



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

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Committee against Torture

**Decision adopted by the Committee under article 22 of the
Convention, concerning Communication No. 857/2017*****

<i>Communication submitted by:</i>	Cevdet Ayaz (represented by counsels, Mr. Kovacevic and Ms. Trkulja, Belgrade Centre for Human Rights)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Serbia
<i>Date of complaint:</i>	7 December 2017 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rules 114 and 115 of the Committee's rules of procedure, transmitted to the State party on 11 December 2017 (not issued in document form)
<i>Date of present decision:</i>	2 August 2019
<i>Subject matter:</i>	Risk of torture in the event of deportation to country of origin (non-refoulement); prevention of torture
<i>Substantive issue:</i>	Deportation of the complainant from Serbia to Turkey
<i>Procedural issues:</i>	None
<i>Articles of the Convention:</i>	3 and 15

* Adopted by the Committee at its sixty-seventh session (22 July - 9 August 2019)

** The following members of the Committee participated in the examination of the communication: Essadia Belmir, Felice Gaer, Abdelwahab Hani, Claude Heller Rouassant, Jens Modvig, Ana Racu, Diego Rodríguez-Pinzón, Sébastien Touzé and Bakhtiyar Tuzmukhamedov.



1.1 The complainant is Cevdet Ayaz, a national of Turkey of Kurdish origin born in 1973. At the time of submission of the communication, the complainant was at risk of extradition to Turkey. He claimed that his extradition would amount to a violation, by Serbia, of article 3, in conjunction with article 15 of the Convention. Serbia made the declaration under article 22 of the Convention on 12 March 2001. The complainant is represented by counsel.

1.2 On 11 December 2017, the Committee, acting through its Rapporteur on new complaints and interim measures, requested the State party to refrain from expelling the complainant to Turkey while it considered his complaint. On 5 November 2018, the State party advised the Committee that the Committee's request for interim measures was not brought to the attention of the Ministry of Justice of Serbia in time to prevent the complainant's extradition, as the request was delivered on 18 December 2018, while the decision on extradition of the complainant was rendered on 15 December 2018.¹

The facts as presented by the complainant

2.1 The complainant has been a Kurdish political activist since late 1980s. After he turned 18, he became a member of People's Labour Party (HEP). He became close with the president of the Diyarbakir branch of HEP, Mr. Vedet Aydin, who was killed by special Gendarmerie unit on 7 July 1991. Later that year, due to an increasing violence in southeastern Turkey and mass human rights violations committed against the Kurdish minority under the pretext of anti-terror operations, the complainant decided to move to Iraq. There, he remained in the city of Erbil and became a member of the Kurdish political party YEKBUN, which ceased to exist in 1994. He remained in Iraq until 1997, when the situation in Turkey slightly improved. The complainant claims to have never been involved in any military operation, nor ever using any kind of weapon or other violent means for achieving his political goals. He has never been a supporter of groups prone to violence (such as PKK) or a member of any political party that was declared as 'illegal' or 'terrorist' by the Turkish Government.

2.2 Upon his return to Turkey, the complainant led peaceful life in Diyarbakir where he opened a shop selling office supplies. He was not politically active, and in 2000, he went to Malatya for the mandatory military service in the Turkish army. On 6 April 2001, when the complainant was returning to his military base in Malatya from the granted leave, his bus was stopped by gendarmes and anti-terror forces, and the complainant was taken to the police station in Elazig where he was kept overnight. He was not informed about the reasons for his detention, was not given access to a lawyer or allowed to inform his family or anyone else about his whereabouts. The following day, he was taken to the Anti-Terror Department in Diyarbakir where he was held incommunicado until 18 April 2001.

2.3 The treatment to which the complainant was submitted during his incommunicado detention between 6 and 18 April 2001 included: being punched, slapped, kicked and beaten by police batons; being kept blindfolded most of the time during the detention; being subjected to 'Palestinian hanging';² being subjected to electric shocks applied through genitals and nipples while he was held on the ground; being hosed with high pressured cold water; being constantly threatened with execution or serious injury to him and his family; being verbally abused due to his Kurdish origin.

2.4 After days of torture, the complainant was forced to sign confession papers while blindfolded, which, as he later found out, said that he was a member and one of the leaders of the Revolutionary Party of Kurdistan ('PSK'). After signing the confession, the complainant was taken to a medical unit where he told the doctor that he had been tortured, however the doctor, in presence of the police officers who tortured him, told him that he was fine and told the officers to take him away. The complainant notes that such party does not exist and he has never heard about it. On 18 April 2001, the complainant was brought before the Diyarbakir court, where he was for the first time allowed to see an attorney. At the hearing,

¹ The State party does not say when exactly the complainant was extradited. According to the counsels, the complainant was extradited to Turkey on 25 December 2018.

