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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. 1081/2021*, **

Communication submitted by:	X and Y (represented by counsel, Ali Yildiz)
Alleged victims:	The complainants
State party:	Switzerland
Date of complaint:	10 June 2021 (initial submission)
Document reference:	Decision taken pursuant to rules 114 and 115 of the Committee's rules of procedure, transmitted to the State party on 30 June 2021 (not issued in document form)
Date of present decision:	11 November 2022
Subject matter:	Deportation of persons affiliated with Fetullah Terrorist Organization (FETÖ)/Gülen to Kosovo and risk of transfer to Türkiye
Procedural issue:	Admissibility – level of substantiation of claims
Substantive issues:	Non-refoulement; refugee; torture
Article of the Convention:	3

1.1 The complainants are X and Y, nationals of Türkiye, born in 1985 and 1990 respectively. They are married, with two minor children who were born in 2014 and 2017. The complainants claim that the State party would violate their rights under article 3 of the Convention by deporting them to Kosovo,[1] from which it is highly likely that they would either be expelled or subjected to illegal rendition to Türkiye, where they would be subjected to torture. The State party made the declaration pursuant to article 22 (1) of the Convention on 2 December 1986. The complainants are represented by counsel.

1.2 On 30 June 2021, the Committee, acting through its Rapporteur on new complaints and interim measures, issued a request for interim measures under rule 114 of the Committee's rules of procedure, requesting the State party to suspend the deportation of the complainants to Kosovo while the communication was pending before the Committee. On 7 July 2021, the State party informed the Committee that it had suspended the complainants' deportation and also requested the Committee to lift its request. On 26 July 2021, the complainants submitted comments on the State party's request. On 28 July 2021, the

* Adopted by the Committee at its seventy-fifth session (31 October–25 November 2022).

** The following members of the Committee participated in the examination of the communication: Todd Buchwald, Claude Heller, Huawen Liu, Maeda Naoko, Ilvija Pūce, Ana Racu, Abderrazak Rouwane, Sébastien Touzé and Bakhtiyar Tuzmukhamedov.

[1] All references to Kosovo shall be understood to be in the context of Security Council resolution 1244 (1999).

Committee, acting through its Rapporteur on new complaints and interim measures, denied the State party's request to lift interim measures. The complainants remain in Switzerland.

Factual background

2.1 The complainants maintain that between 2011 and 2020, X worked as a teacher in Kosovo in schools that operated under the umbrella of the Gülistan Educational Institutions, an entity based in Kosovo and associated with the Gülen movement.[2] Between 2012 and 2014 and 2018 and 2019, Y also worked as a teacher in such schools.[3]

2.2 The complainants refer to the findings of the non-governmental organization Freedom House, according to which the Government of Türkiye, following an attempted coup d'état on 15 July 2016, embarked on a global campaign against members of the Gülen movement and others whom it believed responsible for the coup.[4] The complainants cite the same report as stating that the Government of Türkiye designated the Gülen movement as a terrorist organization (Fethullah Terrorist Organization or FETÖ), and began aggressively pursuing persons affiliated with Gülen throughout the world.

2.3 The complainants assert that the Government of Türkiye classified the Gülistan Educational Institutions as a terrorist organization. According to the complainants, 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, including X, who lived in Kosovo were affiliated with a terrorist organization and provided their residence and workplace addresses. According to the complainants, on 29 March 2018 six individuals, whose names were also 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]

2.4 The complainants assert that shortly after the transfer operation, banks in Kosovo froze the assets of suspected affiliates of the Gülen movement and closed their bank accounts.[6] According to the complainants, the Government of Türkiye, which has significant influence over the authorities in Kosovo, pressured the Government of Kosovo to ban the Gülen movement and deport suspected affiliates to Türkiye. The complainants maintain that, because they were facing increasing pressure and threats, they left Kosovo on 15 August 2020 and moved to Switzerland with their two children.

2.5 On 23 September 2020, the complainants applied for asylum in Switzerland. On 29 December 2020, the State Secretariat for Migration rejected their application within the framework of the accelerated asylum procedure, based on the determination that Kosovo was a safe country for the complainants.[7] Specifically, the State Secretariat for Migration noted

[2] The Gülen movement, also known as Hizmet or Cemaat, is reportedly based on the ideas of Fethullah Gülen, a Muslim preacher from Türkiye who resides in the United States of America.

[3] The complainants provided attestations of employment from Gülistan Educational Institutions.

