



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. 1109/2021**, ***

<i>Communication submitted by:</i>	M. T. (represented by counsel, Ali Yildiz)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Sweden
<i>Date of complaint:</i>	22 November 2021 (initial submission)
<i>Document reference:</i>	Decision taken pursuant to rules 114 and 115 of the Committee's rules of procedure, transmitted to the State party on 7 December 2021 (not issued in document form)
<i>Date of adoption of decision:</i>	8 November 2024
<i>Subject matter:</i>	Deportation of persons affiliated with the Hizmet/Gülen movement/Fetullah Terrorist Organization to Kosovo and risk of transfer to Türkiye
<i>Procedural issue:</i>	Level of substantiation of claims
<i>Substantive issues:</i>	Non-refoulement; refugee status; torture
<i>Article of the Convention:</i>	3

1.1 The complainant is M. T., a national of Türkiye, born in 1995. He claims that the State party would violate his rights under article 3 of the Convention if it deported him to Kosovo,¹ from which it is highly likely that he would be either expelled or subjected to illegal rendition to Türkiye, where he would be subjected to torture. The State party has made the declaration pursuant to article 22 (1) of the Convention, effective from 26 June 1987. The complainant is represented by counsel.

1.2 On 7 December 2021, the Committee, acting through its Rapporteur on new complaints and interim measures, issued a request for interim measures under rule 114 of the

* Reissued for technical reasons on 30 March 2026.

** Adopted by the Committee at its eighty-first session (28 October–22 November 2024).

*** The following members of the Committee participated in the examination of the communication: Todd Buchwald, Jorge Contesse, Claude Heller, Peter Vedel Kessing, Liu Huawen, Maeda Naoko, Ana Racu and Abderrazak Rouwane. Pursuant to rule 109, read in conjunction with rule 15, of the Committee's rules of procedure, and paragraph 10 of the guidelines on the independence and impartiality of members of the human rights treaty bodies (the Addis Ababa guidelines), Erdogan Iscan did not participate in the examination of the communication.

¹ References to Kosovo shall be understood to be in the context of Security Council resolution 1244 (1999).



Committee's rules of procedure, requesting the State party to suspend the deportation of the complainant to Kosovo while the communication was pending before the Committee.

Factual background

2.1 In 2013, the complainant went to Sri Lanka for university education and worked as a volunteer for an organization associated with the Hizmet/Gülen movement.² According to the complainant, the Turkish Embassy in Sri Lanka spied on him and other Hizmet/Gülen movement members living in Sri Lanka, leaked their names and passport information to the Sri Lanka media and defamed them as terrorists.³

2.2 In June 2016, the complainant moved to Kosovo to work as an English teacher in two schools that operated under the umbrella of the Gülistan Educational Institutions,⁴ an entity based in Kosovo and associated with the Hizmet/Gülen movement. He asserts that the Government of Türkiye classified the Gülistan Educational Institutions as a terrorist organization. According to him, on 21 December 2016, the Turkish Embassy in Kosovo sent a telegram to the security services in Türkiye in which it alleged that 78 named individuals who lived in Kosovo – the named individuals did not include the complainant – were affiliated with a terrorist organization and provided their residence and workplace addresses. On 29 March 2018, six individuals whose names were on the list sent by the Embassy were abducted in Kosovo by the Turkish intelligence services and forcibly transferred to Türkiye, where they were imprisoned and mistreated. After the transfer operation, the Office of the Public Prosecutor of Ankara investigated the six individuals as part of a terrorism probe.⁵

2.3 On 8 August 2018, a Turkish lawyer certified that an arrest warrant had been issued and that criminal investigations were pending in Türkiye against the complainant, under the anti-terrorism legal provision (article 314 (2) of the Penal Code, membership in an armed organization), over his affiliation with the Hizmet/Gülen movement.⁶ In an undated letter, a Kosovan lawyer, who had represented a Turkish national for whom Türkiye had requested extradition for affiliation with the Hizmet/Gülen movement, explained that Kosovo was not a safe country for the complainant.⁷ The complainant also obtained an electronic attestation issued on 2 July 2019 by the Turkish Passport Services, confirming that his Turkish passport had been cancelled.⁸ Given the increasing pressure, the complainant moved from Kosovo to Sweden in September 2020.

