

04/05/2022FIRST CLASS

EXTRADITION 1.693 FEDERAL DISTRICT

RAPORTEUR	: MIN. ALEXANDRE DE MORAES
RESPONDENT(S)	: GOVERNMENT OF TURKEY
ATTORNEY(S)	: WESLEY RICARDO BENTO DA SILVA
EXTDO.(A/S)	: YAKUP SAGAR
ATTORNEY(S)	: BETO FERREIRA MARTINS VASCONCELOS OAB/SP 172687 AND OTHERS
ATTORNEY(S)	: ANA LUISA FERREIRA PINTO
AM. CURIAE.	: UNION PUBLIC DEFENDER'S OFFICE
PROC.(A/S)(ES)	: FEDERAL PUBLIC DEFENDER GENERAL
AM. CURIAE.	: HUMAN RIGHTS NETWORK ASSOCIATION
ATTORNEY(S)	: GABRIEL DE CARVALHO SAMPAIO
ATTORNEY(S)	: RODRIGO FILIPPI DORNELLES

EMENTA: EXTRADITION FOR EXECUTION. GOVERNMENT OF TURKEY. PROMISE OF RECIPROCITY. MIGRATION LAW. DOUBLE CHARACTER AND ABSENCE OF THE REQUIREMENTS FOR EXTRADITION. DEFICIENCY IN THE SPECIFIC DESCRIPTION OF THE FACTS. FACTUAL CONTEXT WITH POLITICAL CONNOTATION. RELEVANCE OF THE ALLEGATION OF VIOLATION OF HUMAN RIGHTS DUE TO THE POSSIBLE SUBMISSION OF THE EXTRADITEE TO A COURT OF EXCEPTION. REQUEST DENIED.

1. The present extradition request is supported by the Charter of the Republic, which, in its article 5, LII, authorizes as a rule the extradition of foreigners, a condition supported by the extraditee, who is a Turkish citizen.

2. The granting of the extradition request requires the presence of the requirement of dual criminality, because, as defined by this Supreme Court, it is essential, for the accurate assessment of respect for the principle of dual incrimination, that the facts attributed to the extraditee, notwithstanding the inconsistency of his formal designation, have criminal typicality and are equally punishable by both the domestic legal system and the system of positive law of the requesting State. Precedents.

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3. Lack of specific description of the facts. It is up to the requesting State to identify, with clarity and precision, the defining elements of the criminal conduct. The mere generic exposition of the facts without delimiting the functions, the hierarchical level occupied or the role played by the extraditee within the possible criminal organization makes it impossible to grant the extradition request. Precedents of the COURT: Ext 633, Reporting Justice CELSO DE MELLO, Full Court, DJ of 04/06/2001 and Ext 670, Reporting Justice SEPÚLVEDA PERTENCE, Full Court, j. 11/6/1997, DJ de 27/06/1997.

4. Relevance of the allegation of violation of human rights in the face of the possible submission of the extraditee to a court of law. It is possible to deny an extradition request when political instability is evident in the requesting state and there are no guarantees that the extraditee will receive a fair and impartial trial by an independent judge. Precedents of the COURT: Ext 1.578, Reporting Justice EDSON FACHIN, Second Panel, DJe 20/02/2020 (Government of Turkey x Ali Sipahi); Ext 986, Reporting Justice EROS GRAU, Full Court, DJe 05/10/2007 (Government of Bolivia x John Axel Rivero Antero); Ext 633, Reporting Justice CELSO DE MELLO, Full Court, DJ 06/04/2001 (Government of the People's Republic of China x Qian Hong).

5. Request denied.

A C O R D

These proceedings have been seen, reported and discussed, the Justices of the Federal Supreme Court, in the First Panel, under the Chairmanship of Justice Câremen Lúcia, in conformity with the minutes of the trial and the case notes, unanimously agree to dismiss the extradition request and revoke the precautionary measures previously adopted, and to dismiss the Motion for Clarification filed by the Attorney General's Office, pursuant to the Rapporteur's vote. The following spoke: Dr. Lucas Rodrigues de Paula for the Extraditee; Dr. Beto Ferreira Martins Vasconcelos for the *Extraditee*; Dr. Gustavo Zortéa da Silva, for the *Amicus Curiae* Defensoria Pública da União, and Dr. Rodrigo Fillipi

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Dornelles by *Amicus Curiae* Associação Direitos Humanos em Rede.

Brasilia, April 5, 2022.

Minister **ALEXANDRE DE MORAES**

Reporter

Digitally signed document

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Em: 20/06/2022 - 12:11:08

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ATTORNEY(S) : RODRIGO FILIPPI

DORNELLES R E L A T

O R I O N

MINISTER ALEXANDRE DE MORAES (RAPPORTEUR): This is of instructional extradition request submitted by the GOVERNMENT OF THE REPUBLIC OF TURKEY to the Brazilian State, in favor of YAKUP SAGAR, Turkish citizen, resident here, in order to submit him, in that country, to judicial prosecution, in view of being accused of integrating, together with eighty-three (83) other people, the "Armed Terrorist Organization of Fethullah Güllen/Parallel State Structure (FETÖ/PDY)" which, on 07/15/2016, would have attempted an armed coup against the Government of the Republic of Turkey and the President (Recep Tayyip Erdoğan).

The request was forwarded to this CORTICE by Letter No. 2508/2021/EXT/CETPC/DRCI/SENAJUS/MJ, from the Ministry of Justice and Public Security (MJSP), dated 20/8/2021 (pages 2/2v). Attached to the document is attached to the document (I) a Note Technical Note No. 130/2021/EXT/CETPC/DRCI/SNEJUS/MJ, which emphasizes that the

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documents forwarded are in accordance with the Immigration Law, pointing out, on the other hand, that the Turkish State assumed the

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commitments of art. 96 of the referred rule, except for the respect to the maximum limit of 30 (thirty) years for the completion of the sentence (pages 3/4); and

(II) the Verbal Note No. 2017/14162810-BrasilyaBE/11895350 (fls. 5/37).

According to the report, *"on the date of July 15, 2016, the members of 'Fetullah Gülen's Armed Terrorist Organization/A parallel state structure' captured the planes and helicopters of the Turkish Armed Forces and attacked with bombs and firearms against public buildings. The members of 'Fetullah Gülen's Armed Terrorist Organization/A parallel state structure' attacked with bombs and firearms against people who want to stop the coup attempt. 246 people from the civilian population and security forces martyred because of bombs and firearms. More than 2500 people injured because of bombs and firearms"* (fl. 7).

The request states that the extraditee is wanted for the alleged practice of the crimes of: **(a)** *"qualified swindling by abusing religious convictions and religious feelings"* (provided in article 158/1-a, of the Turkish Penal Code - page 9); **(b)** *"terrorist financing"* (provided in article 4/1, of the Terrorist Financing Law - page 10); **(c)** *"attempting to destroy the State of the Republic of Turkey or to prevent the State of the Republic of Turkey from functioning"* (provided in art. 312/1, Turkey Penal Code - fl. 11); **(d)** *"attempting to destroy constitutional order of the Republic of Turkey"* (provided in art. 309/1, Turkey Penal Code - fl. 12); and **(e)** *"being a member of armed criminal organization"* (provided in art. 314/2, Turkey Penal Code fl. 13).

