



## International Covenant on Civil and Political Rights

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### Human Rights Committee

#### Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communications Nos. 3106/2018, 3107/2018, 3108/2018, 3109/2018, 3110/2018, 3111/2018, 3112/2018, 3113/2018, 3114/2018, 3115/2018, 3116/2018, 3117/2018, 3118/2018, 3119/2018, 3120/2018, 3121/2018 and 3122/2018\*, \*\*

<i>Communication submitted by:</i>	A.G., I.Y., I.O., S.U., B.K., Y.C., T.M., H.A., S.M., M.K., R.K., A.K., B.D., G.C., A.D., E.A. and M.B.
<i>Alleged victims:</i>	The authors and their families
<i>State party:</i>	Angola
<i>Date of communications:</i>	19 January 2018 (initial submissions)
<i>Document references:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 9 February 2018 (not issued in document form)
<i>Date of adoption of Views:</i>	21 July 2020
<i>Subject matter:</i>	Deportation to Turkey
<i>Procedural issue:</i>	Non-exhaustion of domestic remedies
<i>Substantive issues:</i>	Risk of torture, cruel, inhuman or degrading treatment or punishment; non-refoulement
<i>Articles of the Covenant:</i>	7, 13 and 14
<i>Article of the Optional Protocol:</i>	2

1.1 The authors of the 17 communications and their families, on whose behalf they present the case, are nationals of Turkey:

(a) A.G., born in 1978, who presents the communication on his own behalf and on behalf of his wife, E.G., born in 1977, and of their three children born in Turkey: O.Y. (2003), A.E. (2006) and E.Y. (2010). They moved to Angola in 2014, after having lived in South Africa from 2010 to 2014;

\* Adopted by the Committee at its 129th session (29 June–24 July 2020).

\*\* The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Yadh Ben Achour, Arif Bulkan, Furuya Shuichi, Bamariam Koita, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Hélène Tigroudja, Andreas Zimmermann and Gentian Zyberi.



(b) I.Y., born in 1991, who presents the communication on his own behalf and on behalf of his wife, N.K., born in 1991, and their daughter, S.S.Y. (2017), born in Angola. They moved to Angola in October 2012;

(c) I.O., born in 1987, who presents the communication on his own behalf and on behalf of his wife, B.O., born in 1990, and their son, H.E.O. (2016), born in Angola. They moved to Angola in 2015, after having lived in Yemen from 2005 to 2015;

(d) S.U., born in 1990. She moved to Angola in September 2013;

(e) B.K., born in 1984, who presents the communication on his own behalf and on behalf of his wife, B.K., born in 1985, and their daughter, C.I.K. (2013), born in Turkey. They moved to Angola in August 2015;

(f) Y.C., born in 1989. He moved to Angola in August 2015;

(g) T.M., born in 1989, who presents the communication on his own behalf and on behalf of his wife, E.M., born in 1991, and their son, I.C.M. (2017), born in Angola. They moved to Angola in December 2015, after having lived in South Africa and Zambia from 2012 to 2015;

(h) H.A., born in 1978, who presents the communication on his own behalf and on behalf of his wife, A.A., born in 1980, and their children born in Turkey: Y.S.A. (2010) and M.F.A. (2005). They moved to Angola in October 2012;

(i) S.M., born in 1989, who presents the communication on her own behalf and on behalf of her husband, P.M., born in 1990 in Turkmenistan (of Turkmen nationality), and their daughter, N.E.M. (2015), born in Turkey. They moved to Angola in August 2014, after S.M. had studied in Cambodia;

(j) M.K., born in 1990. She left Turkey in 2012, when she went to Malawi to work as a mathematics teacher. She moved to Angola in January 2016, after having lived in Malawi from 2012 to 2015;

(k) R.K., born in 1982, who presents the communication on his own behalf and on behalf of his wife, N.T.K., born in 1981, and their daughter, Z.K. (2016), born in Turkey. They moved to Angola in January 2016, after having lived in South Africa and Zambia from 2008 to 2015;

(l) A.K., born in 1959, who presents the communication on his own behalf and on behalf of his wife, S.K., born in 1964. They moved to Angola in August 2016;

