



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

Distr.: General  
23 January 2017

Original: English

**Committee against Torture**

**Decision adopted by the Committee under article 22 of the  
Convention, concerning communication No. 686/2015\*, \*\***

<i>Communication submitted by:</i>	X (not represented by counsel)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Switzerland
<i>Date of complaint:</i>	2 June 2015 (initial submission)
<i>Date of present decision:</i>	5 December 2016
<i>Subject matters:</i>	Torture in detention; non-refoulement
<i>Procedural issues:</i>	Exhaustion of domestic remedies
<i>Substantive issues:</i>	Torture or cruel, inhuman or degrading treatment; obligation of the State party to proceed to a prompt and impartial investigation; protection against all forms of intimidation for reporting acts of torture; prohibition of other acts committed by public officials; right to redress
<i>Articles of the Convention:</i>	1, 6, 9, 11 and 16

1.1 The complainant is X, a national of Turkey who was granted refugee status by Switzerland in 2002. He is currently detained, following a criminal conviction handed down on 23 February 2010. He claims that Switzerland has violated his rights under articles 1-9, 11-14 and 16 of the Convention. The complainant is not represented by counsel. The State party made a declaration under article 22 of the Convention on 22 December 1986.

1.2 On 17 June 2015, the Special Rapporteur on new communications and interim measures registered the complaint and granted interim measures to the complainant, requesting the State party not to deport him to Turkey while his communication was under review by the Committee.

\* Adopted by the Committee at its fifty-ninth session (7 November-7 December 2016).

\*\* The following members of the Committee participated in the examination of the present communication: Essadia Belmir, Alessio Bruni, Felice Gaer, Abdelwahab Hani, Claude Heller Rouassant, Jens Modvig, Ana Racu, Sébastien Touzé and Kening Zhang.

GE.17-00971(E)



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1.3 On 10 March 2016, at the request of the State party, the Committee, acting through its Special Rapporteur on new communications and interim measures, decided to examine the admissibility of the communication separately from the merits.

#### **Facts as presented by the complainant**

2.1 The complainant alleges that he was banned from the University of Inonu, in Turkey, and that he was detained several times because of his political activities. On 13 October 2000, he was arrested and transferred by the anti-terrorism police of Gebze to the Kocaeli anti-terrorism department, where he was tortured for three days. Upon judicial order, he was placed in isolation in the special prison of Gebze, where he stayed for 40 days, during which time he was tortured. He further claims that he was released after his family talked to the judicial authorities.<sup>1</sup> He then fled to Switzerland. In January 2001, he applied for asylum, which he was granted in 2002.

2.2 The complainant was arrested on 24 June 2009, accused of the rape of a minor.<sup>2</sup> He maintains that before his arrest he was interrogated by the Swiss police and secret service on several occasions because of his links to the November 2003 attacks in Istanbul. He was allegedly taken in for interrogation several times in the middle of the night.<sup>3</sup>

2.3 The complainant claims that following his arrest and before being put on remand he was tortured by the Swiss police in a secret location. He indicates that he was tortured with electric shocks to his penis and nipples, sprayed with cold water from a high pressure hose, hanged and repeatedly beaten. He also alleges that he was forced to listen to satanic music, watch pornographic films and masturbate while being recorded with a video camera, and that he was deprived of food and water and given substances that gave him hallucinations.

2.4 He further claims that, after several days of torture, he was taken before the pretrial judge, in the Public Prosecutor's Office located in the Palace of Justice of Lugano. He also claims that the judge falsified the place and date of the interview mentioned in the detention report to hide information on the days during which the complainant was subjected to torture.<sup>4</sup> The complainant alleges that there is a contradiction in the information, since the pretrial judge's report is dated 25 June 2009 and the date in the police report is 26 June 2009. He considers that this demonstrates that either the pretrial judge made her report on 25 June 2009 without having before her the police report, or that he was taken before the pretrial judge on 26 June 2009. The Attorney General attributes the contradictions to a mistake in the stamp on the report, as all its other pages are dated 25 June 2009. In a letter dated 30 June 2010, the pretrial judge confirmed that the pretrial interview took place in the Public Prosecutor's Office in Lugano and qualified the contradiction between the dates as a mistake. In a letter dated 3 November 2011, the Attorney General of the Canton of Ticino sent a letter to the complainant declaring that the arrest report had been written on 26 June 2009 and had been received on the same day.

2.5 The complainant asserts that on 26 June 2009 he was held in preventive detention in La Farera prison, Ticino Canton. He claims that the prison staff hid the injuries caused by the Swiss police during his detention. He notes that he was not visited by a doctor or taken to the hospital during his stay at La Farera, even though the pretrial judge had written in her report that the complainant should be taken to the hospital after being interrogated.

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<sup>1</sup> No further information has been provided.

<sup>2</sup> He was sentenced under article 189, section 1, of the Swiss Criminal Code of 1937.

<sup>3</sup> No further information has been provided.

<sup>4</sup> The complainant has provided the copy of a page of the detention report in which it is stated that the interview took place in Cadro, Switzerland, on 25 June 2009.