² *Palestinian suspension (strappado, reverse hanging, Corda, Scorpion Position, Akrab)*, is a form of suspension where the arms or wrists are tied behind the back and then attached to a horizontal bar (<https://dignity.dk/en/dignitys-work/health-team/torture-methods/suspension/>).

the complainant told the judge that he was tortured and forced to sign a confession. However, neither the judge nor the prosecutor asked him any questions about the torture, and the court ordered that he should be further kept in pre-trial detention. The complainant was released after 10 months in pre-trial detention, however, the criminal case against him and 36 other persons associated with his party continued.

2.5 In 2006, the European Court of Human Rights examined the complainant's case and found a violation of the right to liberty and security under article 5 (unlawful and arbitrary detention in Diyarbakir police headquarters, and lack of access to lawyer and judicial examination of his detention).³

2.6 On 27 November 2012, after 11 years of investigation, the Diyarbakir Court sentenced the complainant and five other co-defendants to 15 years of imprisonment for participation in an armed organization, namely the Revolutionary Party of Kurdistan (PSK), which, as stated in the court decision, aims to destroy the present system of the Republic of Turkey and to establish in its place an independent Kurdish State on the basis of socialist system, under the name Kurdistan, over the region of eastern and south-eastern Anatolia region. The trial consisted of only a few evidentiary hearings during which the complainant was absent as he was not summoned to appear. He was not present during the sentencing but was informed about the verdict by his lawyer.

2.7 The complainant submitted an appeal to the Supreme Court of Turkey stating all of the violations during the pre-trial investigation (torture, extortion of confession, deprivation of legal representation). On 6 April 2016, the Supreme Court rejected his appeal. After this decision, the complainant fled Turkey and travelled through several countries trying to reach Germany (Iran, Ukraine, Azerbaijan, Russia, Montenegro).

2.8 The complainant was arrested on 30 November 2016 on the border crossing between Serbia and Bosnia and Herzegovina on the basis of an international arrest warrant issued in Turkey. On the same day, he was questioned by a judge at the Higher Court in Šabac in the presence of an *ex-officio* lawyer. However, since the complainant did not know Serbian, the court invited a local merchant who had business connections in Turkey to translate for the complainant. This person did not speak Turkish well, and during the court hearing had to consult over the phone with his associate in Turkey who in turn had to re-phrase judge's questions to the complainant. For the same reason, the *ex-officio* lawyer also was not able to provide confidential counseling for the complainant. The Higher Court in Šabac decided to keep the complainant in detention pending his extradition.

2.9 On 2 December 2016, the complainant appealed against his detention. On 6 December 2016, the Higher Court in Šabac denied his appeal. On 7 December 2016, the Turkish authorities submitted a request to the Ministry of Justice of Serbia for the complainant's extradition. On 19 January 2017, the Higher Court in Šabac decided that all prerequisites for the complainant's removal to Turkey were met in line with articles 7 and 16 of the Law on Mutual Assistance in Criminal Matters. There was no rigorous scrutiny by the Higher Court in Šabac in examining the risks of treatment contrary to article 3 of the Convention. The decision was rendered based on documents received from Turkey and related to the complainant's case, which were not properly translated to Serbian and, as a result, were unreadable. The translation was done in the mixture of Serbian and Macedonian languages in Cyrillic and Latin alphabet. The same translated documents were used throughout the extradition procedure.

2.10 On 3 February 2017, the complainant appealed the decision to extradite him to the Appellate Court in Novi Sad. On 23 February 2017, the Appellate Court in Novi Sad quashed the decision of the Higher Court in Šabac on the grounds that it did not provide for adequate interpretation during the proceedings and did not establish for which criminal offence the complainant had been convicted in Turkey.

2.11 On 17 March 2017, the Higher Court in Šabac rendered an identical decision without proper questioning of the complainant, without properly translating the documents received

³ *Ayaz and others v. Turkey*, Application No. 11804/02.

from Turkey and without properly examining the risks of refoulement. The complainant again appealed this decision on 22 March 2017 to the Appellate Court in Novi Sad.

2.12 On 12 April 2017, the Appellate Court in Novi Sad again conducted a hearing during which the complainant stated that he was a victim of torture and the criminal case against him was of a political nature. On the same day, the Appellate Court in Novi Sad again ordered the Higher Court in Šabac to properly question the complainant and to provide a correct translation of the documents received from Turkey.