2.4 On 24 September 2020, the complainant applied for asylum. On 8 February 2021, the Swedish Migration Agency dismissed his application. It noted that the complainant had not applied for asylum in Kosovo when he was informed by his family that the Turkish police were looking for him in 2017 nor after an arrest warrant was issued against him in 2018 or when a list of Fetullah Terrorist Organization members, including his name, was published in 2019 in Sri Lanka. As to the specific allegations, including the statement by a Turkish lawyer regarding the warrant, the Migration Agency held that it was not examining his case in relation to Türkiye or Sri Lanka, but in relation to Kosovo.

2.5 The Migration Agency noted that the complainant had not been persecuted during his four years in Kosovo by either private individuals or authorities. It then examined his claim that, upon return to Kosovo, he risked being sent to Türkiye. It considered that the statement by a Kosovan lawyer on the complainant's risks as a Hizmet/Gülen supporter had limited

² The Hizmet/Gülen movement, also known as Cemaat, is reportedly based on the ideas of Fethullah Gülen, a Muslim preacher from Türkiye who resided in the United States of America, where he died on 20 October 2024. In Türkiye, it is referred to as the Fetullah Terrorist Organization.

³ See <https://nordicmonitor.com/2019/07/turkish-embassy-spying-in-sri-lanka-exposed-with-a-leak-of-names-of-critics>.

⁴ Between June 2016 and September 2020. He provides attestations of employment from the two Gülistan Educational Institutions.

⁵ See <https://nordicmonitor.com/2020/07/erdogan-critics-kidnapped-by-turkish-intelligence-in-kosovo-included-in-terrorism-indictment>. The six individuals were Kahraman Demirez, Mustafa Erdem, Hasan Hüseyin Günakan, Yusuf Karabina, Osman Karakaya and Cihan Özkan.

⁶ On file, in Turkish.

⁷ On file.

⁸ On file.

probative value because it was nothing more than the lawyer's personal opinion. The Migration Agency took note of the evidence produced by the complainant in the form of articles, reports and video clips regarding the deportation of Turkish citizens from Kosovo to Türkiye but considered that those documents could not be connected to him personally and they did not, in and of themselves, plausibly demonstrate that the complainant risked being sent back to Türkiye upon return to Kosovo.

2.6 As to the deportation of the six Turkish citizens from Kosovo to Türkiye on 29 March 2018, the Migration Agency accepted that the fact that people who worked at the Gülistan Educational Institutions were deported from Kosovo to Türkiye might indicate that the complainant might also be at risk of being sent to Türkiye if returned to Kosovo. It took note, however, that according to a report of the Human Rights Council, Kosovo had introduced a new asylum law on 30 March 2018 that strengthened the non-refoulement principle and guaranteed that vulnerable asylum-seekers would be protected.⁹ Furthermore, the Migration Agency noted that, when the six Turkish citizens were deported to Türkiye, it had been widely reported in the media and several investigations of the incident had been initiated, which had resulted in the prosecution of 22 police officers involved in the operation.¹⁰

2.7 The Migration Agency considered that those circumstances indicated that the Kosovan law enforcement authorities had found that the deportation of the six Turkish citizens had breached Kosovan law. The strengthening of the principle of non-refoulement also indicated that the Kosovan authorities had acted to ensure that similar events would not occur again. The Migration Agency therefore concluded that the circumstances indicated that the complainant did not risk being sent to Türkiye if returned to Kosovo. In the Agency's view, another circumstance along the same lines was that the complainant had lived in Kosovo for more than two years following the incident of 29 March 2018 without being subjected to anything. Nothing had emerged that suggested that the complainant had lived in hiding in Kosovo during that time.