2.6 On 20 August 2009, the complainant was allegedly forced to sign a statement declaring himself guilty of all the charges presented against him. On 21 August 2009, the public prosecutor agreed to have him examined by a psychiatrist. The complainant told the psychiatrist that he had pleaded guilty for fear of being subjected to further acts of torture and solitary confinement. The complainant alleges that, according to the psychiatrist's report, he was suffering from serious psychological problems, including hallucinations caused by the isolation he had been subjected to, and she prescribed him the antipsychotic Zyprexa. The complainant claims that the psychiatrist's report had been amended to read that the Chief of the prison's psychiatry service had prescribed the medicine. The complainant further maintains that on 25 August 2009 he was allowed by the public prosecutor to receive visits from his lawyer and to call him. However, his lawyer only visited him during his detention at La Farera and did nothing regarding the torture he had suffered, even when the police threatened him in his presence.

2.7 The complainant asserts that on 10 July 2010 he complained about his conditions of detention and about the fact that he had not been seen by a doctor. On 11 July 2010, he was seen by a specialist. The complainant claims that the doctor withheld important information about the torture he had suffered and that his request to be examined by another doctor was never addressed by the Public Prosecutor's Office.

2.8 The complainant alleges that on 23 February 2010 the Cantonal Criminal Court in Lugano convicted him to six years of imprisonment for crimes he did not commit. He considers that various irregularities took place during the proceedings. The Public Prosecutor's Office requested that an expert psychiatrist write a report; that report contradicted the one dated 21 August 2009. Both reports were reviewed by yet another expert, who indicated that an additional psychiatric report was necessary. However, the complainant's lawyer refused to allow that expert to participate in the procedure.

2.9 The complainant submitted a complaint to the former Prosecutor General of Ticino alleging violations of several of his rights. He alleges that he was then taken to a secret location, where he was tortured and forced to write an appeal pleading guilty and asking for a reduction in his prison term. On 10 April 2010, he sent an application to the High Court of Cassation, in which he explained that he had submitted the appeal under torture. He also asked for a lawyer and sent another complaint about the torture to the Attorney General of Ticino. He then had a telephone conversation with the president of the High Court of Cassation, who assigned him a lawyer.

2.10 On 30 June 2010, the complainant's lawyer submitted an appeal to the High Court of Cassation. The lawyer entered a guilty plea on his behalf and asked for a reduction in the prison term without his consent. On the same day, the lawyer decided not to represent his client anymore and informed him of his decision on 6 July 2010. The complainant therefore filed a complaint before the Ticino Public Prosecutor's Office against the lawyer and on 7 July 2010 sent a registered letter to "the higher court" rejecting the appeal that had been submitted, mentioning again the acts of torture he had been subjected to by Swiss State agents. The complainant received a letter from "the higher court", with the public prosecutor's observations against the appeal submitted by the lawyer, and a request for the complainant's observations on the matter. Instead of replying to the request, on 29 July 2010 the complainant sent a certified letter to the President of "the higher court" denouncing the situation and asking for his acquittal. However, on 30 September 2010, the "higher court" took its decision based on the appeal submitted by the lawyer. In November 2010, the complainant submitted another complaint to the Prosecutor General of Ticino and to the Council of Magistrates of Ticino, but he never received a reply.

2.11 On 16 January 2011, the complainant requested information from the director of La Farera about the imprisonment regime to which he was being subjected. On 19 January 2011, he was informed that he had been placed under a special regime, in compliance with

article 27 of the prison rules. Under that article, prisoners were entitled to walk for one hour each day as exercise. The complainant claims that, contrary to what the deputy director of La Farera had declared on 28 February 2011, he had been confined to his cell 24 hours a day. The complainant reported to the government of Ticino that he was in solitary confinement 24 hours a day. On 6 July 2012, the justice division of the Ticino department of institutions replied with a letter declaring that it was too late to investigate the complainant's conditions of imprisonment and that the date on which he was supposed to have started walking for one hour as exercise with other prisoners would not be modified. The complainant indicates that he sent letters to the Swiss authorities to alert them to the solitary confinement conditions in La Farera but that his complaints were not addressed.

2.12 In April 2011, the complainant started a hunger strike to denounce the lack of response to his complaints and the ongoing prison conditions. The Attorney General of Ticino therefore telephoned the complainant and informed him that the Public Prosecutor's Office would examine his complaint. That same day, the prosecutor sent a letter to the complainant confirming that such measures would be taken. However, the complainant claims that he never received any notification of a decision regarding his complaint. He further asserts that in May 2011, after several protests, the Attorney General of Ticino went to La Stampa prison to talk to him. The complainant claims that he was interrogated under irregular conditions: he was not represented by counsel and was threatened and the prosecutor did not draft a written statement of the interrogation. The complainant filed a complaint in that regard. On 10 May 2011, the Attorney General of Ticino sent him a letter stating that the Public Prosecutor's Office had no competence with regard to his claims of torture, as such complaints would constitute an "application for revision".

2.13 On 4 April 2013, the complainant was transferred from La Stampa to the high security prison in Bochuz, in the Canton of Vaud. During his imprisonment, he gave information in electronic format to Swiss agents at La Stampa and made a list of the documents he had in his cell before being transferred. He alleges that those documents contained evidence that he was innocent and that he had suffered grave human rights violations by Swiss agents. Before leaving La Stampa, the complainant gave a copy of the list to the prison authorities and requested to have all his documents transferred. However, he never received them. The authorities of Bochuz prison declared that they never received the documents and sent a letter to the authorities in Ticino. On 2 August 2013, the deputy director of La Stampa sent a letter to the deputy director of the prison in Bochuz declaring that the documents were in a hard drive that was being held by the Lugano Public Prosecutor's Office because of the criminal investigation against the complainant initiated on 20 April 2013 by La Stampa authorities. After receiving the letter, the complainant asked the deputy directors of both prisons to find the originals of the documents, but he never received them.