2.13 On 12 October 2017, for the third time, the Higher Court in Šabac decided there were no obstacles to the complainant's extradition to Turkey. The complainant again appealed this decision on 20 October 2017 to the Appellate Court in Novi Sad.

2.14 A hearing before the Appellate Court in Novi Sad was scheduled for 22 November 2017. However, on 9 November, the complainant's lawyer received a phone call from one of the judges of the Appellate Court in Novi Sad who informed her that the hearing was re-scheduled for the 15 November 2017. The judge also said that the change was requested by the Ministry of Justice who insisted that the case must be resolved before 30 November, because the extradition detention could not last longer than 1 year. This was necessary so that the Minister of Justice could render the final decision on the extradition in a timely manner.

2.15 On 15 November 2017, the Appellate Court in Novi Sad again quashed the decision of the Higher Court in Novi Sad and instructed it to hold a hearing in accordance with the Criminal Procedure Code, to translate the documentation received from Turkey on the basis of which it can be determined which specific criminal offence the complainant was accused of and sentenced for.

2.16 On 22 November 2017, the UN High Commissioner for Refugees intervened reminding the State party's authorities of the ongoing asylum proceedings and the importance of examining the complainant's claims of persecution on merits.

2.17 On 30 November 2017, the Higher Court in Šabac held a hearing where the complainant's lawyer reminded the court that the complainant had applied for an asylum in Serbia and due to expiry of maximum of pre-trial detention (1 year expired on that day) he should be released and referred to the asylum camp in Banja Koviljača. After the hearing, the complainant and his lawyers were notified that a decision repealing the detention would be delivered to the correctional institution in Šabac, where complainant was held in detention, by the end of the day, after which the complainant would be released.

2.18 However, later on the same day, while his lawyer waited outside of the prison gates for the complainant to be released, the police secretly transferred the complainant to the detention center for foreigners in Padinska Skela. After learning about this from the prison guards, the complainant's lawyer arrived at 00h30 on 1 December at the detention center for foreigners and asked for the decision on the complainant's detention. Her request was denied. At 09h00 on 1 December 2017, the lawyer received the decision on extradition by the Higher Court in Šabac, rendered on the same day, stating that all prerequisites for the complainant's removal to Turkey were met in line with articles 7 and 16 of the Law on Mutual Assistance in Criminal Matters.

2.19 Later on 1 December 2017, the complainant's lawyer again went to the detention center to visit the complainant and to obtain the decision on his detention. However, she was only allowed to see the letter signed by the president of the Higher Court in Šabac, in which the court president informed the detention center for foreigners that the complainant's detention was repealed and replaced with another measure - prohibition of leaving his temporary place of residence in Banja Koviljača. In the same letter, the court president stated that, because all accommodation capacities in Banja Koviljača Asylum Centre were full, it was necessary to detain the complainant in Padinska Skela. The complainant's lawyer was not allowed to make a copy of the above-mentioned letter. The manager of the detention center informed the complainant's lawyer that the complainant was detained there on the basis of the above letter. According to the Law on Foreigners, the detention center for foreigners is an institution for accommodation of foreigners who are not allowed to enter the country or who are to be expelled from the country.

2.20 On 4 December 2017, the complainant submitted a request for interim measures to the European Court on Human Rights dated, which was denied on 6 December 2017.⁴

The complaint

3. At the time of submission of communication the complainant claimed that his extradition to Turkey would constitute a violation of his rights under article 3 of the Convention since in Turkey he had been sentenced to 15 years in prison for a politically-motivated crime based on his confession extorted under torture. He claimed that the risk of torture and ill-treatment now is even higher in Turkey after the attempted military coup in July 2016, as those who are believed to be politically opposing the current regime have been subjected to torture and other ill-treatment, incommunicado detention, and held in inhumane conditions in Turkish overcrowded prisons.

Additional information from the complainant

4.1 On 19 June 2018, the complainant submitted additional information with regard to his legal proceedings in Serbia, his asylum procedure and extradition to Turkey. He provided translated copies of a number of procedural documents. The complainant also claimed that his extradition would violate article 3, in conjunction with article 15 of the Convention, because the Serbian authorities failed to take into consideration that his sentence in Turkey was based on a confession extorted by torture.

4.2 On 4 December 2018, the complainant appealed the 1 December decision of the High Court in Šabac to the Appellate Court in Novi Sad. In the appeal, the complainant reiterated that due to lack of appropriate translation, the first instance court could not establish the facts of the case against him properly and completely, that he was subjected to prosecution in Turkey on political grounds, that his asylum proceedings were still ongoing, and asked the appellate court to return his case for examination to the first instance court.