[4] The complainants cite Freedom House, "Turkey: transnational repression origin country case study" (2021).

[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] See https://www.aa.com.tr/en/europe/kosovo-bank-reportedly-freezes-feto-linked-accounts/1121303. The complainants also provide an image of an apparent text message, dated 17 April 2018, in which Banka Kombetare Tregtare informs an unnamed customer that the customer's account would be closed within 30 days, in accordance with the bank's internal policy and procedures.

[7] The State Secretariat for Migration issued a decision of non-entry into the substance of the asylum application, based on article 31a (1) (a) of the Federal Law on Asylum of 26 June 1998. According to that provision, as a general rule, the State Secretariat for Migration does not examine an asylum application if the applicant can return to a safe third country in which the applicant previously stayed. If a state is designated as a safe third country by the Federal Council, a statutory presumption exists that asylum-related State persecution does not take place in that country and that protection against non-State persecution is guaranteed. Such a presumption may be overturned in individual cases, based on concrete and substantiated information, taking into account political stability, compliance with human rights, the assessment of other member States of the European Union and the European Free

that Y had obtained refugee status in Kosovo and that X, who already had a permanent residence permit in Kosovo, could receive the same status and protection through her. According to the decision of the State Secretariat for Migration, on 11 December 2020 the Government of Kosovo had provided written confirmation that the complainants had valid residence permits in Kosovo and had approved the State party's request to readmit the complainants, in accordance with the readmission agreement between Switzerland and Kosovo, thus providing the required readmission guarantee. The complainants had been given the opportunity to comment on the readmission guarantee both orally (on 21 December 2020) and in writing (on 24 December 2020) and argued that they would risk being removed to Türkiye if deported to Kosovo. The complainants also referred to two other similarly situated individuals who had applied for asylum in Switzerland and had been granted a full (instead of an accelerated) procedure.

2.6 On 6 January 2021, the complainants appealed the decision of the State Secretariat for Migration to the Federal Administrative Court and requested the examination of their asylum application within a full asylum procedure. In particular, they argued that Kosovo was not a safe third country and that if the State Secretariat for Migration sought to return them to Kosovo, the issue should instead be addressed under article 31 (a) (1) of the Law on Asylum. Under this provision, the State Secretariat for Migration would need to take into account the readmission agreement between Kosovo and Switzerland, under which Switzerland must, before returning an individual to Kosovo, submit a request to the authorities in Kosovo, who would then need to produce a readmission guarantee.[8] According to the complainants, the State Secretariat for Migration would then need to examine their individual case in order to determine whether there existed in Kosovo effective protection from refoulement. To support their appeal, on 21 January 2021 X submitted a letter from his lawyer in Türkiye about a secret investigation in Türkiye against him and the danger he faced in Türkiye due to the persecution of the alleged supporters of the Gülen movement.

2.7 On 13 January 2021, the Federal Administrative Court referred the appeal to the State Secretariat for Migration. On 29 January 2021, the State Secretariat for Migration reversed its earlier decision of 29 December 2020 and declared that it would resume consideration of the complainants' claims in first instance proceedings.

2.8 On 9 February 2021, the State Secretariat for Migration granted the complainants' request to have their asylum application examined within a full asylum procedure. On 22 February 2021, the State Secretariat for Migration, having concluded its re-examination of the complainant's asylum application as part of a full procedure, rejected the application based on the following findings: there were no specific indications that the complainants and/or their two children would be threatened with deportation to Türkiye by the Government of Kosovo; and the complainants' comments, objections and evidence related to the situation of other individuals (primarily to the repatriation of the six individuals mentioned above). That situation, which the complainants had described and substantiated with evidence, had been addressed by the authorities in Kosovo, including through the establishment of a parliamentary commission of inquiry. The then Prime Minister of Kosovo had also publicly opposed the position of the President of Türkiye regarding the repatriation of the six individuals. In addition, the authorities and officials of Kosovo who had been involved in the repatriations had faced adverse professional consequences. For example, the head of the intelligence services in Kosovo and the Interior Minister had been dismissed as a result of those repatriation operations. Thus, the State Secretariat for Migration reasoned that unlawful and politically motivated repatriations from Kosovo to Türkiye would no longer be able to take place. In addition, the letter from X's lawyer in Türkiye regarding an alleged secret investigation in Türkiye against him was insufficient as evidence. That was because, apart from the absence of other documents relating to investigation proceedings in Türkiye, such as a confidentiality order, arrest warrant, indictment and other procedural files or interrogation protocols, there were no indications, such as a request for legal assistance or an extradition request from the authorities of Türkiye, that X would be removed from Kosovo.