(m) B.D., born in 1987, who presents the communication on his own behalf and on behalf of his wife, G.B.D., born in 1990, and their daughter, A.N.D. (2017), born in Angola. They moved to Angola in 2014, after having lived in the United States of America and in South Africa from 2012 to 2014;

(n) G.C., born in 1991. He moved to Angola in July 2015;

(o) A.D., born in 1987. She moved to Angola in October 2016, after having lived in Kenya and Madagascar from 2008 to 2016;

(p) E.A., born in 1985, who presents the communication on his own behalf and on behalf of his wife, F.A., born in 1985, and their son, F.A.A. (2016), born in Turkey. They moved to Angola in March 2012;

(q) M.B., born in 1984, who presents the communication on his own behalf and on behalf of his wife, B.B., born in 1989, and their two children, E.B.B. (2016) and M.S.B. (2014), born in Turkey. They moved to Angola in January 2011.

1.2 The authors allege that their return to Turkey would violate their rights under articles 7, 13 and 14 of the Covenant. The Optional Protocol entered into force for Angola on 10 April 1992. The authors are unrepresented.

1.3 On 9 February 2018, pursuant to rule 92 of its rules of procedure (now rule 94),<sup>1</sup> the Committee, acting through its Special Rapporteurs on new communications and interim measures, requested the State party to refrain from extraditing the authors and their families to Turkey while their cases were under consideration by the Committee.

#### **Facts as submitted by the authors**

2.1 The authors are followers of the teachings of Fethullah Gülen and travelled to Angola between 2011 and 2016, after obtaining positions as teachers<sup>2</sup> in the Colégio Esperança Internacional,<sup>3</sup> one of the hundreds of schools supported by the movement worldwide and following the Gülen ideals. The school operated for many years without any problems and became one of the best and most well-respected schools in Angola.

2.2 However, following the attempted coup d'état of July 2016, the Government of Turkey has been putting pressure on Governments worldwide to close Turkish international schools associated with the Gülen movement and expel teachers and other Turkish nationals living abroad who are perceived as followers of the movement. The Government of Angola has not been immune to Turkish pressure.

2.3 After several visits from Turkish government officials, on 3 October 2016, the President of Angola issued a decree ordering the closure of the Colégio Esperança Internacional and the expulsion of all Turkish citizens affiliated with the school.<sup>4</sup> The decree itself was neither presented to any of the asylum seekers concerned in Angola nor to the Office of the United Nations High Commissioner for Refugees (UNHCR) in Angola. On 5 October 2016, three members of the Ministry of Interior went to the school to inform the Director and the Deputy Principal that the school was to be closed following a high-level decision by the President of Angola. No written document was presented by the government officials.

2.4 On 10 February 2017, the Colégio Esperança Internacional was officially closed by the Ministry of Education. Several police officers came to the school and brutally pushed all the Turkish teachers and other family members present – including children – into two vehicles, a bus with tinted windows and bars and a police van. The authors who were present at the school that day<sup>5</sup> and their families were threatened and screamed at by the police officers, and “treated as common criminals”. After being driven for about 20 minutes, the authors were taken back to the school. Upon arrival at the school, they were informed that they were not going to be deported that day, but would be allowed five days to leave the country with their families. Their passports were collected by the police officers. No information or reasons were given to them for being ordered to leave the country.

2.5 The authors present at the school on 10 February 2017 were told they would be allowed to remain in the school dormitories until they left the country. However, after contacting some high-ranking police officers whose children also attended the school, the police officers allowed them to leave the school premises.<sup>6</sup>

2.6 The school remained closed from 10 February to 20 March 2017 and the ownership was transferred free of charge to an Angolan businessperson. This was part of a provisional agreement whereby the Angolan authorities authorized the school to reopen and the teachers to continue working until the new school administration could find international replacements. However, by February 2017 the authors had requested international protection from the UNHCR office in Luanda. Owing to the suspension of the government asylum

<sup>1</sup> This is the rule under the Committee's former rules of procedure (CCPR/C/3/Rev.10). The equivalent provision under the current rules of procedure (CCPR/C/3/Rev.11) is rule 94.