2.14 On 26 June 2014, the complainant was transferred back to La Stampa. Before the transfer, he prepared a list of documents containing information about the unlawful interrogations and acts of torture he had suffered. He was told by the prison official responsible for his transfer that the documents would be sent immediately. However, he never received them. He filed a complaint about the retention of the documents but did not receive a reply. He states that during his transfer he was taken in a van to Lausanne police station, where he was beaten to force him to write a statement withdrawing the declarations he had sent to the Swiss authorities. He further alleges that "a group of persons" took him to a place where he was injected with a substance to make him weak. He alleges that his hands were tied and that he was burned under the nipple. He also claims that the persons who had taken him had threatened to kill his relatives.

2.15 The complainant asserts that when he arrived at La Stampa he declared that he had been tortured during his transfer and had shown his injuries to the prison authorities, who

did nothing. The guardian wrote on the prison entry report that the complainant had declared that he was in good health. The complainant claims that the prison authorities tried to force him to sign the report, but he refused and wrote on it: "I have been tortured, I don't have good health".

2.16 On 27 June 2014, the complainant had a meeting with a member of the management of the prison, to whom he showed his injuries. However, no measures were taken to investigate the alleged torture. On 30 June 2014, he visited the prison's medical service, where he again showed his wounds, but the doctor there did nothing. The complainant asked for his clinical file, but the medical service staff refused to provide it. He then submitted another application to the Public Prosecutor's Office and the prison's management to be seen by a doctor. On 1 and 4 July 2014, the complainant had meetings with members of the prison's management and asked for a doctor. On 8 July 2014, the complainant's brother went to the Public Prosecutor's Office requesting the intervention of a doctor to treat the complainant's injuries. On 8 July 2014, the doctor at the prison's medical service attended the complainant but stated that the complainant had not informed him about the allegations of torture during his previous visit on 30 June 2014.

2.17 The complainant states that during his stay in La Stampa he was locked up several times in a "blue cell", without clothes, as a disciplinary measure. He indicates that the cell contained a machine that was supposed to function as an air conditioner. He claims that the machine made an unbearable noise that disturbed prisoners' sleep and that, when it was switched off, it was impossible to breathe. He further asserts that during his stay in the "blue cell" he was interrogated several times by the Swiss police, was forced to listen to satanic music and was not allowed to sleep. The complainant also states that on 22 December 2014 the management of La Stampa wrote a letter to judge E.M., referring to the complainant's statement regarding "750 Kg of C-4" during the interrogation carried out by a police officer and during which he was not represented by a lawyer.

2.18 The complainant maintains that on 29 December 2014 he received a communication from the director of La Stampa regarding the submission of a request to be transferred to the Thorberg high security prison, in the Canton of Bern, to which the judge had previously agreed. He claims that on 30 December 2014 the decision to have him transferred was taken, disregarding his right to a defence.

2.19 On 5 January 2015, the complainant was transferred to Thorberg prison. During the transfer, he was taken to the central police station in Bern, where he was burned again under the nipples. He also claims that his mouth and nose were covered with a tissue soaked with a substance, that he was injected with a substance that made him feel weak and that he was made to lie or sit on the floor. His head was covered, his hands and feet were tied, and he was taken to a place where he remained tied to a chair. The complainant further asserts that the prison authorities tried to force him, by making threats, into signing a statement declaring that what he had declared to the authorities was not true and that after completing his sentence he would like to return to Turkey. The complainant states that upon his arrival in prison he requested the prison director to investigate his allegations of torture. On 6 January 2015, a doctor visited him but he just took photographs of his injuries. On the same date, the complainant talked to the prison psychiatrist about the acts of torture he had suffered.

2.20 The complainant further notes that on 14 January 2015 he sent a letter to the President of Switzerland, Simonetta Sommaruga. In that letter he referred to the crimes allegedly committed by Swiss officials against him, to which no answer was given. On 16 February 2015, he was visited by the public prosecutor Thomas Perler.

2.21 The complainant alleges that on 17 February 2015 he was taken to the Embassy of Turkey and was threatened with being bitten by a dog. He also argues that inside the

Embassy he was interrogated regarding his participation in terrorist attacks, especially the November 2003 attack in Istanbul.

2.22 The complainant indicates that on 7 April 2015 the public prosecutor sent him a document in German and French, neither of which he claims to understand. After the document was translated, however, he came to the conclusion that it was a judicial decision against which he had 10 days to file an appeal.

2.23 On 28 May 2015, the complainant sent additional information to the Committee indicating that he had received a letter dated 27 May 2015 from the judge, by which he was informed that he would be deported to Turkey on 18 June 2015. He claims that his deportation should not take place as his appeal, set for 28 June 2015, before the Federal Criminal Tribunal against the decision of the Cantonal Criminal Court of Lugano of 23 February 2010, remained pending.