Trade Association and the Office of the United Nations High Commissioner for Refugees, as well as other country-specific characteristics.

[8] Accord entre le Conseil fédéral suisse et le Gouvernement de la République du Kosovo concernant la réadmission de personnes en situation irrégulière (RS 0.142.114.759), entry into force 1 June 2010.

In sum, there were insufficient indications that the return of the complainants to Kosovo would result in their deportation to Türkiye. Although Kosovo was not a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment or the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), when designating a country as a safe third country the Federal Council considers, inter alia, that country's compliance with human rights standards, as assessed by the Office of the United Nations High Commissioner for Refugees and other member States of the European Union and European Free Trade Association. In addition, the fact that Y and the couple's children had been recognized as refugees in Kosovo indicated that Kosovo had properly carried out the asylum procedure and acted to protect them from persecution. Moreover, the complainants' children had grown up in Kosovo and thus their return to Kosovo with both parents would not be contrary to their best interests.

2.9 On 1 March 2021, the complainants appealed against the negative decision of the State Secretariat for Migration of 22 February 2021 to the Federal Administrative Court. On 4 May 2021, the Court rejected the appeal for the following reason: the complainants no longer disputed that they had stayed in a third country (Kosovo) before their arrival in Switzerland and held valid residence permits in Kosovo. By its decision of 6 March 2009, the Federal Council in Switzerland had classified Kosovo as a safe State, based on factors including its political stability and respect for human rights, subject to periodic review. Moreover, the Court concluded that there were no indications that the complainants would be returned to Türkiye and that on 23 March 2021, the Government of Kosovo had provided written assurances that it would readmit the complainants and their children and an explicit confirmation that it would not deport them to Türkiye. The complainants' submissions and evidence did not establish a sufficient likelihood that they would be deported to Türkiye. Although the complainants had substantiated that in 2018, other individuals had been unlawfully transferred from Kosovo to Türkiye, the information provided by the complainants did not indicate that they faced a specific, personal risk or would not be protected against deportation to Türkiye. The complainants were not themselves affected by the events in 2018, even if some of the individuals who had been deported during that time were known to them. Furthermore, they had not claimed that the Government of Türkiye had taken official measures against them. The complainants had thus failed to establish that they faced a sufficient individual risk of being deported to Türkiye, despite the assurances provided by the authorities in Kosovo.

2.10 The complainants maintain that they have exhausted domestic remedies, as the decision of the Federal Administrative Court is not subject to appeal.

Complaint

3.1 The complainants submit that the State party would violate their rights under article 3 of the Convention by deporting them to Kosovo where, as affiliates of the Gülen movement, it is highly likely that they would be either expelled or be subject to illegal rendition to Türkiye. In Türkiye, the complainants would be likely to be arbitrarily imprisoned and tortured. The domestic authorities erred in determining that Kosovo was a safe third country for their 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 Gülen movement as 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.[9] Kosovo could thus designate the Gülen movement as a terrorist organization at any time and could then extradite the complainants 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 complainants. Y has suffered psychological trauma from the fear of being returned to Kosovo. In previous cases, the Committee found that

[9] See https://www.aa.com.tr/en/europe/kosovo-minister-wants-feto-pkk-pyd-labeled-terrorists/2150030.

Morocco would violate the rights of three individuals under article 3 of the Convention by extraditing them to Türkiye.[10]

3.2 As mentioned above, six individuals, five of whom were co-workers of the complainants, 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.[11] The Government of Türkiye has recently increased its requests for extrajudicial transfers of individuals to its jurisdiction. Selahattin Gülen, a lawful resident of the United States was unlawfully transferred to Türkiye from Kenya in defiance of a court order. In addition, Kosovo is not party to the 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.

3.3 After the attempted coup d'état of 15 July 2016, the Government of Türkiye declared a state of emergency that lasted two years. The complainants allege 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 three (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".[12] The complainants cite several additional reports published by international mechanisms and organizations to support their claims regarding the incidence of torture and ill-treatment in Türkiye.[13]

3.4 The complainants also refer 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.[14] According to the letter, at least 100 individuals suspected of involvement with the Gülen movement have been subjected to arbitrary arrests and detention, enforced disappearance and torture as part of covert operations, allegedly organized or abetted by the Government of Türkiye in coordination with officials in Afghanistan, Albania, Azerbaijan, Cambodia, Gabon, Kosovo, Kazakhstan, Lebanon, Pakistan and other countries.