It is also reported that the High Court of Zonguldak issued an arrest warrant against the extraditee on 28/11/2016 (pp. 8v/14, pp. 16/19, pp. 22/25 and pp. 28/32v).

On 8/30/2021, the case was opened to the Attorney General's Office - PGR, which, on 9/1/2021, requested information from CONARE regarding the request for recognition of the extraditee's refugee status, its specifications, and any decisions made in the administrative procedure (pages 42/43).

In a decision dated 3/9/2021, I accepted the manifestation of the PGR and determined the expedition of official letter to the Ministry of Justice and Security

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Public to request the requested information from the National Committee for Refugees (CONARE), within five (5) days (pages 45/47).

By means of Official Letter no. 41/2021/CONAREGab/DEMIG/SENAJUS/MJ, attached to the case records on September 14, 2021, the MJSP informed that "*ab initio, the grounds for the request for recognition of refugee status are coincident with the grounds for the extradition process, which, s.m.j., invokes the incidence of the provisions of art. 34 of Law no. 9.474, of July 22, 1997*" (pages 54/54v).

Once the case was seen again by the Attorney General's Office, the Public Prosecutor's Office presented its opinion in favor of determining the precautionary arrest for extradition purposes of the Turkish national YAKUP SAGAR (pages 64/67).

On 11/29/2021, I decreed the extraditee's preventive detention (fls. 69/73), whose warrant was served on 12/03/2021 (page 77).

The extraditee's interrogation hearing was held on 12/17/2021, by the 5th Federal Criminal Court of São Paulo.

On 12/9/2021, the defense formulated a request for revocation or substitution of preventive detention (pages 86/101).

On 12/15/2021, the Defensoria Pública da União (DPU) requested to be admitted as *amicus curiae* (e-Doc. 36), which request was granted on 01/11/2022 (e-Doc. 83).

On 20/12/2021, due to the exceptional nature of the case in question, I replaced remand in custody of the extraditee with the following precautionary measures different from imprisonment: (a) to appear in court to report and justify his activities until the 10th day of each month; (b) to submit to house arrest at night and on his days off; and (c) to be subject to electronic monitoring, in accordance with items I, V and IX of art. 319 of the Code of Criminal Procedure, with the area to include his home and work, as per addresses provided (e-Doc. 59).

On 12/21/2021, the Attorney General's Office of the Republic filed a Motion for Clarification against the aforementioned decision, requesting that it be accepted and granted in order to "*remedy the omissions pointed out, explaining the exceptionality that justifies the revocation of the precautionary arrest for purposes of*

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extradition, as well as to determine that CONARE should analyze the refugee request formalized by the extraditee within 60 (sixty) days" (e-Doc. 66).

Subsequently, the extraditee, through a lawyer, presented a written defense on December 27, 2021, in which he claims, in summary, that **(a)** *"the scenario in Turkey and the context of the present extradition request configure serious risks of violation of human rights in case of submission of the extraditee to the requesting State, as recognized by the most diverse International Organizations and Nations States, and, as already recognized in a precedent by this Egregious Court in a case whose charges of the Turkish Government are identical, existing proven doubt as to the guarantees that the extraditee will effectively be submitted to an independent and impartial court"; (b) "there is no double criminality configured, nor a correspondence in Brazilian law of the facts alleged by the Turkish government: (i) in the National Security Law - expressly revoked; (ii) neither in the Terrorism Law - supervening the date of the facts; and (iii) in no other legislation in force in the country. Thus, extradition is prohibited under the terms of art. 82, II of Law 13,445/2017 (Migration Law), which establishes as a requirement for the concession the double criminality or double incrimination not characterized in the present process"; (c) "the false allegations of the requesting State are of a political and opinion nature, extradition being expressly prohibited in these circumstances, under the terms of Article 5, item LII of the Federal Constitution, and in article 82, item VII, of Law 13.445/2017 (Migration Law)"; (d) "extradition would mean the submission of the extraditee to trial without the rights of ample defense, adversarial, and natural and impartial judgment by the justice system of Turkey, about which the international community has warned about the character of true courts of exception, for which reason the express prohibition to extradition contained in art. 82, VIII of Law no. 13.445/2017 (Migration Law)"; (e) "the present case is characterized as public political persecution for reasons of belonging to a 'specific social group', as well as for reasons of 'imputed political opinion', so as to configure the 'causal nexus' that characterizes it as 'persecution' and inserts it in the terms of the International Convention on the Statute of Refugees, as well as in the Clauses of the Brazilian Law 9.474/1997, especially in what concerns*

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refers to its Art. 1, and Mr. Yakup Sagar and his entire family group should be recognized as refugees by the Brazilian State"; and Yakup Sagar and his entire family group should be recognized as refugees by the Brazilian State"; and (f) "both the rejection of the extradition request and the declaration of recognition of refugee status, in addition to the aforementioned rules and principles, systematically align the guarantee of human dignity, the defense of the right to life and liberties proclaimed in the Universal Declaration of Human Rights and the Statute of Refugees and the Cartagena Declaration, ratified by Brazil, and especially the Federal Constitution of 1988. (e-Doc. 73).

On January 18, 2022, the Ministry of Justice and Public Security, through Official Letter 77/2022/EXT/CETPC/DRCI/SENAJUS/MJ, forwarded the documentation from the Turkish Embassy in order to instruct the request for extradition of Turkish national YAKUP SAGAR (e-Doc. 81/82 and 89).

On 2/1/2022, the Attorney General's Office of the Republic manifested: (a) "for the judgment of the interlocutory appeal filed on December 22, 2021 (Petition No. 121434/2021)"; and (b) "for the conversion of the judgment into diligence to determine the subpoena of the requesting State to complement the instruction of the request, and to submit precise information about the time, place, and circumstances of the alleged occurrence of each criminal offense, as well as about the competent body for the process and judgment" (e-Doc 91)

On 7/2/2022, the Ministry of Justice and Public Security informed that "the National Committee for Refugees - Conare recognized the condition of refugee of the Turkish national YAKUP SAGAR" (e-Doc. 93).

On 2/24/2022, the Requesting State manifested itself in the case records requesting, in summary, the prior judgment of the Motion for Clarification filed by the OPG and its subpoena to manifest itself on the content of the pronouncement of CONARE, forwarded by Official Letter no. 17/2022/CONAREGab/DEMIG/SENAJUS/MJ, as well as to present the information requested by the Federal Public Prosecutor's Office. These claims were rejected by me, considering that the case files are duly instructed and ready for the examination and judgment on the merits of the extradition request, when all the issues raised by the parties were addressed.

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involved will be discussed and duly evaluated by this Judging Panel.

Finally, the Associação Direitos Humanos em Rede - CONECTAS DIREITOS HUMANOS requested to be included in the proceedings as *amicus curiae*, and this request was granted on 4/4/2022.

