|  |  |  |  |
| --- | --- | --- | --- |
|  | United Nations |  | |
| _unlogo | **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment** | |  |

**Committee against Torture**

Decision adopted by the Committee under article 22 of the Convention, concerning communication   
No. 782/2016[[1]](#footnote-1)\*, [[2]](#footnote-2)\*\*

Communication submitted by: Hany Khater (represented by Mr. Rachid Mesli, Alkarama) (not represented by counsel)

Alleged victim: The complainant

State party: Morocco

Date of complaint: 14 November 2016 (initial submission)

Document references: Decision taken pursuant to rules 114 and 115 of the Committee’s rules of procedure, transmitted to the State party on 15 November 2016 (not issued in document form)

Date of adoption of decision: 22 November 2019

Date of present decision 22 November 2019

Subject matter: Extradition of the complainant to Egypt

Procedural issues: Exhaustion of domestic remedies; admissibility – non-substantiation

Substantive issues: Risk of torture in the event of extradition on political grounds (non-refoulement); ill-treatment in detention; risk of torture upon deportation

Articles of the Convention: 3 and 16

1. At its meeting on 26 July 2019, the Committee, having received a request from the State party for discontinuance, and noting the fact that the complainant had become a permanent resident of Canada on 5 March 2018 and that therefore the communication was moot, decided to discontinue the consideration of communication No. 665/2015.

At its meeting on 28 April 2021, the Committee, not having received comments from the complainant’s counsel on the State party’s observations, despite sending three reminders to that effect, decided to discontinue the examination of communication No. 940/2019.

At its meeting on 28 April 2021, the Committee, having been informed that the expulsion order against the complainant had become statute-barred on 20 April 2020 and that he could submit a new application for asylum in Sweden, decided to discontinue the examination of communication No. 919/2019, on the understanding that the complainant would be entitled to submit a new communication to the Committee should he face a renewed risk of forcible removal from the State party’s territory.

2. The complainant states that his extradition would constitute a violation by Morocco of its obligations under article 3 of the Convention. He claims a violation of his rights under articles 2 and 13 of the Convention.

3. On 15 November 2016, the Committee, pursuant to rule 114 of its rules of procedure, decided to request interim measures by asking the State party not to extradite the complainant to Egypt while the complaint was under the Committee’s consideration. On 29 December 2016, the State party requested the Committee to lift its request for interim measures.

**The facts as submitted by the complainant**

**The complaint**

**State party’s request to suspend**

**State party’s observations on admissibility and the merits**

**Complainant’s comments on the State party’s observations**

**Complainant’s comments on the State party’s observations on admissibility and the merits**

**Additional information from the complainant**

**Additional submission from the complainant**

**Additional submission from the State party**

**State party’s additional observations**

**Complainant’s additional comments**

**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 procedures*

4. 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 through such irreparable action as extraditing an alleged victim, undermines the protection of the rights enshrined in the Convention.

*Consideration of admissibility*

5. Before considering any claim 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. The Committee recalls that, in accordance with article 22, paragraph 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 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.

7. In accordance with article 22 (5) (b) of the Convention, the Committee must ascertain whether the complainant has exhausted all available domestic remedies, although this shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the alleged victim.

8. The Committee finds that the communication is admissible under article 22 of the Convention with respect to the alleged violation of article 3 and article 16, and proceeds with its consideration of the merits.

*Consideration of the merits*

9. 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.

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

11. The Committee recalls that the prohibition of torture is absolute and non-derogable and that no exceptional circumstances whatsoever may be invoked by a State party to justify acts of torture. The principle of “non-refoulement” of persons to another State where there are substantial grounds for believing that they would be in danger of being subjected to torture, set out in article 3 of the Convention, is similarly absolute.

12. In the present case, the issue before the Committee is whether the forced removal of the complainant to Pakistan would constitute a violation of the State party’s obligation under article 3 of the Convention not to expel or to return (“refouler”) 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 must evaluate whether there are substantial grounds for believing that the complainant would be personally in danger of being subjected to torture upon return to Pakistan. 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 country to which he or she would be returned.

13. In the present case, the Committee must determine whether the complainant runs a personal risk of being subjected to torture if he is extradited to Egypt. The existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient reason for determining that the complainant would be in danger of being subjected to torture if extradited to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Conversely, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.

14. 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 the person is facing deportation, either as an individual or as a member of a group that may be at risk of being tortured in the State of destination. The Committee’s practice in this context has been to determine that “substantial grounds” exist whenever the risk of torture is “foreseeable, personal, present and real”.

The Committee recalls its general comment No. 4 (2017) on the implementation of article 3 in the context of article 22, according to which the Committee will assess “substantial grounds” and consider the risk of torture as foreseeable, personal, present and real when the existence of credible facts relating to the risk by itself, at the time of its decision, would affect the rights of the complainant under the Convention in case of the complainant’s deportation.

15. It also recalls that the burden of proof lies with the complainant, who must present an arguable case, that is to say, submit substantiated arguments showing that the danger of being subjected to torture is foreseeable, present, personal and real. However, when complainants are in a situation 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.

16. 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.

17. The Committee, acting under article 22 (7) of the Convention, decides that the facts before it reveal a violation by the State party of articles 12, 13 and 14 of the Convention.

The Committee therefore concludes that the complainant has not adduced sufficient grounds to enable it to believe that he would run a real, foreseeable, personal and present risk of being subjected to torture upon return to Pakistan. The Committee, acting under article 22 (7) of the Convention, concludes that the complainant’s removal to Pakistan by the State party would not constitute a breach of article 3 of the Convention.

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

1. \* Adopted by the Committee at its sixty-eighth session (11 November–6 December 2019). [↑](#footnote-ref-1)
2. \*\* The following members of the Committee participated in the examination of the communication: Felice Gaer, Abdelwahab Hani, Claude Heller Rouassant, Jens Modvig, Ana Racu, Diego Rodríguez-Pinzón, Sébastien Touzé, Bakhtiyar Tuzmukhamedov and Honghong Zhang. 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), Essadia Belmir did not participate in the examination of the communication. [↑](#footnote-ref-2)