2.24 The complainant states that his political asylum was cancelled by the Federal Administrative Tribunal, yet notes that he still has refugee status in Switzerland.

2.25 The complainant indicates that he has not exhausted all available domestic remedies but that he cannot do so because for five years the authorities of the State party have not replied to any of his complaints. The complainant further submits that his allegations are not being examined by any other procedure of international investigation or settlement.

### **The complaint**

3.1 The complainant claims a violation of his rights guaranteed by articles 1-9, 11-14 and 16 of the Convention, without specifying how his rights protected under these articles have been violated.

3.2 The complainant alleges in general terms that he has been submitted to psychological and physical torture by the Swiss authorities, whose aim was allegedly to obtain information and confessions about the terrorist acts he is suspected of having committed. He further states that those acts of torture have been inflicted by Swiss agents since his detention started on 24 June 2009. He also claims that he was locked up in isolation cells and in a "blue cell" during his stays at La Farera and La Stampa, and that the State party violated his "health rights" during his preventive detention at La Farera, since he was not visited by a doctor.

3.3 The complainant asserts that despite the claims he submitted the authorities of the State party have not taken any measures to stop the use of torture against him. He further claims that he was not assisted by a lawyer during the irregular interrogations he went through. He asserts that his lawyer submitted an appeal against his will to the High Court of Cassation, based on statements he had made under torture.

3.4 The complainant submits that, despite his status as a political refugee, he was taken to the Embassy of Turkey, where he was unlawfully interrogated. He claims that if he is returned to Turkey he will face a real risk of death or torture, based on his political problems and on the threats he received when he was imprisoned there. Therefore, he alleges that the State party would violate article 3 of the Convention in the event of his deportation to Turkey.

3.5 The complainant submits that Switzerland is violating his rights by not including torture as a criminal offence.

3.6 He further claims that, despite the reports he sent to the authorities of the State party and despite the injuries he showed to the prison staff and to prosecutors on various occasions, no action has been taken and his allegations have not been investigated. He also

submits that he has been tortured and intimidated as a result of his complaints to the authorities.

#### **State party's observations on admissibility**

4.1 On 17 August 2015, the State party contested the admissibility of the complaint on the grounds of non-exhaustion of domestic remedies. The State party further indicated that the complainant has not proved the risks he may suffer if deported to Turkey.

4.2 The State party challenges the claim that the complainant exhausted all domestic remedies regarding the various acts of torture and ill-treatment alleged by the complainant. It refers to the legal framework related to torture and indicates that even if torture is not included in the Criminal Code it is covered by other crimes and that the competent authorities are obliged to independently and impartially investigate any complaints against law enforcement officers and prison staff.

4.3 In relation to the complainant's allegations that he was the victim of torture and ill-treatment during the criminal proceedings, the State party asserts that the allegations were examined by the Court of Assizes of Ticino and by the Appeals Court of Ticino during the criminal proceedings resulting in the conviction of the complainant to six years of imprisonment. The State party indicates that the complainant has not exhausted all available domestic remedies, as he did not appeal the decision of the Appeals Court of Ticino of 30 September 2010 to the Federal Tribunal.<sup>5</sup> Furthermore, it points out that, as indicated by the Cantonal Criminal Court of Lugano in its decision of 23 February 2010, the medical experts who treated the complainant during his preventive detention were not informed by him nor did they notice any sign of torture or ill-treatment.<sup>6</sup> The State party further indicates that the complainant's claims were reviewed by the Appeals Court of Ticino, following the complainant's request to reopen his case. The court rejected the request on 17 June 2015, as it considered that the complainant's allegations that he was tortured to obtain a confession were based solely on his declarations, which he had made to avoid being extradited. The court further considered that the case could be reopened only upon the presentation of new facts or evidence, which was not the case for the complainant, in so far as his allegations of torture related to events that had occurred prior to the criminal proceedings, during which he did not mention anything in that regard. Thus, the State party considers that domestic remedies were not exhausted regarding the allegations of torture during pretrial detention.

4.4 The State party also refers to the allegations of torture resulting from the solitary confinement imposed on the complainant as a disciplinary measure. It submits that the decisions to put the complainant in solitary confinement dated 26 April 2011, 4 August 2011, 21 March 2013, 21 July 2014, 29 July 2014 and 25 November 2014 were for a short period of time,<sup>7</sup> which is compatible with the views of the National Commission for the Prevention of Torture.<sup>8</sup> It further submits that all disciplinary decisions indicated the possibility of appeal, providing information on the corresponding deadline. Nevertheless, the author has not appealed such decisions to the Federal Tribunal, which is the highest degree of jurisdiction in charge of controlling the constitutionality of disciplinary

<sup>5</sup> The State party indicates that this possibility was stated in the last page of the court's decision.

<sup>6</sup> The ruling indicates that psychologists who treated the complainant during that period met him several times, but no mention was made of possible acts of torture in their reports.

<sup>7</sup> The disciplinary measures were between three and eight days of solitary confinement.