This is the report.

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Em: 20/06/2022 - 12:11:08

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EXTRADITION 1.693 FEDERAL DISTRICT

VOTO

MINISTER ALEXANDRE DE MORAES (RAPPORTEUR): This is of instructional extradition request submitted by the GOVERNMENT OF THE REPUBLIC OF TURKEY to the Brazilian State, in favor of YAKUP SAGAR, Turkish citizen, resident here, in order to submit him, in that country, to judicial prosecution, in view of being accused of integrating, together with eighty-three (83) other people, the "Armed Terrorist Organization of Fethullah Güllen/Parallel State Structure (FETÖ/PDY)" which, on 07/15/2016, would have attempted an armed coup against the Government of the Republic of Turkey and the President (Recep Tayyip Erdogan).

I move on to the analysis of the merits.

Present constitutional hypothesis. The extradition plea is supported by the MOTHER LETTER, which, in its article 5, LII, authorizes as a rule the extradition of foreigners, a condition supported by the extraditee, who is a Turkish citizen.

Meeting the formal legal requirements. Since one of the constitutional hypotheses authorizing extradition is present, it is up to this SUPREME COURT to verify whether the requesting foreign state has observed the legal requirements established in the new Migration Law (Law 13,445, of May 24, 2017).

The requesting Government pointed out the facts underlying the extradition, having limited the thematic scope of its claim, as required for analysis by the FEDERAL SUPREME COURT (Ext. 667-3, Reporting Justice CELSO DE MELLO, Plenary, DJU of 29/9/1995, p. 31.998).

Reciprocity. The extradition request can only be granted

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RICARDO LEWANDOWSKI, First Panel, DJe de 3/11/2011; Ext 1120/Federal Republic of Germany, Reporting Justice MENEZES DIREITO, Full, DJe de 6/2/2009; and Ext 1.122/State of Israel, Reporting Justice CARLOS BRITTO, Full, DJe de 28/8/2009).

The lack of an extradition treaty between Brazil and Turkey does not impede the fulfillment of the request, since there is in the records a promise of reciprocity made by the Requesting State to the Brazilian Government (pages 2).

Competence of the foreign state. In this case, the facts occurred in Turkish territory, more precisely in the city of Zonguldak (page 62).

Existence of a conviction or arrest warrant issued by a judge, court or competent authority of the foreign state. In this case, the High Court of Zonguldak issued a warrant of arrest against the extraditee on 11/28/2016 (pages 8v/14, 16/19, 22/25 and 28/32v).

Double criminality. The absence of the requirements for extradition: deficiency in the specific description of the facts, factual context with political connotations and submission of the extraditee to a court of exception. The granting of the extradition request requires the presence of the requirement of double criminality (STF, Ext. 1.196/Reign of Spain, Rel. DIAS TOFFOLI, DJe de 26/9/2011), because, as defined by this SUPREME COURT, it is essential, for the accurate assessment of respect for the principle of double incrimination, that the facts attributed to the extraditee, notwithstanding the inconsistency of his formal designation, have criminal typicity and are *equally* punishable by both the domestic legal system and the system of positive law of the State of São Paulo.

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(Ext 669, Reporting Justice CELSO DE MELLO, Plenary, DJ de 29/03/1996, p. 9.343).

The requesting State accuses the Turkish national of committing the offenses specified in the Turkish Criminal Code and the Terrorist Financing Law, whose articles, respectively, are reproduced:

Qualified Fraud

Article number 158-(1) If the crime of fraud is committed in the following ways;

a) By exploring religious beliefs and feelings.

[...]

Infringement of the Constitution

Article number 309-(1) The attempt to overthrow the order provided by the Constitution of the Republic of Turkey, or to replace this order with another one, or to prevent the function of this order with the use of violence and force, is punishable by aggravated life imprisonment.

[...]

Crime against the Government

Article number 312-(1) The attempt to overthrow the Government of the Republic of Turkey, or to impede its functions partially or totally as the use of violence and force, is punishable by aggravated life imprisonment.

[...]

Armed Organization

Article number 314-(1) The individual who creates or directs an armed organization to commit the crimes that are described in sections four and five shall be punished by ten to fifteen years of imprisonment.

(2) Individuals who are members of the organization described in paragraph one shall be punished by five to ten years' imprisonment.

[...]

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The Crime of Terrorist Financing

Article number 4-(1) An individual who knowingly and willfully raises funds for a terrorist or terrorist organization with the purpose of being used, in part or in whole, to carry out acts designated as a crime under article number 3, shall be punished by five to ten years' imprisonment if the act does not require a more serious penalty.

In Brazil, in turn, the narrated facts would correspond to the crimes typified in arts. 3º and 6º, of Law n. 13.260/2016 and in arts. 16 and 17, of Law n. 7.170 (National Security Law in force at the time of the facts). Let's see:

Art. 3. Promoting, constituting, integrating or aiding, personally or through an intermediary, a terrorist organization:
[...]

Art. 6. Receiving, providing, offering, obtaining, keeping, keeping in deposit, requesting, investing, in any way, directly or indirectly resources, assets, goods, rights, values or services of any nature, for the planning, preparation or execution of the crimes provided for in this Law:

Penalty: imprisonment, from fifteen to thirty years.

Sole Paragraph. The same penalty shall apply to anyone who offers or receives, obtains, keeps in deposit, solicits, invests or in any way contributes to the obtaining of assets, goods or financial resources with the purpose of financing, in whole or in part, a person, group of people, association, entity or criminal organization whose main or secondary activity is, even on a contingent basis, the practice of the crimes provided for in this Law.

[...]

Art. 16 - To be part of or maintain an association, party, committee, class entity or group that has the objective of changing the current regime or the Rule of Law, by violent means or with the use of serious threat.

Penalty: imprisonment, from 1 to 5 years.

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[...]

Art. 17 - Attempting to change, with the use of violence or serious threat, the order, the current regime or the Rule of Law.

Penalty: imprisonment, from 3 to 15 years.

Sole Paragraph. If serious bodily harm results, the penalty is increased by half; if death results, it is increased by double.

The vacatio legis period of Law 1497/2021, which revoked the SNA, has elapsed, and the rule became fully effective on December 2, 2021. Therefore, since this date, it has the power to produce its effects, retroacting, as the case may be, to reach past facts, when it is verified that the provision is more beneficial to the accused.

However, there was NO ABOLITIO CRIMINIS, because the legislative evolution produced by the National Congress in defense of Democracy and its institutions effected the legal phenomenon known as NORMATIVE-TYPICAL CONTINUITY, establishing - in the new law - the elements of the criminal types used in the extradition request.

NORMATIVE-TYPICAL CONTINUITY is not to be confused with *abolitio criminis*, because, as ROGÉRIO SANCHES CUNHA points out

"the *abolitio criminis* represents formal and material suppression of the criminal figure, expressing the desire of the legislator in not considering a certain conduct as criminal. This is what happened with the crime of seduction, formally and materially revoked by Law 11.106/2005", while "the principle of normative-typical continuity, on the other hand, means the maintenance of the prohibited character of the conduct, but with the displacement of the criminal content to another penal type. **The intention of the legislator, in this case, is that the conduct remains criminal**" (Manual de Direito Penal: Parte Geral, Editora JusPODIVM, 2013, p. 106).