4.3 On 8 December 2018, the Appellate Public Prosecutor's Office in Novi Sad submitted its own motion to the Appellate Court in Novi Sad where it stated that even though the first instance court had secured an adequate interpreter for the last court hearing, however it had not acted in line with the instructions of the second instance court related to translation of the documents submitted by Turkey, and proposed to quash the first instance decision and to send the case back to the High Court in Šabac.

4.4 On 14 December 2017, the Appellate Court in Novi Sad held an appeal hearing during which the complainant's lawyer submitted the Committee's note verbal, along with its Serbian translation, requesting the State party to refrain from removing the complainant to Turkey. However, the appellate court upheld the decision of the High Court in Šabac to extradite the complainant. In its decision, the appellate court stated that despite the Committee's request to refrain from removing the complainant to Turkey, the extradition in this case is regulated by the provision of article 3(1) of the European Convention on Extradition as well as provisions of Art 3(1) of the Treaty between the Republic of Serbia and the Republic of Turkey on Extradition. The court held that an extradition would not be allowed if the person whose extradition is requested enjoys asylum on the territory of the requested state, and that in accordance with article 7(4) of the Law on Mutual Assistance in Criminal Matters, it is up to the Minister of Justice of Serbia and not the courts to decide if an extradition is requested for a political offence or not.

4.5 On 15 December 2017, the Minister of Justice rendered a decision stating that extradition of the complainant to Turkey was permitted under the Law on Mutual Assistance in Criminal Matters and that the courts had established that the offence for which the extradition was requested represented a criminal offence also in the Serbian legislation, namely a conspiracy for unconstitutional activity. The complainant notes that the Minister of Justice did not consider the issue whether the offence in question was a political crime and

⁴ The complainant never submitted a full application to the European Court of human rights and no application appears to have been registered by the Court.

whether the complainant was at risk of torture, or was tortured and convicted on the basis of the statement tainted by torture.

4.6 By letter of 14 December 2017, the complainant's lawyer informed the Ministry of Interior, the Police Directorate and the Border Police administration that on 11 December 2017 the Committee issued interim measures in the complainant's case, and that removing the complainant to Turkey would constitute a violation of the State party's international obligations. The same letter was submitted to Ministry of Justice on 18 December 2017. Despite this, the complainant was extradited to Turkey on the night of 25 December 2017.

4.7 With regard to his asylum proceedings, the complainant submits that on 26 January 2017, he expressed his intention to seek asylum in the State party. On 9 May 2017, he submitted his formal asylum request, and an asylum interview was conducted on 2 August 2017. During his interview, the complainant gave detailed account of his political activity prior to his arrest, his arrest and torture in 2011, his sentencing in Turkey, and his escape from Turkey. He also submitted copies of correctly translated documents from the Turkish case against him, and their legal analysis, which showed that the complainant's confession was the sole evidence used for his conviction. The complainant also submitted the decision by the European Court of Human Rights on his case, and reports by various international organizations between 1989 and 2017, which showed that torture has been widely used by the Turkish authorities during that period.

4.8 The complainant requested the Asylum Office to examine his application on the merits without automatic application of the 'safe third country' concept, so the authorities could examine the risk of torture in the country of origin. However, on 22 September 2017, the Asylum Office refused the complainant's asylum application stating that Montenegro should be responsible for his asylum. The Asylum Office held that since Montenegro, as a state that the asylum-seeker entered the Republic of Serbia from directly, is on the list of safe third countries based on a decision of the Government of the Republic of Serbia of 17 August 2009, and that it consequently represents a state which abides by the refugee protection principles contained in the 1951 Convention on Status of Refugees and the 1967 Protocol on Status of Refugees, there were valid grounds for dismissal of the asylum application based on article 33(1.6) of the Law on Asylum.⁵

4.9 On unknown date, the complainant appealed the decision of the Asylum Office to the Asylum Commission. On 22 November 2017, the Asylum Commission denied the appeal on the grounds that Montenegro signed and ratified numerous treaties on human rights, and has been implementing them in practice achieving international standards, which meant that it was a safe third country for the complainant.

4.10 The complainant submits that he was extradited to Turkey before he was able to appeal the decision of the Asylum Commission to the Administrative court. The domestic law allows for an appeal to be submitted to administrative court within 30 days from the date of the receipt of the Commission's decision, however the complainant was extradited 14 days after the decision was delivered to his attorney.

4.11 The complainant claims that despite its reasoning, the Asylum Office knew that he would not be deported to Montenegro.⁶ Therefore, the Asylum Office entrusted the extradition authorities to properly assess the risk of ill-treatment in Turkey before the complainant's extradition, while the courts and Ministry of Justice have not even carried out an adequate translation of the complainant's documents received from Turkey.