2.8 The Migration Agency noted that, while Kosovo had not acceded to the Convention relating to the Status of Refugees (1951 Convention), a report of the Department of State of the United States asserted that Kosovo provided protection for refugees and that people who did not qualify as refugees were given subsidiary protection.¹¹ A report of the European Commission also stated that the judicial asylum framework basically followed the European Union regulations, that there were institutions that managed asylum applications but that they needed reinforcement to manage capacity shortages and that important legislative changes had been adopted in 2019, including a regulation on the integration of foreigners.¹² While the Migration Agency noted that there were some shortcomings in the asylum system of Kosovo, it concluded that, in the light of the country of origin information, the complainant could apply for asylum in Kosovo. It also considered that the complainant had stronger ties to Kosovo than to Sweden, because he had lived legally in the country for several years, had had his own home and had subsequently worked there.

2.9 The complainant appealed, claiming, in particular, that it was irrelevant that the Kosovan public authorities had taken measures following the events of 29 March 2018 and passed new migration legislation because it had not been shown that the measures had had an effect. According to him, the fact that he had been able to live freely in Kosovo did not mean that he was not risking being forcibly deported to Türkiye. The Turkish authorities were very keen to find people who could be linked to the attempted coup in 2016, and they exercised considerable influence over the Kosovan authorities and politicians. This was well-known and was stated in, for example, a United Nations report.¹³ The complainant also pointed out that, as recently as February 2021, a government proposal, under which the

⁹ A/HRC/40/59/Add.1, para. 92.

¹⁰ No further details were provided.

¹¹ <https://www.state.gov/wp-content/uploads/2020/02/KOSOVO-2019-HUMAN-RIGHTS-REPORT.pdf>, pp. 16 and 17.

¹² https://neighbourhood-enlargement.ec.europa.eu/system/files/2020-10/kosovo_report_2020.pdf, p. 48.

¹³ No specific reference was provided.

Hizmet/Gülen movement should be labelled as a terrorist organization, had been presented in the parliament of Kosovo. His Turkish passport had been revoked and he had no legal right to remain in Kosovo.

2.10 On 23 April 2021, the Stockholm Administrative Court rejected his appeal. It held, in particular, that although his colleagues had been detained in similar circumstances, there was no objective support for the claim that the complainant risked the same treatment. The Court took into account the fact that the complainant had not been subjected to any form of treatment constituting grounds for protection in the four years that he lived in Kosovo and that the country had taken extensive measures in response to the incident in which his colleagues were detained. While not questioning the claim that people who plausibly demonstrated that they were a part of the Hizmet/Gülen movement risked being subjected to treatment constituting grounds for protection in Türkiye, the Court recalled that the complainant had remained in Kosovo for over two years following the incident without anything happening to him, that the Kosovan authorities had taken the incident seriously and imposed stricter legislation and that the incident had had legal implications for those involved. It concluded that there was no objective evidence that showed that the Turkish authorities had such an interest in the complainant that, some three years after his colleagues were deported, they would have had either the will or the ability to do the same to him, in violation of Kosovan legislation.

2.11 The Administrative Court took note of the complainant's explanation that he had had a temporary residence permit that allowed him to work in Kosovo, which had expired in February 2021, and that there had been difficulties and uncertainty regarding the possibility of extending his permit. It found no reason, however, to deviate from the Swedish Migration Agency's assessment that the complainant could apply for asylum in Kosovo. The Court also agreed with the Migration Agency's assessment that, by living, working and studying in Kosovo legally for several years, the complainant had ties to Kosovo that make it reasonable for him to travel there, irrespective of the fact that he had no relatives there.

2.12 On 29 June 2021, the Migration Court of Appeal refused leave to appeal.

2.13 The complainant has suffered psychological trauma as a result of his fear of being deported to Kosovo. According to a medical certificate of 10 June 2021, he suffers from mixed anxiety and depression disorders. Another certificate of 24 August 2021 mentions suicidal thoughts and, between 17 and 24 September 2021, he was admitted to the hospital for suicide prevention.

Complaint

3.1 The complainant submits that the State party would violate his rights under article 3 of the Convention by deporting him to Kosovo where, as an affiliate of the Hizmet/Gülen movement, it is highly likely that he would be either expelled or subjected to illegal rendition to Türkiye. In Türkiye, the complainant would likely be arbitrarily imprisoned and tortured.