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The repeal of a criminal law does not necessarily imply the decriminalization of all conducts typified therein, given that the principle of normative-typical continuity will allow for the possibility that certain conducts provided for in the repealed criminal law have been subject to the repealing law, as occurred in this case, as pointed out in several judgments of this SUPERIOR COURT (RHC 187. p/órdão Min. LUIZ FUX, Primeira Turma, DJe de 17/11/2011).

It is evident, therefore, that there was typical-normative continuity between the crimes foreseen in **(a)** Former arts. 18 and 23, IV of the LSN and the current art. 359-L, of the Penal Code; and **(b)** Former art. 26 of Law No. 7.170/83 and the crime foreseen in art. 138 c/c art. 141, II, both of the Penal Code.

However, in spite of this, the extradition request should be completely rejected.

The extradition system in force under Brazilian law is qualified as a limited control system, with predominant jurisdictional activity, which allows the Supreme Federal Court (SUPREMO TRIBUNAL FEDERAL) to control the extrinsic legality of the extradition request made by the foreign state, but not the merits, except, exceptionally, in the analysis of the occurrence of the statute of limitations, the observance of the principle of double criminality or the political configuration of the offense charged to the extraditee (Full, Ext. 703-3 - Reporting Justice SEPÚLVEDA PERTENCE).

Thus, the jurisdictional assessment of the SUPREMO TRIBUNAL FEDERAL must take into consideration the version emerging from the complaint or the decision issued by competent bodies in the foreign state;

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However, it must analyze whether the described fact corresponds to criminal typification and, consequently, meets the requirement of double criminality.

In this sense, the first obstacle to extradition is that there was no specific description of the facts, by the requesting State, but only generic expositions and without delimiting what were the functions, the hierarchical degree occupied or role played by the extraditee within the possible criminal organization.

The facts to which the aforementioned Turkish criminal norms apply were described as follows (pp. 09/12):

In the context of investigation file conducted by the Prosecutor General of Zonguldak of the Republic of Turkey with the number of 2016/2348, on the date of October 21, 2016, a criminal case was initiated against the Accused/Defendant YAKUP SAGAR and 83 other Accused/Defendants for committing the crimes of attempting to destroy the State of the Republic of Turkey or preventing the State of the Republic of Turkey from functioning; of financing terrorism; of aggravated swindling by abusing religious convictions and religious feelings; of attempting to destroy the constitutional order of the Republic of Turkey and the crime of being a member of an armed terrorist organization.

[..]

The "Fetullah Gülen's Armed Terrorist Organization/The Parallel State Structure" was formed by Fetullah Gülen. This "Fetullah Gülen's Armed Terrorist Organization/The Parallel State Structure" is intended to take over the authority of the state using the illegal methods. For this purpose, there is a strong hierarchical bond between the members of "Fetullah Gülen's Armed Terrorist Organization/The parallel state structure." This point was taken from the CD during a conversation by Fetullah Gülen - the leader of "Fetullah Gülen's Armed Terrorist Organization/The Parallel State Structure". O

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CD was captured and located within a file investigation conducted by Attorney General De Zonguldak with the number 2016/2348 on the date of October 21, 2016.

There is strong job sharing among the members of the "Fetullah Gülen's Armed Terrorist Organization/Parallel State Structure". The "Fetullah Gülen's Armed Terrorist Organization/The Parallel State Structure" has sufficient human resources and equipment. The "Armed Terrorist Organization of Fetullah Gülen/The parallel state structure" has authorized to use weapons under legal view to carry out the motives of the "Armed Terrorist Organization of Fetullah Gülen/The parallel state structure".

[...]

On the other hand, according to the statements of Tugrul DEMIRASLAN and Zeynep ÇELİK, the members of "Fetullah Gülen's Armed Terrorist Organization/A parallel state structure" stayed as observers in the national elections for the opposition parties for (...) the government to lose the national elections.

In this context, the members of the "Fetullah Gülen's Armed Terrorist Organization/A parallel state structure" have committed the crimes of attempting to destroy the State of the Republic of Turkey or preventing the State of the Republic of Turkey from functioning.

The "Fetullah Gülen's Armed Terrorist Organization/The parallel state structure" was formed by Fetullah Gülen. This "Fetullah Gülen's Armed Terrorist Organization/The Parallel State Structure" is intended to take over the authority of the state using illegal methods.

For this purpose, there is a strong hierarchical bond between the members of "Fetullah Gülen's Armed Terrorist Organization/The parallel state structure". There is a strong work sharing among the members of "Fetullah Gülen's Armed Terrorist Organization/The parallel state structure".

Fetullah Gülen's "Armed Terrorist Organization/A Parallel State Structure" has the human and

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sufficient equipment. [...]

The "Fetullah Gülen's Armed Terrorist Organization/A parallel state structure" opened the foundations, associations, companies and private schools in Antalya province and Antalya district as (...) opened throughout Turkey. The "Fetullah Gülen's Armed Terrorist Organization/The parallel state structure" abused people's religious feelings to raise money with the promise to deliver to the needy using the foundations, the associations established by the "Fetullah Gülen's Armed Terrorist Organization/The parallel state structure".

On the other hand, the "Fetullah Gülen's Armed Terrorist Organization/The Parallel State Structure" took over the lands of bona fide people as donation. After taking over the land and the money, the "Fetullah Gülen's Armed Terrorist Organization/The Parallel State Structure" used them for the construction of the private schools. The "Fetullah Gülen's Armed Terrorist Organization/ Parallel State Structure" took tolls from the students to ensure financial gain for the "Fetullah Gülen's Armed Terrorist Organization/ Parallel State Structure."

At the end of investigations conducted throughout Turkey, the members of the "Fetullah Gülen's Armed Terrorist Organization/A parallel state structure" have suffered a heavy blow from the Turkish authorities.

Therefore, to end this situation, members of the "Fetullah Gülen's Armed Terrorist Organization/A parallel state structure" activated a coup attempt to overthrow the Government of the Republic of Turkey and the President of the Republic of Turkey on the date of July 15, 2016.

Members of the "Fetullah Gülen's Armed Terrorist Organization/A parallel state structure" participated in and supported this coup attempt to overthrow the Government of the Republic of Turkey and the President of the Republic of Turkey.

On the date of July 15, 2016, the members of the "Organization

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Armed Terrorist Organization of Fetullah Gülen/A parallel state structure" captured planes and helicopters of the Turkish Armed Forces and attacked with bombs and firearms against public buildings. The members of "Fetullah Gülen's Armed Terrorist Organization/A parallel state structure" attacked with bombs and firearms people who wanted to stop the coup attempt. 246 people from the civilian population and security forces martyred because of bombs and firearms. More than 2500 people were injured because of bombs and firearms.