⁵ Article 33(1.6) of the Law on Asylum states that an asylum application would be dismissed without examination if established that the person seeking asylum has arrived from a safe third country unless proven that it is not safe.

⁶ In its decision the Asylum Office wrote: "Bearing in mind that the applicant Ayaz Cevdet, national of Turkey, is in extradition detention in the District Prison in Šabac and that his leaving the territory of the Republic of Serbia depends on the decision of another state authority, the Asylum Office in this legal matter has not invoked Art 57(1) of the Law on Asylum stipulating that a foreigner whose asylum application has been refused or rejected, or whose asylum procedure has been suspended, and who does not reside in the country on some other grounds, shall be obliged to leave the Republic of Serbia within the time limit specified in that decision".

4.12 The complainant further argues that reports and findings by the Council of Europe, various UN Special Procedure mechanisms and Treaty Bodies show existence of consistent pattern of gross, flagrant or mass violations of human rights in Turkey during the last 30 years. The complainant submits that the country of origin information, combined with his personal circumstances, being his ethnicity, political views and past torture, should have been considered by both, the asylum and extradition authorities of the State party, as substantial grounds for believing that he would be exposed to foreseeable, personal, present and real risk of torture and ill-treatment if extradited to Turkey.

State party's observations on the merits

5.1 On 5 November 2018, the State party submitted its observations on the merits. The State party notes that on 5 December 2016, the Ministry of Justice of the Republic of Serbia informed the Republic of Turkey about the complainant's arrest based on the active international warrant of Interpol, and asked for an extradition request to be submitted along with the required documentation. On 29 December 2016, the Ministry of Justice received the request for extradition along with the required documents translated into Serbian language. The following day, these documents were forwarded to the High Court in Šabac (with supplements on 6 and 9 January 2017). On 9 May 2017, the High Court in Šabac returned the documents to the Ministry of Justice due to "incomprehensible translation". On 12 May 2017, the Ministry of Justice submitted the returned documents to a certified Turkish translator and the new translation was submitted to the High Court in Šabac on 21 July 2017. By a letter dated 15 August 2017, the High Court in Šabac requested clarifications regarding the complainant's criminal offence. The requested information was provided to the court by the Ministry of Justice on 4 and 5 October 2017. On 27 November 2017, the UN High Commissioner for Refugees intervened and requested that the complainant should not be extradited before authorities make final decision on his asylum request. This intervention was forwarded to the High Court in Šabac on 6 December 2017. On 1 December 2017, the Ministry of Justice received the decision of the Asylum Commission denying the complainant's appeal. On 15 December 2017, the High Court in Šabac forwarded to the Ministry of Justice the final decision in the complainant's extradition case, confirmed by the Appellate Court in Novi Sad on 14 December 2017. On 15 December 2017, the Minister of Justice of the Republic of Serbia issued a decision allowing the extradition of the complainant to the Republic of Turkey. On 18 December 2017, the decision was served to the Interpol's Belgrade office. On the same day, the Ministry of Justice received, through the Permanent Mission of the Republic of Serbia in Geneva, the documents related to the complainant's individual communication.

5.2 The State party rejects the complainant's claim that there has been no adequate translation from Turkish to Serbian of the documents received from Turkey for over a year. It notes that based on the court's request for a revised translation of the provided documents, the Ministry of Justice engaged a local certified Turkish translator.

5.3 The State party further notes that in accordance with the European Convention on extradition or any other multilateral or bilateral extradition documents, there is no requirement to translate an entire case file to the language of the State party which is requested to extradite an individual. Only documents mentioned in article 12 of the European Convention on Extradition,⁷ of which both Serbia and Turkey are Contracting Parties, must be attached to the request for extradition, as no other state is authorized to evaluate and examine legal proceedings conducted in another state.

⁷ Article 12 of the European Convention on Extradition states that the request for extradition shall be supported by: a) the original or an authenticated copy of the conviction and sentence or detention order immediately enforceable or of the warrant of arrest or other order having the same effect and issued in accordance with the procedure laid down in the law of the requesting Party; b) a statement of the offences for which extradition is requested. The time and place of their commission, their legal descriptions and a reference to the relevant legal provisions shall be set out as accurately as possible; and c) a copy of the relevant enactments or, where this is not possible, a statement of the relevant law and as accurate a description as possible of the person claimed, together with any other information which will help to establish his identity and nationality.