State party's observations on admissibility and the merits

4.1 In its observations of 21 February 2022, the State party asserts that the communication is inadmissible because it is manifestly ill-founded, and is also without merit.

Factual information

4.2 During their asylum interviews, the complainants stated that they had left Türkiye for the last time in August 2015 to take up residence in Kosovo. However, they also acknowledged having resided in Kosovo since 2011 or 2012. According to their claims, they

[10] See *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).

[11] See opinion No. 47/2020.

[12] A/HRC/37/50/Add.1, para. 23.

[13] See, for example, "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".

[14] AL TUR 5/2020.

lived for almost nine years in Kosovo, where they worked as teachers in various schools affiliated with the Gülen movement.

4.3 During the asylum proceedings, the complainants initially denied having residence permits and/or international protection in Kosovo. However, on 11 December 2020 the State Secretariat for Migration received written confirmation from the Government of Kosovo that the complainants in fact possessed valid residence permits in Kosovo, and that they and their children had obtained refugee status in Kosovo on 12 September 2018 and therefore enjoyed international protection status.

4.4 On 5 January 2022, after the submission of their communication to the Committee, the complainants submitted a new asylum application to the State Secretariat for Migration based on new facts.[15]

Lack of substantiation

4.5 In their communication to the Committee, the complainants repeat the arguments that were reviewed by both the State Secretariat for Migration and the Federal Administrative Court during the first asylum procedure. The complainants have not set forth convincing indications that the classification of Kosovo as a safe State should be modified. That classification is not altered by the complainants' allegation that Türkiye is very influential in Kosovo, nor by the fact that Kosovo has not ratified the European Convention on Human Rights or the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, because the complainants have not demonstrated that they would face a personal risk of persecution in Kosovo owing to their affiliation with the Gülen movement, which is not prohibited in Kosovo.

4.6 In addition, the complainants have not demonstrated how the written assurance, as well as the explicit confirmation produced at the request of Switzerland, would not bind the authorities of Kosovo or why Kosovo would not respect it. In that context, it should be emphasized that relations between Switzerland and Kosovo are particularly close, both politically and economically. Indeed, Switzerland was one of the first countries to recognize the independence of Kosovo and remains very committed to Kosovo, in particular through investments for reconstruction. Moreover, the diaspora of Kosovo in Switzerland is one of the largest outside Kosovo. It is therefore "inconceivable" that the Government of Kosovo would risk ignoring a written assurance, as well as an explicit confirmation that it has given pursuant to a treaty concluded with Switzerland. Such a course of action would in fact be likely to jeopardize the proper functioning of bilateral cooperation with Switzerland, which is not in its interest.

4.7 To substantiate their claim under the Convention, it is not sufficient for the complainants to refer to the unlawful surrender of six individuals in 2018, or to the existence of a general risk that would affect all followers of the Gülen movement abroad. They have not established the existence of a personal danger to themselves, or an inability or unwillingness of the authorities in Kosovo to protect them from a hypothetical refoulement to Türkiye. As serious as the complainants' allegations are regarding the situation of [the six] individuals, that situation has no direct relationship with the complainants and does not establish that the latter are likely to be targeted by a possible handover operation to Türkiye. Moreover, the unlawful surrender that took place on 29 March 2018 was the subject of investigations in Kosovo within the framework of a parliamentary commission of inquiry set up for that occasion. At the time, the Prime Minister of Kosovo also publicly opposed any extrajudicial surrender to Türkiye of supporters of the Gülen movement. In addition, the authorities and officials involved faced professional and criminal consequences as a result of their involvement in the surrender. Given the reactions of the Kosovan authorities and the Prime Minister in particular, it is "legitimate to think" that extrajudicial surrenders carried

[15] In response to a request from the United Nations Secretariat, the State party informed the Committee on 7 October 2022 that the authors' second asylum application in Switzerland, filed on 6 January 2022, had been rejected by the State Secretariat for Migration on 28 February 2022 and that their subsequent appeal had been rejected by the Federal Administrative Court on 19 July 2022.

out for political reasons and outside the framework of the rule of law will not take place in the future.