A criminal case was initiated against the Accused/Defendant YAKUP SAGAR and 83 other Accused/Defendants. The punishment of Accused/Defendant YAKUP SAGAR and the other 83 Accused/Defendants was requested by Attorney General De Zonguldak.

It is observed, in this way, that the exposition of the criminal facts imputed to the extraditee do not present the necessary clarity and precision, indispensable elements to define the extraditee's alleged conduct in the criminal enterprise.

In this sense, this Supreme Court has already decided that, in crimes of this nature, it is absolutely necessary, for the purposes of granting the extradition request, "*that the documentation instructing the request specify, in relation to each of them, the extraditee's conduct*" (Ext. 670, Reporting Justice SEPÚLVEDA PERTENCE, Full Court, j. 11/6/1997, DJ de 27/6/1997).

It should be noted that this deficiency was also highlighted by Min. GILMAR MENDES in Ext 1.578 (State of Turkey x Ali Sipahi, Reporting Justice EDSON FACHIN, Second Panel, j. August 6, 2019, DJe de 20/02/2020), whose factual and legal situation therein presented circumstances similar to those of the present case.

On that occasion, Min. GILMAR MENDES was emphatic in pointing out that in relation to certain facts "*one observes the excessive generality and*

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non-specificity of the alleged criminal facts. It is not described how the extraditee became a member of the alleged criminal organization after his association with the center, nor what were the functions performed, the hierarchical level held, or his role in the so-called criminal organization.

Therefore, in cases where this requirement is not observed, the indetermination as to the defining elements of the criminal conduct makes it impossible to grant the extradition request, for violation of the principle of double incrimination, as defined by this SUPREME COURT:

EXTRADITION - PEOPLE'S REPUBLIC OF CHINA - CRIME OF SWINDLING PUNISHABLE BY DEATH PENALTY - PRECARIOUS AND INSUFFICIENT PENAL TYPIFICATION THAT MAKES IT IMPOSSIBLE TO EXAMINE THE REQUIREMENT CONCERNING DOUBLE INCRIMINATION - REQUEST DENIED. EXTRADITIONAL PROCESS AND THE FUNCTION OF GUARANTEE OF THE CRIMINAL TYPE. - **The act of criminal typification imposes on the State the duty to identify, with clarity and precision, the defining elements of the criminal conduct. The norms of incrimination that fail to meet this requirement of objectivity - in addition to failing to fulfill the function of guarantee that is inherent to the criminal type - are qualified as the expression of a normative discourse that is absolutely incompatible with the very essence of the principles that structure the criminal system in the context of democratic regimes. The recognition of the possibility of instituting flexible typical structures does not give the State the power to construct criminal figures with the use, by the legislator, of ambiguous, vague, imprecise and undefined expressions. The regime of indeterminate criminal types implies, in the final analysis, the subversion of the constitutional postulate of the rule of law, which has the immediate consequence of seriously compromising the system of public liberties. The clause of criminal typification, whose content**

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The description is precarious and insufficient, and does not allow the principle of double incrimination to be observed, consequently making it impossible to grant the extradition request. [.]

(Ext 633, Reporting Justice CELSO DE MELLO, Full Court, DJ de 6/4/2001).

The second obstacle to extradition is that some of the accusations made by the requesting state have a clear political motivation.

In the case under examination, the very characterization of the "Fethullah Güllen's Armed Terrorist Organization/Parallel State Structure (FETÖ/PDY)" as a kind of criminal organization arises in the environment of the political opposition carried out by the organization and its leader against the permanence of the Turkish President (Recep Tayyip Erdogan) in power, factual circumstances that prevent extradition.

According to what has been reported, except by the requesting state, there is no characterization of the accused movement as a terrorist organization. In fact, if it is proven to be a terrorist movement, the analysis of political motivation is excluded, according to the traditional understanding in Brazilian extradition law (applying both to terrorist acts and to attacks against public authorities). Thus, if there is no proof that the movement is equivalent to a terrorist organization, but only that it has a political connotation, extradition is not possible.

The third obstacle to extradition is that the request is not admissible when there is talk of the extraditee being subjected to trial in the requesting State before an exceptional court or tribunal.

It is a well-known fact the current troubled political moment experienced in the Turkish State, which reveals serious institutional instabilities, compromising the proper functioning of the powers instituted in that nation, including strong interference in the independent performance of the

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The Judiciary, the mainstay for the realization of a true Democratic State and Rule of Law.

The international organization *Journalists and Writers Foundation* (JWF) prepared a Special Report, on the recent date of 11/22/2021, based on the cases of Turkish citizens Selahaddin Gülen, which occurred in Kenya, and Muaz Türkyılmaz, which occurred in Panama, who were accused by the Government of Turkey of belonging to the terrorist organization and with connections to the coup attempt in July 2016.

It was concluded that the Turkish government has adopted an **abusive policy of issuing red notices to Interpol** in Ankara, misusing this important instrument that this legal entity of international law uses to locate and arrest international fugitives.

In light of this, the following recommendations were issued to Interpol and the Member States, freely translated as follows (e-Doc. 74, fl. 13):

52. The 89th Interpol General Assembly, to be held November 20-25, 2021, in Istanbul is an opportunity to remind the host country authorities about the need to conform their actions to the Interpol Constitution and the set of principles protecting human rights. In particular, the Turkish authorities must ensure that data, including lost and stolen passports, submitted to the organization are in line with Article 3 of the Organization's Constitution.

53. Any demands or efforts by the host country (Turkey), one of the most notorious abusers of the system, **to boost the campaign of the government of Turkey in persecuting dissidents around the world**, should be approached with caution and rejected by Interpol, in accordance with the spirit of the Universal Declaration of Human Rights. (emphasis added).

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54. Finally, considering the Turkish abuse of the Interpol system, all other member states should adopt a more cautious approach when enforcing notifications or broadcasts originating from Turkey.

It is reported in the media that the Turkish government arrested 2,745 judges and prosecutors immediately after the events in the period mentioned by the petitioning state. Two thousand seven hundred and forty-five judges and prosecutors! The arrest of 2,745 judges and prosecutors in itself would already be an absurd fact, generating psychological reflexes in relation to the others who were not arrested. In addition, the Turkish government arrested a member of the country's Supreme Court; the Turkish police arrested ALPARSLAN ALTAN, a judge of the country's Supreme Court, the highest judicial authority, and attacked the country's Supreme Court; another Turkish judge, MURAT ARSLAN, was also persecuted for being a defender of the independence of the judiciary, so much so that he was the winner of the 2017 Václav Havel Human Rights Prize, awarded in France, in Strasbourg, and had to flee Turkey.

The following excerpts from the vote of Min. EDSON FACHIN in Ext. 1.578, which dealt very well with this issue involving an extradition request from the Government of Turkey, also deserve to be reproduced:

Beyond the simple characterization of a political crime or a court of exception, this Court has scrutinized the scope of the phrase "court of exception" to see its broader scope, which is to ensure a fair trial and the guarantee of *due process of law*.