5.4 The State party rejects the complainant's claim that it breached the principle of division of authority by telling the courts to complete the proceedings before one year term for detention of the complainant expires. It notes that in accordance with the Criminal Procedure Code of Serbia, there are other measures besides detention to secure presence of a person in extradition proceedings.

5.5 With regard to the Republic of Turkey and its violation of human rights, the State party submits that it included Turkey in the list of safe countries of origin and safe third countries. It further notes that Croatia and Bulgaria also consider Turkey to be a safe country of origin, and it has been proposed to put Turkey in the joint list of the European Union of safe countries of origin. Moreover, the State party explicitly conditioned the extradition in its decision with the Turkey's obligation to respect all human rights and freedoms of the complainant, as provided by the appropriate international conventions.

5.6 The State party submits that the Ministry of Interior is the national authority in charge of extradition procedures, and the Ministry of Justice usually receives information about extraditions only after their completion.

5.7 The State party notes that with regard to the complainant's asylum proceedings, the decision of the Asylum Commission is not considered to be final and can be further appealed.

5.8 As to the complainant's claim that the State party has ignored the request for interim measures by the Committee, the State party notes that it has learned about the request on 18 December 2017 only, i.e. three days after the decision on extradition was already made. A copy of the Committee's letter was submitted along with a letter by representatives of the Belgrade Centre for Human Rights, who did not submit proof of being authorized to represent the complainant before the authorities of the State party.

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

6.1 On 4 January 2019, the complainant submitted his comments on the State party's observations on the merits. He emphasizes that the State party has ignored invitations of the Committee to submit its observations on the admissibility and merits of the complaint for almost a year, which, according to the complainant, reflects Government's attitude towards its obligations arising from the Convention.

6.2 The complainant notes that the State party's submission contains only observations by the Ministry of Justice of Serbia, but does not contain information from other state authorities, what led to a violation of the principle of non-refoulement enshrined in article 3, in conjunction with article 15 of the Convention. He further notes that this shows that the State party does not have an established mechanism to properly communicate with the UN treaty bodies. The complainant requests that the Committee examines the lack of a State mechanism or body consisted of trained professionals who would be in charge of communicating with the UN Treaty bodies, because establishing such body would prevent unjustified postponements in individual procedures and problems in communication between different authorities in the State party.

6.3 The complainant reiterates his position that he was extradited without the courts properly translating the required documents received from Turkey. He notes that on 8 December 2018, the Appellate Public Prosecutor's Office in Novi Sad submitted a motion to the Appellate Court in Novi Sad stating that even though the first instance court had secured an adequate interpreter for the last court hearing, it had not acted in line with the instructions of the second instance court related to translation of the documents submitted by Turkey, and proposed to annul the first instance decision and to send the case back to the first instance court. The complainant agrees that while it was not necessary to translate the entire case file of his Turkish case, the State party's authorities failed to provide adequate translation of any documents received from Turkey.

6.4 The complainant further reiterates that the Ministry of Justice has influenced the decision-making process of the appellate court by forcing it to reschedule the second instance hearing from 22 November 2017 to 15 November 2017, in order to resolve the entire case before the expiry of maximum length of the one-year extradition detention. The complainant does not consider this practice to be unusual since the independence of the judiciary in the

State party has been a long-standing problem recognized in the latest findings of this and Human Rights Committees.

6.5 The complainant rejects the State party's argument that Turkey was included in the list of safe countries, and notes that State party's Decision on Safe Countries of Origin and the Safe Third Countries was annulled after the new Law on Asylum and Temporary Protection had come into force in June 2018. Articles 44 and 45 of the new law require that the determination of whether a particular country of origin or a third country is safe shall be done on a case by case basis. Thus, automatic reliance on the said list fully undermined the State party's obligation to assess the risk of refoulement with rigorous scrutiny.

6.6 Finally, the complainant notes that his case has also been brought to the attention of the UN Special Rapporteur on Torture who sent an urgent letter No. 3/2017 to the Serbian Minister of Foreign Affairs. It appears that the Special Rapporteur has never received a response to the said letter.

Issues and proceedings before the Committee

The State party's failure to cooperate and to respect the Committee's request for interim measures pursuant to rule 114 of its rules of procedure

7.1 The Committee notes that the adoption of interim measures pursuant to rule 114 of its rules of procedure, in accordance with article 22 of the Convention, is vital to the role entrusted to the Committee under that article. Failure to respect the interim measure requested by the Committee, in particular by forcibly removing an alleged victim, undermines the protection of the rights enshrined in the Convention.⁸

7.2 The Committee notes the State party's argument that it has learned about the request on 18 December 2017 only, while the decision on extradition was rendered on 15 December 2017. The Committee also notes that the State party's submission does not indicate when exactly the complainant was extradited to Turkey. At the same time, the Committee notes the complainant's submission that his extradition took place on 25 December 2017.