<sup>8</sup> The State party quotes a report, available in Italian only, from the National Commission for the Prevention of Torture according to which solitary confinement not exceeding a period of 10 days is acceptable. See [www.nkvf.admin.ch/dam/data/nkvf/Berichte/2011/tessin/120830\\_ber\\_la\\_farera.pdf](http://www.nkvf.admin.ch/dam/data/nkvf/Berichte/2011/tessin/120830_ber_la_farera.pdf), para. 49.

measures.<sup>9</sup> For this reason, the State party considers that domestic remedies have not been exhausted.

4.5 With respect to allegations of torture during the complainant's transfer between the Cantons of Vaud and Ticino on 26 June 2014, the State party asserts that the Public Prosecutor immediately reacted to the complainant's allegations in so far as, following his complaint of 4 July 2014, he requested the University of Varese, in Italy, to establish the causes of the complainant's injuries.<sup>10</sup> Based on the university's report, the Public Prosecutor decided, on 25 August 2014, that it was not necessary to initiate an investigation (decision of non-consideration).<sup>11</sup> The State party further argues that the complainant did not appeal the Public Prosecutor's decision and that he did not, therefore, exhaust all available domestic remedies.<sup>12</sup>

4.6 Concerning the complaint dated 11 January 2013 regarding an alleged aggression of the complainant by a prison guard on 12 December 2012, the State party submits that, after having examined the internal reports from La Stampa prison<sup>13</sup> and a video, the Public Prosecutor decided on 31 January 2013 that a criminal investigation should not be opened (decision of non-consideration). The complainant appealed that decision but did not do so properly. He was then given the possibility to improve his appeal but did not do so.<sup>14</sup> On 8 April 2013, the Appeals Court of Ticino decided that a criminal investigation should not be opened (decision of non-consideration). As the complainant had not complied with the conditions established by the law to appeal the decision, the State party considers that the complainant has not exhausted all available domestic remedies regarding those allegations.

4.7 With respect to the complainant's allegations of torture during his transfer between the Cantons of Ticino and of Bern on 5 January 2015, the State party asserts that the Public Prosecutor of Bern-Mittelland conducted an exhaustive inquiry, during which the complainant was interrogated on two occasions. Another detainee was also interviewed, as a witness, but he said that the complainant had never mentioned any mistreatment. In addition, the complainant did not report any torture or ill-treatment during the interview he participated in upon arrival at Thorberg prison. The State party further indicates that, in the medical report issued on 5 January 2015 by the Thorberg prison medical services, it was only noted that the complainant had a "superficial injury" on the left side of his chest<sup>15</sup> but that his explanations on how he was injured were not compatible with the nature of the injury. Therefore, the Public Prosecutor considered that there were insufficient elements to open a criminal procedure for physical harm, threats or abuse of power and issued a decision of non-consideration on 1 April 2015. On 22 June 2015, the Supreme Court of Bern rejected the appeal of that decision. The State party submits that the decision of the Supreme Court of Bern, of which the complainant was notified on the same date and published on 8 July 2015 in the Official Gazette of Bern, could have been appealed before the Federal Tribunal. However, it states that "it ignores" if the complainant has appealed the decision and considers that domestic remedies have not been exhausted.

4.8 In relation to the complainant's allegations that he was hit and threatened with a dog by the prison guards because he refused to go to the Embassy of Turkey,<sup>16</sup> the State party indicates that on 29 April 2015 the Public Prosecutor decided not to open a criminal

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<sup>9</sup> The State party quotes articles 113 ff. of the Law on the Federal Tribunal of 17 June 2005.

<sup>10</sup> A copy of the medical report dated 12 July 2014 has been provided, in Italian only.

<sup>11</sup> See article 310 of the Swiss Code of Criminal Procedure.

<sup>12</sup> The State party provides a letter from the Public Prosecutor, in Italian only, dated 27 July 2015 indicating that the Public Prosecutor's decision dated 25 August 2014 had not been appealed.

<sup>13</sup> A letter from La Stampa's director and the relevant internal reports is provided, in Italian only.

<sup>14</sup> No further details have been provided.

<sup>15</sup> Photographs of the injury have been provided.

<sup>16</sup> The date of the incident has not been indicated.



investigation (decision of non-consideration) because the complainant's allegations were contradictory and not credible. That decision was notified to the complainant on 4 May 2015, who did not appeal. Therefore, the State party considers that the complainant did not exhaust all available domestic remedies.

4.9 Regarding the complainant's removal to Turkey, the State party submits that the Federal Migration Office revoked the complainant's residence permit on 27 November 2013.<sup>17</sup> The State party submits that the complainant failed to appeal that decision to the State Council of Ticino even though the complainant states that he did so on 10 December 2014. The State Council never received such an appeal,<sup>18</sup> despite having given the complainant additional deadlines for submitting it. Therefore, the State Council issued a decision of non-consideration on 2 September 2014. The complainant did not appeal that decision to the Federal Administrative Tribunal. Consequently, the State Secretariat for Migration decided on 4 December 2014 to ban the complainant's entry to Switzerland.<sup>19</sup> That decision, which could have been appealed within 30 days, was notified to the complainant on 9 December 2014; the complainant did not appeal the decision. Instead, he requested access to his file on 7 January 2015. On 2 February 2015, the complainant submitted an appeal to the Federal Administrative Tribunal that was rejected on 23 February 2015 because it was presented after the deadline. The State party therefore considers that domestic remedies were not exhausted.