Political instability and even resignations of judges, as well as arrests of opponents of the government of the requesting state can be considered a notorious fact (e-Doc 49). In such circumstances, there is at least a justified doubt as to the guarantees that the extraditee will effectively be submitted to an independent and impartial tribunal.

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impartial, in a framework of institutional normality, safe from exogenous and endogenous instabilities and pressures.

The European Parliament Resolution of March 13, 2019, approving the 2018 Report, condemned the increased control exercised by the Executive and political pressure on the work of judges and magistrates:

(...) 6 Condemns the increase in executive control and political pressure on the work of judges and magistrates; stresses that a thorough reform of the legislative and judicial powers is necessary for Turkey to improve access to the judicial system, increase its efficiency and provide better protection of the right to trial within a reasonable time; stresses that these reforms are necessary for Turkey to fulfil its obligations under international human rights law;

Is concerned that the dismissal of more than 4,000 judges and prosecutors is a threat to the independence and impartiality of the judiciary; also considers that the arrest of more than 570 lawyers is an obstacle to the right of defense and a violation of the right to a fair trial;

It also condemns the detention and judicial harassment of human rights lawyers;

Calls for the Reform Action Group to examine the judicial reform strategy and bring it into line with the standards required by the EU and the Council of Europe; calls on Turkey to ensure, throughout the reform process, the involvement of all stakeholders and in particular civil society organizations; calls on the Commission to monitor the appropriate use of EU funding for the training of judicial and law enforcement officials, which should not be used to legitimize repressive behaviour ((European Parliament, Texts adopted, 13/03/2019, Report 2018,

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relative à Turkey.
(http://www.europarl.europa.eu/doceo/document/TA-8-2019-0200_EN.html.)

I should also mention that the Supreme Court of the United Kingdom has recently rejected 4 extradition requests made by Turkey regarding its nationals for the alleged practice of terrorism. In April of this year, on April 12, that Supreme Court upheld the decision of the United Kingdom courts that had denied the extradition of the Turkish citizen AKIN IPEK, a businessman accused by the Turkish government of being involved with the Gülen movement.
(<https://www.supremecourt.uk/decided-cases/index.html>)

And in the face of such instabilities in the political life of the requesting State, the solution, in a judgment that protects individual liberties, is to refuse extradition, since the guarantee of an impartial trial in accordance with constitutional franchises cannot be glimpsed with certainty.

According to these premises, it is necessary to observe the extraditional prohibition contained in art. 82, VIII, of Immigration Law n. 13.445/17, namely:

Art. 82 Extradition will not be granted when: [...]

VIII - the extraditee must answer, in the requesting State, before a court or court of exception.

The impartiality of the judiciary and the security of the people against state arbitrariness find in the principle of the natural judge one of its indispensable guarantees. BODDO DENNEWITZ states that the institution of a court of exception implies a mortal wound to the rule of law, since its prohibition reveals the status conferred on the judiciary in a democracy (*Kommentar zum Bonner Grundgesetz: Bonner Kommeratar*. Hamburg: Joachin Hestmann, 1950, art. 101).

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The natural judge is only the one who is part of the Judiciary Branch, with all the institutional and personal guarantees provided for in the legislation. Thus, as stated by Justice CELSO DE MELLO, only the judges, courts and jurisdictional bodies provided for in the Constitution and legislation can be identified with the natural judge (*A tutela judicial da liberdade*. RT 526/291).

The Principle of the Natural Judge is a constitutional vector enshrining the independence and impartiality of the judging body, because as highlighted by the German Federal Constitutional Court, "it protects the confidence of the postulants and of society in the impartiality and objectivity of the courts" (Decision - Urteil - of the First Senate of March 20, 1956 - 1 BvR 479/55 - Fifty Years of Case Law of the German Federal Constitutional Court. Original Collection: Jürgem Schawabe. Organized and introduced by Leonardo Martins. Konrad Adenauer - Stiftung - Programa Estado de Derecho para Sudamérica, p. 900-901).

This principle must be interpreted in its fullness, in such a way as to prohibit not only the creation of exceptional courts or tribunals, but also absolute respect for the objective rules for determining jurisdiction, so that the independence and impartiality of the judging body is not affected.

Therefore, once the political instability experienced by the requesting State is evident - aggravated by interference in the independence of the Judiciary - and because there are no guarantees that the extraditee will receive a fair and impartial trial by an independent judge in accordance with the *due process of law*, it is not possible to grant the extradition request. CELSO DE MELLO, Full Court, DJ on April 6, 2001 (Government of the People's Republic of China x Qian Hong); Ext 986, Reporting Justice EROS GRAU, Full Court, DJ on October 5, 2007 (Government of Bolivia x John Axel Rivero Antero); Ext 1578, Reporting Justice EDSON FACHIN, Second Panel, DJ on February 20, 2020

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(Government of Turkey vs. Ali Sipahi).

The fourth and final obstacle to extradition is the extraditee's refugee status. The Ministry of Justice and Public Security informed in these proceedings that on February 3, 2022, in an ordinary session held by CONARE, the extraditee's refugee status was recognized, pursuant to art. 1 of Law 9.474/1997, emphasizing that "*the grounds for the request for recognition of refugee status are coincident with the grounds of the extradition process*" (e-Doc. 93, page 01).

Faced with this new legal situation, another obstacle to granting the request arises. This is because, although it is possible to extradite a refugee, the request will not be granted when it is based on the facts that were the basis for granting refuge, as stated in art. 33 of Law 9.474/97:

Art. 33 - Recognition of refugee status will prevent the processing of any extradition request based on the facts that were the basis for granting refuge.

This is what we have in this case, especially in light of what was stated in the opinion of the Ministry of Justice and Public Safety (e- Doc. 93, pages 06/07):

TURKEY. BUSINESSMAN. HIZMET. GULENIST MOVEMENT. EXISTENCE OF A WELL-FOUNDED FEAR OF PERSECUTION. The petitioner is 52 years old, was a businessman, was a representative of the Chamber of Commerce of his city - Zonguldak and a follower of the Hizmet of Turkey. In this regard, since the year 2000 he had been voluntarily working on humanitarian missions for the NGO *Kimse Yok Mu*, of which he was also the ombudsman. He claims that he was forced to flee Turkey in order not to be arrested, due to his links with Hizmet. A

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he applicant's narrative of the facts and context described was consistent. His narrative was also consistent with the narrative of his family members and friends, refugee applicants. Regarding the situation in Turkey, it was possible to see that in the wake of an alleged coup attempt in July 2016, the Turkish government declared a state of emergency, indiscriminately charged, persecuted, and prosecuted people related to Hizmet - a movement of religious origin, created in the 1960s by Muslim Cleric Fethullah Gülen which has become a transnational civil society movement, with actions in about 160 countries, including the USA and Canada, with the participation of people from different ethnic and religious backgrounds, through schools and other institutions in their respective countries, yet, it is believed that in Turkey alone the group includes more than 4 million followers. Following the alleged coup attempt, hundreds of businesses were confiscated by the government, or closed, as well as NGOs, schools and other institutions maintained, or inspired by Hizmet, politicians, journalists, businessmen, judges, military and police officers, lawyers, civil servants, and teachers were persecuted, arrested, prosecuted, and convicted by the courts under exceptional law. Furthermore, the government used official media, especially a website called Resmi Gazete, to accuse Hizmet, publicize the names of its members, and also to encourage the denunciation of anonymous members, exposing these people to social discrimination, unemployment, and the threat of violence as they were exposed as "terrorists" in their communities. Although the state of emergency expired in 2018, the Government adopted an "anti-terrorism legislation" passed by the Turkish Parliament and the charges continued to be widely used. A commission set up by the government in 2017 to review the dismissal of more than 130,000 civil servants, mostly for alleged Gulenist ties, assessed 36,000 cases, with only 2,300 relocated to their positions by January 2019. By June 2018 almost one-fifth (48,924) of the