7.3 The Committee observes that any State party that has made a declaration under article 22 (1) of the Convention recognizes the competence of the Committee to receive and consider complaints from individuals who claim to be victims of violations of the provisions of the Convention. By making such a declaration, States parties implicitly undertake to cooperate with the Committee in good faith by providing it with the means to examine the complaints submitted to it and, after such examination, to communicate its comments to the State party and the complainant. By failing to respect the request for interim measures transmitted to the State party on 11 December 2017, the State party violated its obligations under article 22 of the Convention because it impeded the comprehensive examination by the Committee of a complaint relating to a violation of the Convention, and prevented it from taking a decision which could effectively block the complainant's extradition to Turkey, should the Committee find a violation of article 3 of the Convention.

Consideration of admissibility

8.1 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.

8.2 The Committee recalls that, in accordance with article 22 (5) (b) of the Convention, it shall not consider any communication from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Committee notes that, in the present case, the State party has not challenged the admissibility of the complaint.

⁸ See *Thirugnanasampanthar v. Australia* (CAT/C/61/D/614/2014), para. 6.1 - 6.3; *Tursunov v. Kazakhstan* (CAT/C/54/D/538/2013), paras. 7.1 and 7.2.

8.3 Seeing no other obstacles to admissibility, the Committee finds that the complaint is admissible under article 22 of the Convention with respect to the alleged violation of article 3, and proceeds to consider it on the merits.

Consideration of the merits

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

9.2 In the present case, the issue before the Committee is whether the complainant's extradition 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. The Committee recalls, first and foremost, that the prohibition against torture is absolute and non-derogable and that no exceptional circumstances may be invoked by a State party to justify acts of torture.⁹

9.3 In assessing whether there are substantial grounds for believing that the alleged victim would be in danger of being subjected to torture, the Committee recalls that, under article 3 (2) of the Convention, States parties must take into account all relevant considerations, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights in the requesting State. However, the aim of such an analysis is to determine whether the complainant runs a personal risk of being subjected to torture if he is extradited to Turkey. The existence of a pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient reason for determining that a particular person would be in danger of being subjected to torture on extradition to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk.¹⁰ 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.¹¹

9.4 The Committee recalls its general comment No. 4 (2017) on the implementation of article 3 of the Convention in the context of article 22, according to which the non-refoulement obligation exists whenever there are "substantial grounds" for believing that the person concerned would be in danger of being subjected to torture in a State to which he or she is facing deportation, either as an individual or a member of a group which may be at risk of being tortured in the State of destination. 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".¹² Indications of personal risk may include, but they are not limited to: the complainant's ethnic background; 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.¹³ 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.¹⁴

9.5 In the present case, the Committee notes the complainant's claim that his extradition to Turkey would make him face a serious risk of persecution and torture in detention in Turkey owing to the perception that he is a member and one of the leaders of the Revolutionary Party of Kurdistan (PSK). In this regard, the Committee notes that the complainant has been sentenced in 2012 to 15 years in prison for his membership in PSK,

⁹ See the Committee's general comment No. 2 (2007) on the implementation of article 2 by States parties, para. 5.

¹⁰ See *Ayden v. Morocco* (CAT/C/66/DR/846/2017), para. 8.3; *Alhaj Ali v. Morocco* (CAT/C/58/D/682/2015), para. 8.3; and *Mugesera v. Canada* (CAT/C/63/D/488/2012), para. 11.3.

¹¹ See *M.S. v. Denmark* (CAT/C/55/D/571/2013), para. 7.3.

¹² See general comment No. 4 (2017), para. 11.

¹³ *Ibid.*, para. 45.

¹⁴ *Ibid.*, para. 50.

while he denies being a member or even knowing about the existence of such an organization, and claims to have been tortured while being held incommunicado for 12 days and forced to sign a confession. The Committee also notes that in 2006, the European Court of Human Rights has already found that the complainant has been a victim, of a violation by Turkey of his rights under article 5(3) and (4) of the Convention as to his unlawful and arbitrary detention in Diyarbakir police headquarters in 2001, and lack of access to lawyer and judicial examination of his detention.