4.8 It is also noteworthy that between 29 March 2018 and 15 August 2020 (the date of the complainants' departure from Kosovo), namely for more than two years, the complainants did not report any incident that would suggest that they faced a concrete risk of surrender or lack of protection in Kosovo. During the same period, they were able to continue their work without being in any way disturbed by the authorities in Kosovo. The attestations that they provided from their employer indicate that they resided in Kosovo for approximately nine years and had integrated well there, both professionally and socially. Their stay in Kosovo is legal and it is unrealistic to think that the authorities in Kosovo would suddenly expel them and their minor children to Türkiye by carrying out an extrajudicial abduction.

4.9 The complainants' assertions that certain banks in Kosovo have sought to freeze the assets of suspected affiliates of the Gülen movement are by no means proven. In fact, the documents that they have produced on this issue are general in nature and do not demonstrate that the complainants' own bank accounts have been blocked or otherwise affected.

4.10 In addition, the complainants' allegations relating to incidents of torture in Türkiye are irrelevant in the present case, because the State party's authorities decided that the complainants should be removed to Kosovo. The complainants do not claim that they would be subjected to torture in Kosovo. They fear a hypothetical transfer to Türkiye if they are returned to Kosovo, but have not substantiated that fear with elements of a concrete and personal nature. The three decisions of the Committee that the complainants have cited above are in no way comparable to their own situation. In those three cases, the individuals in question resided in Morocco, were specifically targeted by criminal proceedings in Türkiye, were the subject of an arrest warrant issued by the authorities in Türkiye, had been arrested by the police in Morocco and had been placed in detention for the purpose of extradition, as Türkiye had presented Morocco with a formal request for their extradition. Those circumstances do not apply to the complainants in the present case. The complainants have not produced any documents, such as a summons to appear or an indictment, that would attest to the existence of criminal proceedings against them. Thus, unlike the three cases mentioned above, there is no risk that the complainants will be extradited and transferred to Türkiye through international judicial cooperation.

4.11 The complainants do not claim to have been the victims of acts of torture or cruel, inhuman or degrading treatment or punishment in Kosovo or Türkiye. They do not claim to have engaged in political activities in either country. X has not demonstrated that he is the subject of criminal proceedings in Türkiye. During the asylum proceedings, they initially claimed not to have residence permits in Kosovo but, as previously described, they did in fact have such permits.

4.12 With respect to the procedural integrity of the asylum proceedings, the complainants were represented by counsel throughout those proceedings. The State Secretariat for Migration interviewed each complainant separately on 14 October 2020 and carefully examined their case, as demonstrated in the decision it rendered on 22 February 2021. The Federal Administrative Court granted the complainants free legal aid and examined all the relevant elements of the file before rejecting their appeal. The complainants have not presented any concrete elements that could vitiate the assessment of the domestic authorities.

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

5.1 In their comments of 30 May 2022, the complainants assert that the Government of Türkiye has carried out a further unlawful transfer operation of an individual living abroad. Orhan İnandi, a teacher and dual national of Kyrgyzstan and Türkiye, was abducted and transferred from Kyrgyzstan to Türkiye. That incident is in addition to the aforementioned unlawful transfer of Selahattin Gülen from Kenya to Türkiye. After their abductions, both victims were tortured at black site locations over a period of days. Those incidents demonstrate that the Government of Türkiye can abduct even the nationals or lawful residents of other countries. Thus, although the State party argues that the complainants have refugee

status in Kosovo, they would constantly live in fear of being surrendered to Türkiye if they were removed to Kosovo. Subjecting complainants to that fear amounts to a form of torture.

5.2 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.

5.3 Affiliates of the 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 Defence of Türkiye visited Kosovo and asked government officials to arrest and extradite all 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.

5.4 Recently, the Government of Türkiye has resorted to new tactics to force other States to extradite dissidents. In particular, it has said that it would veto the applications of Finland and Sweden for membership in the North Atlantic Treaty Organization until they had extradited 33 individuals, including 16 Gülenists, to Türkiye.[16]

5.5 In a further submission dated 7 July 2022, the complainants reiterate that Türkiye has leverage and influence over Kosovo, which is therefore not a safe country for them. 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 members of the Fetullah Terrorist Organization in Kosovo was the biggest obstacle to that membership bid.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claims 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 the complainants, following the rejection of their appeal, obtained a negative, final decision on their application for asylum and that the State party has not asserted that the complainants have failed to exhaust domestic remedies. The Committee further notes the State party's information that the authors' second asylum application in Switzerland, filed on 6 January 2022, had been rejected by the State Secretariat for Migration on 28 February 2022, and that their subsequent appeal had been rejected by the Federal Administrative Court on 19 July 2022. In view of the foregoing, the Committee considers that it is not precluded by article 22 (5) (b) of the Convention from examining the complaint.