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total prison population in the country (246,426) was charged or convicted of terrorism crimes, and among those, 34,241 were detained for alleged "Gülenist ties." However, many terrorism trials in Turkey are said to lack convincing evidence of criminal activity or acts that would reasonably be considered terrorism. The practice of prolonged pre-trial detention has also raised concerns that its use has become a form of summary punishment. In relation to Hizmet, no evidence was found in research on the country that this group was involved in acts of terrorism, according to the internationally accepted meaning of the term, or that it has been classified as terrorist by the UN, or the EU, or the Brazilian authority that even denied the extradition of a Turkish citizen accused of having Gülenist ties. The case also presented no evidence that the applicant had committed crimes, or acts of violence that would justify individualized persecution by the Turkish authorities. The basis for the persecution of Hizmet is primarily that this group stood out as the political opposition to President Erdoğan's government; because of its power and influence, it was considered more powerful than the state itself. Also, reports of persecution of the group gained notoriety starting in 2013 in the wake of popular protests against the government. Thus, based on the available information, it is concluded that anyone related to Hizmet is at risk of persecution in Turkey. In the specific case, since the applicant was a businessman, and was a provider of the NGO *Kimse Yok Mu*, the main means by which Hizmet carried out its actions, it is reasonable to assume that he became a target of persecution by the authorities and was forced to flee the country to preserve his freedom and physical integrity. Furthermore, according to the exposed, it is evidenced persecution for reason of belonging to a specific social group, as well as, for reason of imputed political opinion, so as to configure the causal link that characterizes the case as persecution and inserts it

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in the terms of the International Convention on the Statute of Refugees, as well as in the clauses of Brazilian Law 9.474/1997, especially in what refers to its Art. 1. It is recommended, therefore, that the refugee status of the applicant and his/her family group be recognized.

As a precedent of this Supreme Court, the principle of *non-refoulement*, which prohibits extradition in contexts of this magnitude, must be observed. In this sense, Ext. 1170, Reporting Justice ELLEN GRACIE, Full Court, DJe Apr. 23, 2010:

EXTRADITION. REFUGEE DOCUMENT ISSUED BY THE HIGH COMMISSIONER OF THE UN (ACNUR). CONARE. RECOGNITION OF REFUGEE STATUS BY THE MINISTER OF JUSTICE. PRINCIPLE OF NON REFOULEMENT. REJECTION.

1. Extradition request made by the Government of Argentina to the Argentine national GUSTAVO FRANCISCO BUENO for the alleged practice of the crimes of aggravated unlawful deprivation of liberty and threats.

2. At the time of the execution of the above-mentioned precautionary arrest, a document issued by the UN High Commissioner for Refugees (UNHCR) was seized from the extraditee's possession, indicating his possible refugee status.

3. The President of the National Committee for Refugees - CONARE attests that the extraditee is a refugee recognized by the Brazilian Government, according to document number 326, dated 12.06.1989.

4. Prior to Law 9.474/97, the legal basis for granting or not granting refuge was the UNHCR's recommendations and, therefore, the comparison was made based on the adaptation of the concrete situation to the referred recommendations, resulting in the granting or not of the refuge request.

5. The extraditee is covered by his refugee status, duly attested by the competent body.

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CONARE -, and his case does not fit the list of exceptions authorizing the extradition of a refugee agent.

6. Opinion of the Attorney General's Office for the extinction of the case without resolution of merit and the immediate granting of freedom to the extraditee.

7. Extradition denied.

8. Preventive detention revoked

In light of the above, I VOTE to deny the request for extradition, revoking the precautionary measures previously adopted, and I JUDGE the Motion for Clarification filed by the OPG.

It's like voting.

Impresso por: 36912773818 - ANA LUISA FERREIRA RINHO
Em: 20/06/2022 - 12:11:08

04/05/2022 FIRST CLASS

EXTRADITION 1.693 FEDERAL DISTRICT

CLARIFICATION

THE MINISTER CÁRMEN LÚCIA (PRESIDENT) -

I wonder, in view of the claim - sketched out at least - by the lawyer, if there is still interest, if Your Excellency, as Reporter, would accept any clarification of fact that he might want to make now, at the end of his vote.

THE MINISTER ALEXANDRE DE MORAES (REPORTER)

- President, if it is a clarification of fact, there is no problem. If it is not a contradiction to the vote, as long as it is a clarification of fact, there is no problem.

THE MINISTER CÁRMEN LÚCIA (PRESIDENT) -

I ask Dr. Lucas if now, at the end of his vote and after consultation with the Reporting Justice, you intend to clarify any point of fact.

So, Doctor Lucas, you have the floor, as the Reporter said, who granted the request, to clarify a specific fact, not a contradiction.

O SENIOR LUCAS RODRIGUES DE PAULA - Your Excellencies, just to cooperate with your Excellencies' conclusion about the case, with regard to the factual basis, the Republic of Turkey presented, in its last note verbale in the records, the description of the facts effectively pointed out as being the responsibility of Yakup Sagar. I would just like to point out that, with regard to this point, it was emphasized that the extraditee, making use of his position as a company director - we call them the various companies in which he was a director - acted as an intermediary for the terrorist organization to raise money, acting as a member of the board of directors of that organization.

We also point out that, in relation to the crime of qualified fraud, the extraditee used the pretext of raising funds to carry out

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religious rituals. He did not perform them and, in effect, directed these funds to Fethullah Gülen's organization. Finally, he also used one of the companies and acted as an intermediary for the organization to raise funds. He failed to declare certain taxable amounts from these companies and directed them to Bank Asya, one of the main funders of Fethullah Gülen's organization. This is stated in the last statement, in a note verbale, forwarded in the records by the Republic of Turkey.

Thank you once again, Your Excellencies.

MINISTER CÁRMEN LÚCIA (PRESIDENT) - I

that I thank you, Dr. Lucas. Thank you very much for your collaboration! I imagine that the Rapporteur is satisfied.

THE MINISTER ALEXANDRE DE MORAES (REPORTER)

- Yes, President. Just to add to that, as I said, these are absolutely inaccurate allegations, you simply forgot the causal link to the fact itself: this money was used for religious events, it was passed from this account to this account, to buy the bomb that exploded I don't know where. You simply ignored that.