3.2 The complainant considers that the domestic authorities erred in determining that Kosovo was a safe third country for his return. In reality, the Government of Türkiye has significant influence and leverage in Kosovo. In February 2021, facing increasing pressure from Türkiye on the Government of Kosovo, the Regional Development Minister of Kosovo requested the Government to officially designate the Hizmet/Gülen movement a terrorist organization. He stated that Kosovo would benefit from increased cooperation with Türkiye. According to media reports, the then Prime Minister of Kosovo referred the request of the Regional Development Minister to the Kosovo Intelligence Agency for review.¹⁴ Kosovo could thus designate the Hizmet/Gülen movement a terrorist organization at any time and could then extradite the complainant to Türkiye. That is neither a remote nor an imagined risk, but an actual and highly likely threat to the rights, freedoms and well-being of the

¹⁴ See <https://www.aa.com.tr/en/europe/kosovo-minister-wants-feto-pkk-pyd-labeled-terrorists/2150030>.

complainant. In several previous cases, the Committee found that Morocco would violate the rights of three individuals under article 3 of the Convention by extraditing them to Türkiye.¹⁵

3.3 As mentioned above, six individuals, five of whom were co-workers of the complainant, were abducted and forcibly transferred to Türkiye, where they were imprisoned. The Working Group on Arbitrary Detention has determined that their imprisonment was unlawful and arbitrary.¹⁶ The Government of Türkiye has recently increased its requests for extrajudicial transfers of individuals to its jurisdiction. Since May 2021, two similar incidents have occurred. Selahattin Gülen, a lawful resident of the United States was unlawfully transferred to Türkiye from Kenya in defiance of a court order. Orhan İnandi, a teacher and dual national of Kyrgyzstan and Türkiye, was abducted and transferred from Kyrgyzstan to Türkiye. In addition, Kosovo is not a party to the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), the International Covenant on Civil and Political Rights or the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In the past, Kosovo has not respected the principle of non-refoulement.

3.4 The complainant explains that, after the attempted coup d'état of 15 July 2016, the Government of Türkiye declared a state of emergency that lasted two years. He alleges that the Government invoked the state of emergency as a blanket excuse to violate human rights on a large scale. During that time, the Government enacted 32 decrees, of which 3 (Nos. 667, 668 and 696) established full impunity for public servants and civilians for any act executed in order to suppress an attempted coup d'état or terrorist act. According to a report published in 2017 by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Türkiye, "despite persistent allegations of widespread torture and other forms of ill-treatment, made in relation both to the immediate aftermath of the failed coup of 15 July 2016 and to the escalating violence in the south-east of the country, formal investigations and prosecutions in respect of such allegations appear to be extremely rare, thus creating a strong perception of de facto impunity for acts of torture and other forms of ill-treatment".¹⁷ The complainant cites several additional reports published by international mechanisms and organizations to support his claims regarding the incidence of torture and ill-treatment in Türkiye.¹⁸

3.5 The complainant also refers to a letter of allegations that was sent to Türkiye on 5 May 2020 by the Working Group on Enforced and Involuntary Disappearances, the Special Rapporteur on the human rights of migrants, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.¹⁹ According to the letter, at least 100 individuals suspected of involvement with the Hizmet/Gülen movement had been subjected to arbitrary arrest and detention, enforced disappearance and torture, as part of covert operations reportedly organized or abetted by the Government of Türkiye in coordination with authorities in Afghanistan, Albania, Azerbaijan, Cambodia, Gabon, Kosovo, Kazakhstan, Lebanon, Pakistan and other countries.

State party's observations on admissibility and the merits

4.1 On 20 June 2022, the State party informed the Committee that, after the asylum proceedings, the complainant had applied for a residence permit, citing impediments to the enforcement of the expulsion order. He maintained the grounds previously cited in his asylum request, adding that he was suffering from mental illness and that there were practical

¹⁵ *Erdoğan v. Morocco* (CAT/C/66/D/827/2017); *Onder v. Morocco* (CAT/C/66/D/845/2017); and *Ayden v. Morocco* (CAT/C/66/D/846/2017).