<sup>2</sup> I.Y. came to work as an accountant for the school.

<sup>3</sup> The school has some 747 students.

<sup>4</sup> There is a copy of the decree in the case file.

<sup>5</sup> B.K., H.A., A.K. and A.D. were not at the school when the police came. According to B.K. and A.K., when hearing about what had happened to their colleagues, a group of 10 persons drove in two cars to the UNHCR office in Luanda to ask for help. No other information was presented to the Committee on the identity of the 10 persons.

<sup>6</sup> The authors do not specify the exact number of days during which they were forced to stay in the school's dormitories.

procedures and the high risk of refoulement, protection letters were issued to them and their families and also transmitted to the Government of Angola.

2.7 However, the pressure continued for the authors to leave the country. In May 2017, they were requested by the new Angolan director of the school to organize their departure, according to the instructions given by the Angolan Migration and Foreigners Service. The Turkish asylum seekers were divided into groups and a list was prepared, indicating which families or individuals should depart first.

2.8 Despite the issuance of protection letters and several meetings between the Angolan authorities and the UNHCR Representative and Acting Representative for Angola, the State party maintained its position that the Turkish asylum seekers were to abide by the presidential decree without having their asylum claims assessed. The presidential decree referred to State security as the reason for the expulsion of the Turkish teachers and their families. However, they were not presented with any charges or allegations. Conversely, the State party has kept them in a precarious situation, allowing them to work for the school, albeit still maintaining in place the presidential decree ordering them to leave the country. As a result, the authors are in a legal limbo, unable to access the asylum procedures in Angola and also unable to remain legally in the country because the State party has not renewed their work visas, so they face a permanent threat of refoulement.

2.9 The status and treatment of asylum seekers and refugees in Angola is governed by the Right of Asylum and Refugee Status Act (Law No. 10/15) adopted on 17 June 2015. The law provides that asylum seeker cases should be transmitted to the National Council for Refugees. However, almost two years after the adoption of Law No. 10/15, the Council is yet to be created. As reported by the Special Rapporteur on the human rights of migrants on his mission to Angola: “Since the promulgation of the new Asylum Law No. 10/15 of June 2015, the previous system for refugee status determination has been discontinued. The regulation necessary for the establishment of a new refugee status determination system has yet to be adopted. The resulting legal gap has existed since June 2015 and is extremely prejudicial to asylum seekers, who are provided with no alternative status and no documentation” (A/HRC/35/25/Add.1, para. 41). Since the adoption of the new law, no asylum seekers have therefore had their claims assessed. As such, despite being asylum seekers who fear returning to Turkey because of a fear of being persecuted and subjected to torture or other inhumane or cruel treatment, the authors and their families cannot resort to the Angolan asylum system for protection.

2.10 The unwarranted, lengthy delay in the implementation of Law No. 10/15 has prevented asylum seekers and refugees, including children, from accessing services such as education and health care. Furthermore, the refusal by the authorities to issue identification documents for asylum seekers and refugees has exacerbated the socioeconomic challenges that they face in Angola. In addition, as Law No. 10/15 has not been implemented, even those individuals who fall within the family reunification criteria cannot be recognized as refugees. The inevitable result is that the lack of government identification documents puts asylum seekers and refugees at risk of refoulement, in contravention of article 33 of the 1951 Convention relating to the Status of Refugees, since they have no proof that they are seeking asylum in Angola. Although Law No. 10/15 is not yet in force, article 29 (4) of the Law on the Legal Regime of Foreign Citizens already provides safeguards against the expulsion of refugees to countries where they might be persecuted for political, racial or religious reasons, or where their lives might be in danger (A/HRC/35/25/Add.1, para. 33).

### **Complaint**

3.1 The expulsion order issued by the State party, which determines the expulsion of all Turkish nationals associated with the Colégio Esperança Internacional, including the authors, exposes them and their families to a risk of being forcibly returned to Turkey where, owing to their open association with the Gülen movement, they would undoubtedly be subjected to violations that amount to the acts proscribed by article 7 of the Covenant. Such a conclusion is based on the concrete situation in Turkey for those with a real or perceived association

with the Gülen movement,<sup>7</sup> also reported by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, after a visit to Turkey between 27 November and 2 December 2016 (see A/HRC/37/50/Add.1).