4.10 The State party also submits that the complainant's allegations under article 9 of the Convention are inadmissible *ratione materiae* because that article requires cooperation between States under circumstances that are not present in the present case.

4.11 In view of the foregoing, the State party requests the Committee: (a) to lift the interim measures; (b) to declare the communication inadmissible for non-exhaustion of domestic remedies; and (c) to declare the allegations related to article 9 of the Convention inadmissible *ratione materiae*.

#### **Complainant's comments on the State party's observations**

5.1 On 20 July, 11 August and 5 October 2015, the complainant submitted information to the Committee on the "sabotage" of his correspondence by the Swiss authorities. He asserts that his signature has been forged several times to show that he received certified correspondence,<sup>20</sup> which he never did, including court notifications; that the envelopes he sent were filled with blank pages instead of his actual complaints; and that he received envelopes containing blank papers or incomplete correspondence. He states that he has filed complaints regarding the acts of "sabotage" but that the authorities have taken no action.<sup>21</sup> Taking into account the alleged sabotage, he fears that he can be deported to Turkey before the Committee issues a decision on his case. The complainant also indicates that he was

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<sup>17</sup> The State party has provided the text of the decision, in Italian only. On 23 March 2012, the Federal Migration Office revoked the complainant's residence permit. The decision was appealed before the Federal Administrative Tribunal, which partially rejected it and requested the Office to present a report on the risks the complainant would be exposed to if returned to Turkey. In that report, which was issued on 17 October 2013, the Office indicated that the complainant was not the object of a search by the Turkish authorities and that he would not currently be exposed to any risk. Following the issuance of the report, the Office decided to definitely cancel the complainant's residence permit on 27 November 2013.

<sup>18</sup> The State Council received only a few blank pages.

<sup>19</sup> The State party has provided the text of the decision, in Italian only.

<sup>20</sup> The complainant has provided three delivery receipts and alleged that the signature that appears on them is not his.

<sup>21</sup> No further information has been provided.

obliged to spend 17 hours a day in a cell with no possibilities of exercising.<sup>22</sup> He further indicates that, despite his reiterated requests to the authorities, he has not been able to talk to a psychologist or a psychiatrist and has not been assigned a defence lawyer.<sup>23</sup>

5.2 On 4 December 2015, the complainant submitted his comments on the State party's observations. However, the envelope received by the Committee only contained the first four pages and blank pages. On 21 December 2015, upon the request of the Secretariat, the complainant submitted the full version of his comments.

5.3 With respect to his transfer between the Cantons of Vaud and Ticino, the complainant challenges the State party's statements in relation to some of the documents from the Public Prosecutor of Ticino.<sup>24</sup> He alleges that the State party mixes up two different proceedings: the proceedings regarding his complaint alleging that he was subjected to torture and ill-treatment during his transfer between Vaud and Ticino Cantons on 26 June 2014, and the proceedings related to the complaint initiated against him on 4 July 2014.<sup>25</sup> He indicates that the file numbers are different<sup>26</sup> and that the decision of non-consideration of 25 August 2014 concerned the proceedings related to the complaint presented against him, not to his complaint of torture, which he presented on 26 June 2014. He also considers suspicious that one of the documents (contained in annex 27) does not identify the person who signed it on behalf of the Public Prosecutor, while all other decisions were signed by the Public Prosecutor with his own name and stamp. Therefore, he considers that the State party's statement that he did not exhaust all available domestic remedies is not correct. He also argues that he did not receive any notification of the decision regarding the handwritten complaint he submitted upon his arrival to La Farera on 26 June 2014 as to the torture he suffered during his transfer between the Cantons of Vaud and Ticino.<sup>27</sup>

5.4 In relation to his transfer between the Cantons of Ticino and of Bern on 5 January 2015, the complainant submits that he appealed the 22 June 2015 decision of the Supreme Court of Bern to the Federal Court.<sup>28</sup> However, on 17 July 2015, he received a letter from the Federal Court indicating that his envelope contained blank papers and that his appeal

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<sup>22</sup> No further information has been provided.

<sup>23</sup> The complainant has provided a copy of a decision of the judge for coercive measures, dated 11 December 2015, which indicates that a lawyer was appointed for the proceedings related to his administrative detention and that he should be notified of that appointment. The complainant submits that when he tried to contact the lawyer, the lawyer denied having been appointed to represent him.

<sup>24</sup> The complainant refers to three documents, contained in annexes, provided by the State party: a document issued by the Public Prosecutor of Ticino, J.N., dated 25 August 2014, in which the Public Prosecutor indicates having issued a decision of non-consideration regarding a complaint against the complainant dated 4 July 2014 (annex 26); a document issued by the Public Prosecutor of Ticino, dated 27 August 2014 (the person who signs is not identified), in which it is indicated that there was a mistake in the heading of the decision dated 25 August 2014, which should have said that the complaint was being submitted against "unknown persons" instead of against "the complainant" (annex 27); and a document issued by the Public Prosecutor of Ticino, J.N., dated 27 July 2015 indicating that the decision adopted by the Public Prosecutor on 25 August 2014 had not been appealed (annex 28).

<sup>25</sup> No further details have been provided.

<sup>26</sup> In annexes 26 and 28 (see footnote 39 above), the file number is 2593/2014; in annex 27, it is 6389/2014.