¹⁶ See Working Group on Arbitrary Detention, opinion No. 47/2020.

¹⁷ A/HRC/37/50/Add.1, para. 23.

¹⁸ See, for example, Council of Europe, "Report to the Turkish Government on the visit to Turkey carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 10 to 23 May 2017" (Strasbourg, 2020).

¹⁹ See communication TUR 5/2020, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25209>.

obstacles to enforcement because he was not a citizen of Kosovo and lacked a passport. The application was still pending before the Swedish Migration Agency.²⁰

4.2 The State party then challenges the admissibility of the complaint, arguing that it is manifestly unfounded because it fails to rise to the minimum level of substantiation.

4.3 On the merits, the State party clarifies that, in his communication before the Committee, the complainant essentially focuses on claims regarding his need for protection in Türkiye and the general human rights situation there. The Swedish migration authorities, however, have not examined the complainant's asylum application with respect to Türkiye. Thus, should the Committee conclude that the communication is admissible, the State party considers that the issue before the Committee is whether the forced return of the complainant to Kosovo, as a safe third country, would constitute a breach of article 3 of the Convention.

4.4 The State party submits that, while Kosovo is not a member of the United Nations nor the Council of Europe, and has therefore not been invited to ratify conventions drawn up under the statutes of those organizations, in article 22 of its Constitution, Kosovo commits to unilaterally guarantee that the Convention, as well as the International Covenant on Civil and Political Rights and the European Convention on Human Rights and its Protocols, are directly applicable and have priority over the provisions of laws and other acts of public institutions. National asylum legislation further provides for the possibility of granting asylum on the basis of refugee or subsidiary protection, and there is an explicit prohibition of expulsion or return (non-refoulement). The legal framework is now, in principle, in line with the European Union acquis.

4.5 The State party then refers to the decisions issued at the domestic level, holding that there is no reason to conclude that they were inadequate or that the outcome of the domestic proceedings was in any way arbitrary or amounted to a denial of justice. The complainant was not able to plausibly demonstrate that he had been subjected to any measures from the Turkish authorities in Kosovo.

4.6 The State party notes that, while the complainant claims before the Committee that Kosovo, in the near future, will designate the Hizmet/Gülen movement a terrorist group, such a decision has not yet been made by the Kosovan authorities. The State party also notes that, while the complainant claims that he was targeted by the Turkish Embassy while living in Kosovo, he has not further substantiated that claim in his communication.

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

5.1 In his comments of 7 July 2022, the complainant submits that the Turkish Government has continued to raise extradition requests²¹ through every diplomatic avenue, using its leverage against its counterparts. According to him, Türkiye recently forced the State party into signing a memorandum on the extradition of Turkish citizens living in Sweden in exchange for lifting its veto on the State party's membership in the North Atlantic Treaty Organization.²² The complainant points out that, according to the memorandum, the State party commits not to provide support to the organization referred to as the Fetullah Terrorist Organization in Türkiye, to address pending deportation or extradition requests by Türkiye of terror suspects expeditiously and thoroughly, taking into account information, evidence and intelligence provided by Türkiye, and to establish the necessary bilateral legal frameworks to facilitate extradition and security cooperation with Türkiye. For the complainant, that development proves his concern that Türkiye has leverage and influence over Kosovo, which is therefore not a safe country for him. Indeed, on 19 June 2022, the Foreign Minister of Türkiye stated that his country supported the application of Kosovo for membership in the North Atlantic Treaty Organization and stressed that the presence of

²⁰ The State party does not contest the fact that all available domestic remedies have been exhausted.

²¹ No specific references were provided.

