complainant's detention in Turkey, including his access to counsel and medical care, within the framework of existing agreements with Turkey, in order to ensure that he is not subjected to treatment contrary to article 3 of the Convention, and inform the Committee as to the results of such monitoring.

²⁹ See 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/fr/web/conventions/search-on-treaties/-/conventions/treaty/005/Declarations.

³⁰ Human Rights Watch, *Turkey: Events of 2018*. Available at <https://www.hrw.org/world-report/2019/country-chapters/turkey>.

³¹ *Thirugnanasampanthar v. Australia*, para. 9.

11. 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 the present decision, of the steps taken in response to it. The Committee urges the State party to take steps to prevent similar violations of article 22 in the future and to ensure that, in cases where the Committee has requested interim measures, the complainants are not removed from the State party's jurisdiction until the Committee has made a decision on a prospective application.