3.2 The authors complain that Turkey has been violating their rights to a fair trial and to due process of law through the treatment afforded to those with a real or perceived affiliation with the Gülen movement, who have been accused of being terrorists. If returned to Turkey, they therefore face a high probability of having their rights enshrined in article 14 of the Covenant violated and thus suffer the same fate as thousands of people arrested, indicted or simply fired from employment just for identifying themselves with the Gülen movement. Denial of a fair trial by Turkey to those seemingly affiliated to the Gülen movement and the treatment they received from the Turkish authorities would undeniably subject the authors to the risk of irreparable harm, as it increases the probability that they might be arbitrarily deprived of their liberty and subjected to treatment proscribed by article 7 of the Covenant.

3.3 Finally, the authors invoke a violation of article 13 of the Covenant in the sense that everyone shall have the right to contest an expulsion order and have the case reviewed by a competent authority prior to removal from a country. As the expulsion order issued by the President of Angola was not publicly issued and was never officially and formally delivered to the authors, they were never given the opportunity to present their arguments against expulsion. According to paragraph 15 of the Committee's general comment No. 31 (2004), the expulsion cannot be arbitrary and not only must the reviewing authority be independent and impartial, but the State must also guarantee that individuals have access to effective remedies for alleged violations of rights under the Covenant. By not allowing access to the proper expulsion order and by not providing the reasons for that order, the State party is therefore in breach of its obligations under article 13 of the Covenant.

3.4 As for the exhaustion of domestic remedies, the authors recall that, owing to the threat of deportation or expulsion from the State party resulting from the presidential decree and after being unable to apply for asylum through the national authorities, they appealed to UNHCR for international protection, together with the other teachers. As a result, in February 2017 they were given protection letters by UNHCR<sup>8</sup> and were later informed that their asylum claims had been handed over to the Government of Angola by UNHCR.

3.5 According to the authors, on 12 June 2017 the UNHCR regional representation for southern Africa submitted an intervention to the then Vice-President of Angola, requesting the forced removal to be halted for all asylum seekers who were subject to the expulsion order. On 26 June 2017, the UNHCR regional representation submitted a second intervention to the Vice-President, again requesting that the forced removal be halted and assurances given that no refoulement would take place.<sup>9</sup> By January 2018, no response to the request to halt the forced deportations had been received from the State party.

3.6 The authors consider that, given that the presidential decree has not been cancelled and that there is an imminent threat of refoulement, it would be futile and/or dangerous for them to try to resort to the Angolan judiciary or to do any more than what has been hitherto attempted. They base this allegation on what the United States Department of State calls "institutional weaknesses in the judicial system" of Angola, which is affected by, *inter alia*, factors "such as political influence in the decision-making process".<sup>10</sup>

3.7 The authors invoke the existence of a consistent and pervasive slowness affecting the Angolan judicial system that severely hampers access to justice and the general efficiency of the judiciary when adjudicating lawsuits.<sup>11</sup> Noting such a reality, the Committee declared during its 107th session that it was "concerned at the reported lack of independence as well

<sup>7</sup> The authors refer to reports by the United States Department of State, Freedom House, Amnesty International and Human Rights Watch, which document instances of torture and ill-treatment in prison of supporters of the Gülen movement.

<sup>8</sup> The authors provide 12-month valid asylum seeker certificates dated 25 July 2017.

<sup>9</sup> Copies of these two letters are not provided.

<sup>10</sup> See United States Department of State, "2016 Country reports on human rights practices: Angola" (March 2017).

<sup>11</sup> *Ibid.* and Freedom House, "Freedom in the world 2017: Angola" (2017).

as corruption of the judiciary, and the insufficient number of judges, lawyers, tribunals and courts, all of which may create difficulties regarding access to justice. The Committee is further concerned at the prohibitive cost of legal fees, which may prevent some citizens, in particular disadvantaged persons and those living in rural areas, from accessing justice” (CCPR/C/AGO/CO/1, para. 20).