²² See https://www.nato.int/nato_static_fl2014/assets/pdf/2022/6/pdf/220628-trilat-memo.pdf. See also <https://www.aa.com.tr/en/world/sweden-finland-turned-back-most-of-turkiyes-requests-for-terrorist-extraditions-over-last-5-years/2589502>.

members of the Fetullah Terrorist Organization in Kosovo was the biggest obstacle to that membership bid.²³

5.2 The complainant then asserts that, after the aforementioned abductions of Selahattin Gülen and Orhan İnandı, both victims were tortured at black site locations over a period of days. Those incidents demonstrate that the Government of Türkiye can abduct even nationals or lawful residents of other countries. Thus, although the State party argues that the complainant will be safe in Kosovo, he would live in constant fear of being surrendered to Türkiye if he were removed to Kosovo. Subjecting complainants to that fear amounts to a form of torture.

5.3 In addition, the transfer operation to Türkiye in March 2018 was conducted with the complicity of local officials and despite the instructions of the Chief Special Prosecutor of Kosovo, who had denied the extradition request for the individuals in question. Thus, the real concern is not the law or any assurances, but the implementation of them, including because of the power and influence wielded by the Government of Türkiye.

5.4 Affiliates of the Hizmet/Gülen movement have been denounced as terrorists by the Turkish Embassy in Kosovo and have been subjected to surveillance by intelligence agents in Türkiye. The Government of Türkiye continues to exercise relentless diplomatic pressure on the Government of Kosovo. For example, in December 2021, the Minister of Defense of Türkiye visited Kosovo and asked government officials to arrest and extradite all Hizmet/Gülen affiliates residing there. On 1 March 2022, during the visit of the President of Kosovo to Ankara, President Erdoğan stated that it was extremely important to eliminate the Fetullah Terrorist Organization, which threatened the democracy of Türkiye and had nefariously killed 251 nationals of Türkiye. President Erdoğan conveyed to the President of Kosovo that the Government of Türkiye expected certain steps to be taken, based on their friendly and brotherly ties. During the same visit, a member of parliament in Türkiye called for support in the country's fight against the Fetullah Terrorist Organization. He stated that individuals who had committed crimes in Türkiye should not be protected in friendly and brotherly countries.

Issues and proceedings before the Committee

Consideration of admissibility

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

6.2 In accordance with article 22 (5) (b) of the Convention, the Committee shall not consider any communication from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Committee notes that, in the present case, the State party has not contested that the complainant has exhausted all available domestic remedies. The Committee therefore finds that it is not precluded from considering the communication under article 22 (5) (b) of the Convention.

6.3 The Committee notes that the State party challenges the admissibility of the complainant's claims under article 3 on the basis that they are manifestly unfounded, given that the complainant has not substantiated the existence of substantial grounds for believing that he would face a foreseeable, present, personal and real risk of torture if returned to Kosovo. The Committee takes note of the complainant's contention that, if returned to Kosovo, he would live with the constant fear of being abducted and taken back to Türkiye, that this lack of security and the resulting constant fear would amount to being tortured and that he has already been suffering from psychological trauma due to the fear of being deported to Kosovo. The Committee considers that the complainant has provided evidence that he has

²³ <https://www.koha.net/en/lajmet-e-mbremjes-ktv/cavusoglu-gulenistet-pengese-ne-raportet-mes-kosoves-dhe-turqise> and <https://sot.com.al/aktualitet/turqia-mbeshtet-kosoven-ne-nato-avusoglu-ne-prishtine-kerkon-goditjen-i520808/> (in Albanian).

suffered psychological trauma as a result of his fear of being deported to Kosovo. Such evidence, however, does not substantiate the complainant's claim that his fear amounts to torture, as defined by the Convention. The Committee therefore concludes the complaint is inadmissible insofar as it is based on the argument of being subjected to torture in Kosovo.²⁴

6.4 The Committee also takes note of the complainant's claim that, if returned to Kosovo, the risk he faces of being subsequently transferred to Türkiye and, upon transfer, of being subjected to torture there is sufficiently high that deportation to Kosovo would violate the State party's obligations under article 3 of the Convention. The Committee further notes the State party's argument that the Swedish migration authorities have not examined the complainant's asylum application with respect to Türkiye, and that therefore the issue before the Committee is whether the forced return of the complainant to Kosovo, as a safe third country, would constitute a breach of article 3 of the Convention. In that connection, the Committee refers to its general comment No. 4 (2017), in which it noted that, under article 3, a person should never be deported to another State from which the person may subsequently face deportation to a third State in which there are substantial grounds for believing that the person would be in danger of being subjected to torture.²⁵ Accordingly, the Committee considers that that portion of the complaint and the State party's contentions regarding its admissibility raise substantive issues under article 3 of the Convention and that those issues should be examined on the merits. As the Committee finds no further obstacles to admissibility, it declares the communication admissible and proceeds with its examination of the merits.