9.6 The Committee must take into account the current situation of human rights in Turkey, including the impact of the state of emergency (lifted in July 2018). The Committee notes that systematic extensions of the state of emergency in Turkey led to serious violations of human rights against hundreds of thousands of people, including arbitrary deprivation of the right to work and freedom of movement, torture and other ill-treatment, arbitrary detention and violations of the rights to freedom of association and expression.¹⁵

9.7 The Committee recalls its concluding observations on the fourth periodic report of Turkey, issued in 2016, in which it noted with concern that “despite the fact that the State party has amended its law to the effect that torture is no longer subject to a statute of limitations, ... [the Committee] has not received sufficient information on prosecutions for torture, including in the context of cases involving allegations of torture that have been the subject of decisions of the European Court of Human Rights. The Committee is also concerned that there is 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 periodic report, suggesting that not all allegations of torture have been investigated during the reporting period.”¹⁶ The Committee highlighted its concern about “recent amendments to the Code of Criminal Procedure, which give the police greater powers to detain individuals without judicial oversight during police custody”.¹⁷ The Committee also regretted the “lack of complete information on suicides and other sudden deaths in detention facilities during the period under review (arts. 2, 11 and 16)”.¹⁸ The Committee takes note of the fact that the concluding observations in question were issued prior to the declaration of the state of emergency. However, the Committee notes that reports published since the declaration of the state of emergency on the situation of human rights and the prevention of torture in Turkey indicate that the concerns raised by the Committee remain relevant.¹⁹

9.8 In the present case, the Committee notes that the complainant’s asylum application was refused in Serbia on the grounds that Montenegro should be responsible for his asylum application. Thus, there was an assumption that the complainant would be removed to Montenegro where the local authorities would examine his asylum claims on the merits, or in case of his extradition, the State party’s courts would assess the risk of torture that such an extradition would entail for the complainant in view of the general human rights situation in Turkey and the complainant’s personal circumstances. As a result, the Committee observes that neither the Asylum Office nor the courts have carried an assessment of the risk of torture that the complainant would be exposed to following an extradition to Turkey. The documents before the Committee show that the Minister of Justice of Serbia also did not carry out an assessment if the charges against the complainant were of a political nature, as it was required by the decision of the Appellate Court in Novi Sad and the Law on International Legal Assistance in Criminal Matters, before signing the decision to extradite the complainant. The

¹⁵ See *Ayden v. Morocco*, para. 8.6; also, 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.

¹⁶ Concluding observations on the fourth periodic report of Turkey (CAT/C/TUR/CO/4), para. 9.

¹⁷ *Ibid.*, para. 19.

¹⁸ *Ibid.*, para. 33.

¹⁹ See *Ayden v. Morocco*, para. 8.7; *Erdogan v. Morocco* (CAT/C/66/DR/827/2017), para. 9.7; *Onder v. Morocco* (CAT/C/66/DR/845/2017), para. 7.7; also, OHCHR, “Report on the human rights situation in South-East Turkey: July 2015 to December 2016”, February 2017; and 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. See also the report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Turkey (A/HRC/37/50/Add.1).

Committee therefore concludes that the State party's authorities have failed in their duty to carry out an individualized risk assessment before returning the complainant to Turkey.

9.9 The Committee further notes the complainant's claim that the State party failed to take into consideration that his prison sentence in Turkey was based on a confession extorted by torture due to the absence of adequately translated documents related to the complainant's conviction in Turkey. The Committee also notes that based on the court's request for a revised translation of the provided documents, the Ministry of Justice engaged a local certified Turkish translator to translate the documents. However, the Committee observes that the appeal submitted by the complainant to the Appellate court in Novi Sad on 4 December 2017 and the motion submitted by the Appellate Public Prosecutor's Office in Novi Sad to the same court on 8 December 2017, indicate that at the time of the complainant's extradition, the State party still hasn't adequately translated the documents related to his conviction in Turkey. Thus, the Committee is of the view that the State party's authorities failed to establish whether the complainant's conviction was based on his own confession extorted by torture.

9.10 Taking into consideration the foregoing, the Committee concludes that, in this case, the State party's removal of the complainant to Turkey constituted a violation of article 3 of the Convention. In light of this conclusion, the Committee will not consider any other complainant's claims.

10. The Committee, acting under article 22 (7) of the Convention, therefore concludes that the complainant's extradition 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 11 December 2017 for interim measures for the complainant not to be extradited, and his forcible removal to Turkey on 25 December 2017, 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.²⁰ The Committee also notes that the State party failed to provide any sufficiently specific details as to whether it has engaged in any form of post-expulsion monitoring of the complainant, and whether it has taken any steps to ensure that the monitoring is objective, impartial and reliable.

11. The Committee considers that the State party has an obligation to provide redress for the 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 under which the complainant is in detention in 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.

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

²⁰ See *Thirugnanasampanthar v. Australia*, para. 9.