3.8 Before transferring the ownership of the school to an Angolan national, two different procedures were filed by the school’s lawyers: one petition dated 10 October 2016 was addressed to the President of Angola to halt any possible deportations or exclusion actions amounting to refoulement and the other petition, dated 12 October 2016 and based on the right of access to information provided in article 69 of the Angolan Constitution, was submitted to the Supreme Court requesting access to any document related to the closing of the school and the possible expulsion of the Turkish teachers and their families.<sup>12</sup> However, until February 2017, when the ownership of the school was transferred and the contract with the law firm responsible for the procedures expired, no response was forthcoming to either procedure.

3.9 Based on the aforementioned and considering their precarious situation in Angola, where an expulsion order subsists and the threat of refoulement is imminent, the authors consider it indisputable that resorting to other national remedies would ineluctably expose them to further risk. Moreover, it is highly likely that resorting to the judiciary or other administrative procedures would be ineffective, particularly considering the influence of the executive power over the judicial system and the apparent willingness of the Government to disregard international norms prohibiting refoulement, since the expulsion order remains valid despite all UNHCR interventions.

3.10 In conclusion, in the absence of a first instance as well as an appeal instance for refugee status determination, there are no mechanisms available for accessing international protection; neither are domestic courts considered a viable option for the reasons presented above. As such, there are no other reasonable national remedies available for the authors to have the expulsion suspended.

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

4.1 On 9 August 2018, the State party submitted its observations on admissibility and the merits. It considers that some of the information provided by the authors is inaccurate and in any event exaggerated, in particular the alleged lack of legal protection of claimants in Angola.

4.2 The State party mentions that the Colégio Esperança Internacional was closed for irregularities at the moment of its registration, as happened with other educational institutions which were functioning irregularly. During the administrative process, the Turkish teachers were initially invited to leave the country, but after being heard they submitted a request for special protection through UNHCR. They now enjoy protection under the Right of Asylum and Refugee Status Act, while awaiting a final decision to their requests, which will be examined by the National Council for Refugees and, if necessary, by the courts.

4.3 The State party considers that it has acted in accordance with legal principles, with the Covenant and with the Convention relating to the Status of Refugees. Given that the proceedings initiated in 2016 are still pending, the State party submits that the authors have not exhausted all domestic remedies.

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

5.1 In their comments of 17 December 2018, the authors mention that they and their families have been living in the State party with the protection letters provided by the UNHCR on 11 February 2017. But even with such protection letters, following the pressure placed on them, five Turkish families had left the State party by August 2017.<sup>13</sup> However,

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<sup>12</sup> Copies of the two petitions are attached.

<sup>13</sup> The authors mention that those families did not go back to Turkey, but went to other countries.

the authors declare that since August 2017 no pressure has been placed on them or their families by the State party to leave the country.

5.2 The authors also submit that during a meeting with UNHCR in November 2018, they were informed about some improvements in their case: the new National Council for Refugees had been established and UNHCR was in dialogue with the Council to obtain refugee status for the teachers concerned and their family members.

5.3 Finally, the authors express their wish to live as refugees in the State party and to contribute to its education. They allege that Turkey has not provided them with any documents.<sup>14</sup> They also refer to human rights abuses of tens of thousands of educators working in Turkey, allegedly reported by the United Nations, by the European Union, by Amnesty International and by other human rights organizations.<sup>15</sup> The authors therefore believe that they and their families will be in danger if they return to Turkey, hence they seek asylum in the State party.<sup>16</sup>

## Issues and proceedings before the Committee

### *Consideration of admissibility*

6.1 Before considering any claims contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether it is admissible under the Optional Protocol.