Consideration of the merits

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

7.2 The Committee observes that the complainant's claim under article 3 of the Convention requires the Committee to assess two separate issues. The Committee must first ascertain whether there are substantial grounds for believing that, if returned to Türkiye, the complainant would face a real, personal, present and foreseeable risk of being subjected to torture. In assessing that risk, the Committee must take into account all relevant considerations, pursuant to article 3 (2) of the Convention. Secondly, the Committee must determine whether the complainant would, if deported by the State party to Kosovo, face a sufficient risk of subsequently being forcibly returned to Türkiye.²⁶

7.3 The Committee recalls that, in addressing these questions, the burden of proof is on complainants, who must present an arguable case regarding the aforementioned risks.²⁷ However, when complainants are in a position where they cannot elaborate on their case, the burden of proof is reversed and the State party concerned must investigate the allegations and verify the information on which the complaint is based.²⁸ The Committee further recalls that it gives considerable weight to findings of fact made by organs of the State party concerned but is not bound by such findings. It follows that the Committee needs to make its own assessment of the information available to it, taking into account all of the circumstances relevant to each case.²⁹

Risk of torture in Türkiye

7.4 As to whether the complainant has demonstrated that there are substantial grounds for believing that he would face a personal, real, present and foreseeable risk of being subjected

²⁴ *X and Y v. Switzerland* (CAT/C/75/D/1081/2021), para. 6.4.

²⁵ Para. 12. For the purposes of the general comment, paragraph 4 defines the term "deportation" to include, but not be limited to, expulsion, extradition, forcible return, forcible transfer, rendition and rejection at the frontier of, and pushback operations (including at sea) involving a person or group of individuals from a State party to another State.

²⁶ *X and Y v. Switzerland*, para. 7.2.

²⁷ General comment No. 4 (2017), para. 38; *T.A. v. Switzerland* (CAT/C/73/D/914/2019), para. 8.5; and *E.T. v. the Netherlands* (CAT/C/65/D/801/2017), para. 7.5

²⁸ General comment No. 4 (2017), para. 38.

²⁹ *Ibid.*, para. 50.

to torture if forcibly returned to Türkiye, the Committee first notes that the State party does not dispute his claims on that issue. The Committee also notes that, according to a report by the Office of the United Nations High Commissioner for Human Rights based on investigations that occurred in the wake of the attempted coup d'état in Türkiye in July 2016, persons in custody were subjected to various forms of torture and ill-treatment, including beatings, sexual assault, electric shocks and simulated drowning that were generally intended to extract confessions or prejudicial information about other individuals, and that the situation was further marked by the detention of women who were arrested as associates of their husbands, who were the Government's primary suspects for connection to terrorist organizations.³⁰ The Committee also notes that, following his mission to Türkiye in 2016, the Special Rapporteur on torture issued a report in which he expressed the view that the use of torture was widespread following the attempted coup d'état and noted that numerous interlocutors had mentioned that, according to official records, a number of detainees suspected of being affiliated with the Hizmet/Gülen movement had committed suicide in custody, although there was no confirmation of that cause of death by independent autopsy.³¹ The Special Rapporteur also stated that the low number of investigations and prosecutions initiated in response to allegations of torture or ill-treatment seemed grossly disproportionate to the alleged frequency of the violations, indicating that the relevant authorities had not sufficiently investigated those allegations.³² The Committee also notes more recent reports that few allegations of torture had resulted in prosecutions in 2021, that a pervasive culture of impunity persisted, that abductions and enforced disappearances continued to be reported and were not investigated properly and that those disappeared for the longest periods were individuals alleged to be involved with the Hizmet/Gülen movement.³³ Accordingly, the Committee considers that the complainant would face a personal, real, present and foreseeable risk of being subjected to torture if transferred to Türkiye.