[16] See, for example, Financial Times, "Erdoğan blocks Nato accession talks with Sweden and Finland", 18 May 2022.

6.3 The Committee notes, however, the State party's position that the communication is inadmissible because it is not sufficiently substantiated. In that connection, for purposes of admissibility, the Committee must consider whether the information provided by the complainants is such that their claim is "manifestly unfounded" and thus inadmissible under rule 113 (b) of the Committee's rules of procedure. In that regard, the Committee notes that the complainants have put forward two separate arguments: the first based on their fear of being subjected to torture in Kosovo itself and the second based on the risk, if returned to Kosovo, of being subsequently returned to Türkiye.

6.4 With regard to the first of these arguments, the Committee takes note of the complainants' contention that, if returned to Kosovo, they would constantly live with the 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 Y has in fact already been suffering from psychological trauma due to the fear of being deported to Kosovo. The Committee further notes, however, that the complainants have not provided any specific evidence to substantiate these arguments. The Committee therefore concludes the complaint is inadmissible insofar as it is based on this argument.

6.5 With regard to the second argument, the Committee takes note of the complainants' claim that, if returned to Kosovo, the risk they face of being subsequently transferred to Türkiye and upon transfer 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. In that connection, the Committee takes note of 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.[17] Accordingly, the Committee considers that this 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 to its examination on the merits.

Consideration of the merits

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

7.2 The Committee observes that the complainants' 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 complainants 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 complainants would, if deported by the State party to Kosovo, face a sufficient risk of subsequently being forcibly returned to Türkiye.

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.[18] 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.[19] 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

[17] 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.

[18] See general comment No. 4 (2017), paras. 11–12; *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

[19] General comment No. 4 (2017), para. 38.

assessment of the information available to it, taking into account all of the circumstances relevant to each case.[20]

Risk of torture in Türkiye

7.4 As to whether the complainants have demonstrated that there are substantial grounds for believing that they would face a personal, real, present and foreseeable risk of being subjected to torture if forcibly returned to Türkiye, the Committee first notes that the State party does not dispute their claims on this issue. The Committee also notes that according to a report by the Office of the United Nations High Commissioner for Human Rights (OHCHR), 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.[21] 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 Gülenist movement had committed suicide in custody, although there was no confirmation of this cause of death by independent autopsy.[22] 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.[23] 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 Gülen movement.[24] Accordingly, the Committee considers that the complainants 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 complainants would be forcibly returned from Kosovo to Türkiye, the Committee first notes the complainants' claim that regardless of whether they have refugee status in Kosovo, that status would not protect them from being deported to Türkiye, and that there is evidence of this in the unlawful transfer to Türkiye in March 2018 of six individuals who were, like the complainants, affiliated with the Gülen movement and were also holders of residence permits that were revoked by Kosovo. 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 also notes the State party's position that the complainants do not face a risk of being returned to Türkiye because they hold refugee status in Kosovo and that the Government of Kosovo sent diplomatic assurances on 23 March 2021, informing the State party that it would readmit the complainants and would not deport them to Türkiye.

7.6 With respect to the situation of X, the Committee notes that there is a lack of clarity regarding whether he has refugee status in Kosovo. The State party has indicated that the Kosovo authorities informed the State Secretariat for Migration that X obtained such status on 12 September 2018 (see para. 4.3 above). However, in their communication of 23 March

[20] Ibid., para. 50.

[21] "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. 77–78.

[22] A/HRC/37/50/Add.1, para. 95.

[23] Ibid., paras. 70–73.

[24] See Human Rights Watch, *World Report: Turkey 2022*, available from https://www.hrw.org/world-report/2022/country-chapters/turkey#8d3ef8.