6.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

6.3 The Committee notes the State party's submission that the authors have failed to exhaust domestic remedies regarding their claims, because their requests are awaiting a final determination and the proceedings they initiated in 2016 are still pending. The Committee further notes the authors' claim about the lack of an effective domestic remedy that would allow them to contest the presidential decree by which their expulsion was ordered. In that regard the Committee observes that the new Asylum Law No. 10/15 was promulgated in June 2015 but has not yet been brought into force, while the previous system for determination of refugee status has been discontinued, leaving a gap in the legal system for the determination of claims of refugee status. The Committee recalls that in its 2019 concluding observations on the second periodic report of Angola, it expressed regret as to the lack of implementation mechanisms for the law on the right to asylum and refugee status adopted in 2015, including the lack of asylum procedures (CCPR/C/AGO/CO/2, para. 39). In view of the lack of any explanation or other relevant information provided by the State party on this matter, the Committee concludes that the State party has failed to demonstrate the existence of any domestic remedies available for contesting an expulsion decree in order to enable the authors to assert their rights under the Covenant. The Committee considers therefore that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the communication.

6.4 The Committee takes note of the authors' claims under article 14 of the Covenant that if returned to Turkey, they would face the risk of being subjected to an unfair trial, convicted, based on their open association with the Gülen movement, and arbitrarily detained and ill-treated. The Committee considers, however, that these claims cannot be dissociated from

<sup>14</sup> Without giving details, they submit that the children of three families born in Angola have not been given passports by the Embassy of Turkey in Angola. The passports of five children of two families have also expired and the validity of the passports of other children will expire soon as well.

<sup>15</sup> No further details have been provided.

<sup>16</sup> While the present Views were being finalized, the authors indicated that there had been no improvement in their situation. They alleged that the National Council for Refugees had still not registered the case of the Turkish teachers and that their own cases had been pending for more than three years. While acknowledging that the Angolan authorities allowed them to work, their passports were still at the immigration service and the only legal documents they had were the UNHCR protection letters. However, if, for instance, they wished to go to the bank they needed to show a passport with a valid visa and they had not been able to travel for the previous four years.

those presented under article 7 of the Covenant and will therefore examine them under that article and not under article 14.

6.5 The Committee considers that the authors' claims under articles 7 and 13 of the Covenant have been sufficiently substantiated for purposes of admissibility. The Committee thus declares these claims admissible and proceeds with their examination of the merits.

*Consideration of the merits*

7.1 The Committee has considered the present communication in the light of all the information made available to it by the parties, as required under article 5 (1) of the Optional Protocol.

7.2 The Committee notes that the State party has not replied to the authors' claims concerning the merits of the case. In the absence of any explanations from the State party in that respect, due weight must be given to the authors' allegations, provided they have been sufficiently substantiated.

7.3 The Committee notes the authors' claim that deporting them and their families to Turkey would expose them to a risk of irreparable harm, in violation of article 7 of the Covenant. The Committee also notes the authors' argument that they and their families would face persecution by the Turkish authorities as a consequence of their real or perceived association with the Gülen movement.

7.4 The Committee recalls its general comment No. 31 (2004), in which it refers to the obligation of States parties not to extradite, deport, expel or otherwise remove a person from their territory when there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated by articles 6 and 7 of the Covenant (para. 12). The risk must be personal<sup>17</sup> and there is a high threshold for providing substantial grounds to establish that a real risk of irreparable harm exists.<sup>18</sup> Thus, all relevant facts and circumstances must be considered, including the general human rights situation in the author's country of origin.<sup>19</sup> The Committee also recalls that it is generally for the organs of States parties to examine the facts and evidence of the case in question in order to determine whether such a risk exists,<sup>20</sup> unless it can be established that the assessment was clearly arbitrary or amounted to a manifest error or denial of justice.<sup>21</sup>

7.5 The Committee notes that in the present case, the State party has not demonstrated that the administrative and/or judicial authorities have conducted an individualized assessment of the authors' cases in order to determine whether there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated by article 7 of the Covenant, if the authors and their families are removed from Angola. According to the State party's observations, almost two years after initiating proceedings against the authors for their removal from Angola there has been no decision in their case by the National Council for Refugees. The Committee recalls that in its 2019 concluding observations on the second periodic report of Angola, it expressed concern about reports of mass expulsions of migrants and asylum seekers, including those in need of international protection, without the necessary individual assessments being carried out (CCPR/C/AGO/CO/2, para. 39).