Impresso por: 36912773818 - ANA LUISA FERREIRA
Em: 20/06/2025 12:11:08

04/05/2022 FIRST CLASS

EXTRADITION 1.693 FEDERAL DISTRICT

VOTE

SENIOR MINISTER LUÍS ROBERTO BARROSO - President,
I also salute the illustrious attorneys that were at the rostrum, all of them deducing the arguments that seemed to them the most adequate, Dr. Lucas Rodrigues de Paula, extremely combative, Dr. Beto Vasconcelos, the Federal Public Defender that usually attends our rostrum, Dr. Gustavo Zortéa, and Dr. Rodrigo Fillipi Dornelles.

President, I have little to add, because I think this is a case of rejection *ex vi legis*. It is enough to read art. 82 and the relevant sections, which has already been done by the eminent Rapporteur, whom I congratulate.

Personally, I would even start at the end. The extraditee has been granted refuge.

"Art. 82 Extradition will not be granted when:

(...)

IX - the extraditee is a refugee (...)"

So I think you only proceed here if the refuge is invalid for some reason. Moreover, even if it were invalid, clearly we are dealing with crimes of a political nature. Unfortunately, Turkey, a beautiful and lovely country, fell into this web of authoritarian, extremist populism, with the compromising of its institutions, including, as pointed out by the eminent Rapporteur, the independence of the judiciary, unfortunately. There is even doubt whether the trial would not be by a court of exception.

As the Rapporteur also pointed out, there is no specificity. The crime is predominantly of a political nature, there are doubts about the effective and due legal process in the requesting country, and refuge has been granted

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by the Brazilian government.

Thus, it is a set of situations that add up and that lead me to the unequivocal rejection of the request, following the eminent Rapporteur.

Impresso por: 36912773818 - ANA LUISA FERREIRA PINTO
Em: 20/06/2022 - 12:11:08

04/05/2022FIRST CLASS

EXTRADITION 1.693 FEDERAL DISTRICT

RAPPORTEUR	: MIN. ALEXANDRE DE MORAES
RESPONDENT(S)	: GOVERNMENT OF TURKEY
ATTORNEY(S)	: WESLEY RICARDO BENTO DA SILVA
EXTDO.(A/S)	: YAKUP SAGAR
ATTORNEY(S)	: BETO FERREIRA MARTINS VASCONCELOS OAB/SP 172687 AND OTHERS
ATTORNEY(S)	: ANA LUISA FERREIRA PINTO
AM. CURIAE.	: UNION PUBLIC DEFENDER'S OFFICE
PROC.(A/S)(ES)	: FEDERAL PUBLIC DEFENDER GENERAL
AM. CURIAE.	: HUMAN RIGHTS NETWORK ASSOCIATION
ATTORNEY(S)	: GABRIEL DE CARVALHO SAMPAIO
ATTORNEY(S)	: RODRIGO FILIPPI

DORNELLES VOTING-

GLOBAL

THE CHIEF MINISTER ROSA WEBER - Madam

President, I salute Your Excellency; my dear Colleagues; the representative of the Public Ministry; our Servants; the eminent Lawyers who have occupied the rostrum with oral arguments - for me, particularly, very profitable; and also, in a very special way, Minister Alexandre de Moraes, who, in my opinion, has exhausted the subject.

Like Minister Luís Roberto, I had thought of starting with the obstacle that, for me, is definitive. Brazil has granted refuge - we have the certificate from Conare itself - for the same reasons that led to

Supreme Court

Full text of the judgment - Page 40 from 43

the extradition request. The obstacle is definitive. No

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we have, in my point of view, in line with what was very well explained by Minister Alexandre, how to continue with the extradition process, not to mention the political motivation, the risk of a court of exception, and all the regrettable facts that, in my view, have been duly exposed and addressed.

I refer, in particular, to the precedent set by my eminent predecessor, Justice Ellen Gracie, Extradition 1.170, and I fully agree with the eminent Rapporteur.

Impresso por: 36912773818 - ANA LUISA FERREIRA PINHO
Em: 20/06/2022 - 12:11:08

04/05/2022 FIRST CLASS

EXTRADITION 1.693 FEDERAL DISTRICT

VOTE

A LADY MINISTER CÁRMEN LUCIA - Also
I would like to begin by congratulating Minister Alexandre, whose vote was dense, exhaustive, detailed, with extremely important mentions and transcriptions.

He pointed out exactly what we have in the picture: a refuge, carried out on the basis of the same facts that would give rise to extradition or described in the extradition request; the lack of specification - a circumstance peculiar to our system, also emphasized by the Reporting Minister (the double typicity constitutes an impediment due to the lack of detail or categorization that would even allow typification in relation to the practices of the extraditee or imputed to the extraditee); the question of political order, a regrettable political condition, even turned against the Judiciary, one of the Powers of that beautiful country that is Turkey.

Therefore, the requirements are not met in this case, leading me also to follow the vote of the Reporting Justice for the denial of extradition and prejudice of the motions.

Impresso por: 36912713318: ANA LUISA FERREIRA PINTO
Em: 2006/2022-12:1108

FIRST ROUND

EXCERPT FROM THE MINUTES

EXTRADITION 1.693

PROCED. : FEDERAL DISTRICT

REPORTER: MIN. ALEXANDRE DE MORAES

REQUEST(S) : GOVERNMENT OF TURKEY

ATTORNEY(S) : WESLEY RICARDO BENTO DA SILVA (18566/DF)

EXTDO.(A/S) : YAKUP SAGAR

ADV.(A/S) : BETO FERREIRA MARTINS VASCONCELOS CAB/SP 172687 AND OTHERS

ADV.(A/S) : ANA LUISA FERREIRA PINTO (345204/SP)

AM. CURIAE. PUBLIC DEFENDER OF THE UNION

PROC.(A/S)(ES) : FEDERAL PUBLIC DEFENDER GENERAL

AM. CURIAE. : HUMAN RIGHTS NETWORK ASSOCIATION

ADV.(A/S) : GABRIEL DE CARVALHO SAMPAIO (55891/DF, 252259/SP)

ADV.(A/S) : RODRIGO FILIPPI DORNELLES (329849/SP)

Decision: The Panel unanimously denied the extradition request and revoked the precautionary measures previously adopted. The motion for clarification raised by the Attorney General's Office was denied, as per the Rapporteur's vote. Dr. Lucas Rodrigues de Paula spoke for the Applicant: Dr. Beto Ferreira Martins Vasconcelos for the Extraditee; Dr. Gustavo Zortéa da Silva, for the *Amicus Curiae* Defensoria Pública da União, and Dr. Rodrigo Fillipi Dornelles for the *Amicus Curiae* Associação Direitos Humanos em Rede. Presiding Justice Cármen Lúcia. First Panel, April 5, 2022.

Presiding Justice Cármen Lúcia. Justices Dias Toffoli (by videoconference), Rosa Weber, Luís Roberto Barroso and Alexandre de Moraes attended the session.

Deputy Attorney General of the Republic, Dr. Luiz Augusto Santos Lima.

Luiz Gustavo Silva Almeida
Class Secretary