2021, the Government of Kosovo described only Y and the couple's children, and not X, as clearly having refugee status. The Committee also observes that the complainants allege, and the State party does not contest, that X, along with 77 other individuals, was profiled in a telegram sent by the Turkish Embassy in Kosovo to Turkish security officials as being affiliated with a terrorist organization, that the telegram included the residence or workplace addresses of all 78 of those individuals and that 6 of them, 5 of whom were also co-workers of X and Y, had their residence permits revoked and were abducted in a Turkish intelligence operation, in collusion with the Kosovo intelligence forces, and forcibly taken to Türkiye, where they were reportedly taken to court and charged with international terrorism and espionage. The Committee notes that it is also relevant that Kosovo is not a party to the Convention and thus is not bound under international law by article 3 of the Convention to refrain from transferring X 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 indicated 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.[25]

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

7.8 With respect to Y, the Committee notes that she 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. However, the Committee observes that Y, like X, was a co-worker of the five individuals mentioned above who were associated with the 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 addition, the Committee considers that it is appropriate to take into account that Y, as the wife of X, who was specifically included in the list of 78 individuals, could be subject to a similar risk of abuse in Kosovo as a means of exerting pressure on X[26] and notes in this connection the report by OHCHR detailing the arrests of women as associates of their husbands, who were the primary suspects of the Government of Türkiye for connections to terrorist organizations, without separate evidence supporting charges against them.[27] In view of these considerations, the Committee considers that it is foreseeable that Y would face a real risk of being transferred from Kosovo to Türkiye if she were returned to Kosovo.

7.9 Further, the Committee must consider whether, in the particular circumstances of the present case, the representations provided to the State party in the communication of 23 March 2021 by the authorities in Kosovo provide sufficient assurance against deportation or forcible transfer of the complainants to Türkiye so as to negate the conclusion that the complainants would face a real risk of being transferred from Kosovo to Türkiye if they were returned to Kosovo. In that regard, the Committee recalls its general comment No. 4 (2017), in which it stated that diplomatic assurances should not be used as a loophole to undermine the principle of non-refoulement as set out in article 3 of the Convention, where there are substantial grounds for believing that a person would be in danger of being subjected to torture.[28] The Committee further recalls that in this context the term "diplomatic assurances" refers to a formal commitment by a receiving State to the effect that the person concerned will be treated in accordance with the conditions set by the sending State and in accordance with international human rights standards.[29] In the present case, the Committee observes that the representations in the communication of 23 March 2021 simply consist of an email and merely state commitments about what DCAM (the Department of Citizenship, Asylum and

[25] Opinion No. 2020/47, paras. 38–39.

[26] See general comment No. 4 (2017), paras. 45 and 49 (e)

[27] "Report on the impact of the state of emergency on human rights in Turkey, including an update on the South-East: January–December 2017", para. 78.

[28] Para. 20.

[29] Para. 19.

Migration of the Ministry of the Interior), as opposed to the Government of Kosovo as a whole, will do. The Committee further observes that this communication indicates that the legislation in force in Kosovo provides that, because they enjoy refugee status, X and Y (and their children) cannot be returned to their country of origin. However, the communication falls short of constituting a commitment from the Department, much less from the Government of Kosovo, not to transfer the complainants, or allow their transfer, to their country of origin. The Committee further observes that nothing in the communication of 23 March speaks to what the status of complainants would be if, as the Government of Türkiye has pressed the Government of Kosovo to do, the Government of Kosovo changes the status of the complainants, for example if Kosovo designates the Gülen movement as a terrorist organization and asserts that its adherents are consequently a danger to the security of the country, in which case the protection enjoyed by refugees against return would no longer apply.[30] The Committee further notes that the importance of this possibility is highlighted by reports that the request from the Regional Development Minister of Kosovo to his Government to officially designate the Gülen movement as a terrorist organization remains pending. Finally, the Committee observes that there are no arrangements in connection with the communication of 23 March 2021 for monitoring, consultation or follow-up of any type to ensure that the terms of the communication are complied with.

7.10 In view of the aforementioned considerations, the Committee is of the view that the representations contained in the communication of 23 March 2021 do not provide sufficient assurance against deportation or forcible transfer as to negate the conclusion that the complainants would face a real risk of being transferred from Kosovo to Türkiye if they were returned to Kosovo.

8. In the light of the foregoing, the Committee, acting under article 22 (7) of the Convention, decides that the removal of the complainants by the State party to Kosovo, where they 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.

9. The Committee is of the view that, in accordance with article 3 of the Convention, the State party has an obligation to refrain from forcibly returning the complainants 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.

[30] Under article 33 of the Convention relating to the Status of Refugees, protection against refoulement may not be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is. That is in contrast to the protections against refoulment owed to an individual in danger of being tortured under article 3 of the Convention, to which no such exceptions apply.