<sup>27</sup> The complainant states that the document contained in annex 24, dated 4 July 2014, which has been identified by the State party as his complaint regarding the torture he allegedly suffered during the transfer, is not his real complaint. He submits that the document is a request he made to get a medical visit to demonstrate that he had been tortured on 26 June 2014.

<sup>28</sup> The date has not been provided.

could therefore not be considered. He also asserts that he has never signed the declaration indicating that he had been treated well during the transfer.<sup>29</sup>

5.5 Concerning his complaint regarding the aggression by a prison guard on 11 January 2013 at La Stampa, the complainant asserts that he never received a notification regarding the decision of non-consideration adopted by the Public Prosecutor on 31 January 2013 and that, although he managed to appeal that decision to the Court of Appeal of Ticino, he could not do it properly because he never read the decision. He also claims that he never received the decision of the Court of Appeal of Ticino rejecting his appeal on 8 April 2013.

5.6 Regarding the disciplinary measures imposing solitary confinement, the complainant challenges the veracity of some of the facts taken into account by the authorities,<sup>30</sup> asserts he appealed all of them,<sup>31</sup> describes the conditions of solitary confinement as torture<sup>32</sup> and indicates that he was in solitary confinement for 19 days in a row.<sup>33</sup>

5.7 Regarding the State party's observations on his allegations of torture and other violations, including of his right to a fair trial during the criminal proceedings, the complainant reiterates that the Court of Appeal of Ticino did not review them in its decisions of 30 September 2010 and 17 June 2015. Regarding the State party's remark that the medical experts did not notice any sign of torture, the complainant challenges their independence because they are civil servants and it is very unlikely that complaints presented against them could succeed.<sup>34</sup> The complainant further submits that he appealed the decision of the Court of Appeals of Ticino dated 30 September 2010 to the Federal Criminal Court, but that he never received an answer.<sup>35</sup>

5.8 The complainant further indicates that the State party took him illegally to the Embassy of Turkey for interrogation, despite his refugee status. He also asserts that he appealed the decision of the Bern-Mittelland Public Prosecution dated 29 April 2015 to the Supreme Court of the Canton of Bern, regarding his complaint on the mistreatment he suffered during his transfer to the Embassy on 17 February 2015, but he did not receive a reply.

5.9 Concerning his return to Turkey, the complainant submits that he cannot be deported because he still holds refugee status. He reiterates that his criminal case is still pending before the Federal Criminal Court. The complainant further states that he appealed the

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<sup>29</sup> The State party has provided a declaration, in German only, indicating that the complainant did not state that he had been mistreated during the transfer. The complainant notes that he did not sign it and that it only bears the signature of the director of Thorberg prison. According to the same document, the complainant stated that he had been mistreated during his transfer from Vaud to Ticino.

<sup>30</sup> For example, the complainant alleges that the decision of 21 March 2013 contains a lie about an attack on another detainee that the complainant did not commit.

<sup>31</sup> No further information has been provided.

<sup>32</sup> The complainant indicates that he was kept naked in a "blue/yellow" cell several times and that he was placed in another cell (measuring 2.5m by 3m) for "walking" so that, in fact, he was not able to do any exercise.

<sup>33</sup> The complainant was in solitary confinement from 21 to 29 July 2014 (eight days). On 30 July 2014, the confinement was renewed until 5 August 2014 (an additional six days). Immediately after that, the complainant was confined again for five days at la Farera. Therefore, he was in solitary confinement for 19 days in a row. No documents supporting the solitary confinement in La Farera have been provided. The complainant refers to the report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (A/66/268).

<sup>34</sup> No further information has been provided.

<sup>35</sup> No document has been provided to support that affirmation. The complainant does not mention if he appealed the decision of 17 June 2015. He refers to a claim dated 28 May 2015 submitted to the Federal Penal Tribunal, against all the judges of the Court of Appeal of Ticino, allegedly not acted upon by the authorities.

decision revoking his political asylum to the Administrative Federal Court and that, on 28 February 2013, the court rejected his appeal. He has appealed that decision and is still waiting for a reply. Regarding the entry ban imposed on 4 December 2014, he asserts that he did not appeal that decision to the Administrative Federal Court on 2 February 2015, as the State party indicates, but on 10 December 2014, within the deadline. Moreover, he reiterates that he would still be at risk if returned to Turkey, as he has been convicted by a criminal court there and has been tortured several times by Turkish officers. He also mentions that his mental health has been permanently damaged owing to the torture he suffered in Turkey.

5.10 The complainant finally submits that many of the documents he had in Thorberg prison, before being transferred to La Farera on 23 June 2015, were never returned to him.

#### **Additional submissions by the State party**

6.1 On 30 November 2015, the State party informed the Committee that the complainant was being transferred from Realta prison to Lugano to be heard in relation to the extension of his administrative detention.<sup>36</sup> On 21 January 2016, the administrative detention was renewed for six months.

6.2 On 4 February and on 3 and 17 March 2016, the State party expressed concern regarding the security risks posed by the complainant and indicated that, following a psychiatric examination conducted by a specialist, he was diagnosed as schizophrenic and placed in a specialized institution for six weeks.