7.6 The Committee recalls that States parties should give sufficient weight to the real and personal risk that a person might face if deported and considers that it is incumbent upon the State party to undertake an individualized assessment of the risk that the authors and their families would face if they were returned to Turkey. In the absence of any apparent assessment that takes into due consideration the consequences of the authors' personal and family situation in their country of origin, the Committee considers that the State party has

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<sup>17</sup> See *K. v. Denmark* (CCPR/C/114/D/2393/2014), para. 7.3, and *P.T. v. Denmark* (CCPR/C/113/D/2272/2013), para. 7.2.

<sup>18</sup> See *X v. Sweden* (CCPR/C/103/D/1833/2008), para. 5.18.

<sup>19</sup> *Ibid.*

<sup>20</sup> See *Pillai et al. v. Canada* (CCPR/C/101/D/1763/2008), para. 11.4, and *Z.H. v. Australia* (CCPR/C/107/D/1957/2010), para. 9.3.

<sup>21</sup> See, for example, *K. v. Denmark*, para. 7.4.

failed to assess the authors' real, personal and foreseeable risk of returning to Turkey in the light of its non-refoulement obligations under article 7 of the Covenant.

7.7 The Committee then notes the authors' uncontested claim under article 13 of the Covenant that they have not had the opportunity to challenge the decision on their deportation. The Committee recalls that article 13 of the Covenant provides that: "An alien lawfully in the territory of a State party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority."

7.8 The Committee first notes that it is not in dispute that the authors were "lawfully in the territory" of the State party. It then recalls its general comment No. 15 (1986), in which it refers to the obligation of States parties to give an alien full facilities for pursuing his or her remedy against expulsion so that this right will, in all the circumstances of his or her case, be an effective one (para. 10). In the circumstances of the present case, the Committee notes that the authors were not informed about the reasons for their expulsion and were not given an effective remedy to challenge their expulsion, to submit arguments against their expulsion and to have their case reviewed by a competent authority.<sup>22</sup> The Committee further notes that, even if the presidential decree issued on 3 October 2016 invokes the Constitution, the State party has not shown that there were compelling reasons of national security to deprive the authors of access to a remedy.<sup>23</sup>

7.9 Furthermore, the Committee notes that in the presidential decree the expulsion of all Turkish citizens affiliated with the school Colégio Esperança Internacional was ordered. In that connection, the Committee recalls its general comment No. 15 (1986), in which it states that article 13 of the Covenant entitles each alien to a decision in his or her own case and hence article 13 would not be satisfied by laws or decisions providing for collective or mass expulsions (para. 10). Accordingly, the Committee is of the view that the presidential decree issued on 3 October 2016 in relation to the authors collectively, with no consideration of individual cases and the lack of an effective remedy for the authors to challenge their expulsion, to submit arguments against their expulsion and to have their case reviewed by the competent authority, amounts to a violation of article 13 of the Covenant.

8. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the authors' removal to Turkey, if implemented in the absence of a procedure which guarantees a proper assessment of the real and personal risk that a person might face if deported, would violate the rights of the authors and their families under articles 7 and 13 of the Covenant.

9. In accordance with article 2 (1) of the Covenant, which establishes that States parties undertake to respect and to ensure to all individuals within their territory and subject to their jurisdiction the rights recognized in the Covenant, the State party is under an obligation to proceed to a review of the authors' cases, taking into account the State party's obligations under the Covenant and the Committee's present Views. The State party is requested to refrain from expelling the authors and their families until their request for asylum is properly considered. The State party is also under an obligation to take all the steps necessary to prevent similar violations from occurring in the future, including by ensuring the prompt implementation of the law on the right to asylum and refugee status and by putting in place fair and effective asylum procedures offering effective protection against refoulement (CCPR/C/AGO/CO/2, para. 40).

10. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy if a

<sup>22</sup> See *Giry v. Dominican Republic* (CCPR/C/39/D/193/1985), para. 5.5, and *Ahani v. Canada* (CCPR/C/80/D/1051/2002), para. 10.8.

<sup>23</sup> See *Hammel v. Madagascar* (CCPR/C/29/D/155/1983), para. 19.2.

violation has been established, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views and disseminate them widely in the official languages of the State party.

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