Risk of being deported or forcibly transferred from Kosovo to Türkiye

7.5 In assessing the risk that the complainant would be forcibly returned from Kosovo to Türkiye, the Committee first notes the unlawful transfer to Türkiye in March 2018 of six individuals who were, like the complainant, affiliated with the Hizmet/Gülen movement, and where they were reportedly taken to court and charged with international terrorism and espionage. The Committee notes that various officials of the Government of Kosovo subsequently declared that the transfer of those six individuals had violated domestic and international law and took several steps to establish accountability for the incident. The Committee notes that the complainant's Turkish passport has been cancelled and that it is claimed by a Kosovan lawyer that Kosovo is not a safe country for the complainant (see para. 2.3). The Committee also notes the State party's authorities' position that the circumstances indicate that the complainant does not risk being sent to Türkiye if he returns to Kosovo and that he can apply for asylum in Kosovo.

7.6 The Committee then notes that the complainant's temporary residence permit in Kosovo expired in February 2021 and that he has no refugee status in Kosovo. It observes that, while the complainant was not specifically included in the list of 78 individuals profiled in the telegram sent by the Turkish Embassy in Kosovo to Turkish security officials, he was a co-worker of the five individuals mentioned above who were associated with the Hizmet/Gülen movement as teachers at schools that operated under the umbrella of the Gülistan Educational Institutions, which the Government of Türkiye has classified as a terrorist organization. In that connection, the Committee takes note of the governmental proposal in the Kosovan parliament to outlaw the movement.

7.7 The Committee has already expressed concern as to allegations regarding a systematic practice in Türkiye of State-sponsored extraterritorial abductions and forcible returns of individuals supposedly associated with the Hizmet/Gülen movement in coordination with

³⁰ "Report on the impact of the state of emergency on human rights in Turkey, including an update on the South-East: January–December 2017" (March 2018), paras. 77 and 78.

³¹ [A/HRC/37/50/Add.1](#), para. 95.

³² *Ibid.*, paras. 70–73.

³³ [CCPR/C/TUR/CO/2](#), paras. 25 and 27.

authorities in several countries, including Kosovo.³⁴ The Committee has therefore urged Türkiye to cease all extrajudicial extraditions and renditions, including of individuals with perceived or real affiliations with the Hizmet/Gülen movement and on counter-terrorism pretexts.³⁵

7.8 The Committee also highlights that Kosovo is not a party to the 1951 Convention or to any regional or international conventions on human rights. Thus, Kosovo is not bound under international law by article 3 of the Convention against Torture to refrain from transferring the complainant to a country where he would be in danger of being subjected to torture, nor is it bound by any of the other provisions of the Convention. In that connection, the Committee notes with concern that, in an opinion on the unlawful transfer of the six individuals to Türkiye, the Working Group on Arbitrary Detention stated that the Government of Kosovo had not responded to its request for information about the situation of the six individuals and for an explanation of the legal provisions justifying their forcible arrest and handover to Türkiye and of the compatibility of those actions with the obligations of Kosovo under international law.³⁶

7.9 In view of those considerations, the Committee considers that it is foreseeable that the complainant would face a real risk of being transferred from Kosovo to Türkiye if he were returned to Kosovo today.

8. In the light of the foregoing, the Committee, acting under article 22 (7) of the Convention, decides that the removal of the complainant by the State party to Kosovo, where he would face a real risk of being forcibly transferred to and subjected to torture in Türkiye, would constitute a violation of article 3 of the Convention.³⁷

9. The Committee is of the view that, pursuant to article 3 of the Convention, the State party has an obligation to refrain from forcibly returning the complainant to Kosovo.

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

³⁴ CAT/C/TUR/CO/5, para. 26.

³⁵ Ibid., para. 27.

³⁶ Opinion No. 2020/47, paras. 38 and 39.

³⁷ *X and Y v. Switzerland*, para. 8.