6.3 On 16 September 2016, at the request of the Committee, the State party provided information regarding the periods during which the complainant was placed in solitary confinement. The State party indicates that, according to relevant legislation,<sup>37</sup> solitary confinement decisions can be appealed to the justice division in Belinzona, that such decisions can be appealed to the Court of Appeals (Corte dei reclami del Tribunale d'appello) and that the court's decisions can be appealed before the Federal Tribunal.<sup>38</sup> The State party further indicates that the complainant only appealed two of the disciplinary decisions imposing solitary confinement on him: those of 26 April 2011 and 4 August 2011. Regarding the first decision, it was appealed by the complainant on 2 May 2011 to the justice division, which rejected the appeal on 26 July 2011. The complainant appealed that decision to the Court of Appeal, which rejected it on 31 October 2011. Both entities considered that the complainant only alleged the violation of his right to be heard and that that right had been respected, as he had been interviewed regarding the incident leading to the solitary confinement. They also considered that, although the complainant had not received the documents he had requested,<sup>39</sup> the authorities could limit prisoners' rights in order to guarantee the normal functioning of the prison and that the public interest of guaranteeing the pacific cohabitation in the prison justified a restriction to the complainant's access to such documents. The complainant appealed the Court of Appeal's decision to the Federal Tribunal, which rejected it on 7 May 2012, as it considered that

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<sup>36</sup> The complainant is currently in administrative detention following a decision taken by the Cantonal Administrative Court of Ticino on 31 August 2015.

<sup>37</sup> The Ticino Rules on the Execution of Criminal Penalties, the Ticino Rules on Detention Facilities, the Swiss Code of Criminal Procedure and the Law on the Federal Tribunal.

<sup>38</sup> The State party indicates that it committed a mistake in its previous submission, in which it stated that the complainant could have appealed the solitary confinement decisions to the Federal Tribunal regarding their constitutionality. It explains that it wrongly made reference to the old legislation on the Federal Tribunal, amended in 2007.

<sup>39</sup> The declarations by the other detainee involved in the fight that led to the solitary confinement.

vague and conflicting arguments could not validly form the basis for an admissible claim.<sup>40</sup> Regarding the solitary confinement decision of 4 August 2011, the State party indicates that the complainant challenged the decision on 5 August 2011, requesting its annulment because it was imposed during Ramadan and because the prison officer had made disproportionate use of force against him. On 29 February 2012, the justice division rejected the appeal, referring to its previous decision of 26 July 2011, in which it denied any access to the documents requested by the complainant in order to avoid conflicts within the prison. The justice division also considered that the complainant's right to be heard had not been violated.

6.4 The State party reports that the complainant did not appeal that decision. With respect to the solitary confinement decisions dated 21 and 29 July 2014, it submits that the complainant sent two letters to the justice division requesting access to the documents related to the matter, without specifically indicating that he was appealing the decisions. On 2 September 2014, the justice division replied stating that it had contacted the prison's management directly and that, given that the complainant had been heard and informed of the accusations made against him on the dates when the disciplinary sanctions were adopted, the complainant's procedural rights had been fully respected and the complainant could appeal the above-mentioned decisions. However, he did not do so on time, as the deadline had already expired.<sup>41</sup>

6.5 The State party further submits that, according to article 31 of the Ticino Rules on the Execution of Criminal Penalties, detainees are informed of their rights, including of the possibility of having a lawyer. It submits that, although article 31 is general in nature, it establishes that the right to contact a lawyer is not restricted when the detainee is in solitary confinement. It also indicates that before solitary confinement decisions are imposed, detainees are heard by prison authorities and a report of the hearing is established. Detainees are not legally represented by a lawyer during such hearings; however, they can request that their lawyer be present.<sup>42</sup> The State party indicates that the complainant has not requested to be represented by a lawyer during the disciplinary hearings or to submit an appeal against the decisions imposing solitary confinement,<sup>43</sup> even though he is fluent in Italian and is fully aware of the possibility of contacting a lawyer.

#### **Additional submissions by the complainant**

7.1 On 4, 18 and 19 January 2014, the complainant reiterated his claims to the Committee.

7.2 On 16 February 2016, the Committee received a submission from the complainant indicating that on 27 January 2016, after the complainant had declared that he would start a hunger strike, 15 prison guards tortured him. The complainant claims that he was taken

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<sup>40</sup> According to the Law on the Federal Tribunal (LTF: RS 173.110) appeals addressed to that Tribunal should explain, even if succinctly, the alleged act that violates the applicant's rights. If this requirement is not fulfilled, the appeal is inadmissible.

<sup>41</sup> A copy has been provided, in Italian only.

<sup>42</sup> The State party refers to a 2014 report by the Swiss Centre of Expertise in Human Rights, according to which it would be desirable for detainees to be systematically legally represented when they are the object of a disciplinary decision imposing solitary confinement, including the possibility of requesting legal aid. Available, in French only, at [www.skmr.ch/frz/domaines/police/publications/detention-protection-juridique.html](http://www.skmr.ch/frz/domaines/police/publications/detention-protection-juridique.html).

<sup>43</sup> The State party refers to the reports by the prison's authorities regarding the decisions imposing solitary confinement. In those reports it is indicated that the complainant was asked whether he understood Italian and whether he needed an interpreter, and that he was then heard in relation to the events causing the disciplinary sanction. He was reminded of his right to remain silent. Copies of the reports have been provided by the State party, in Italian only.

naked to the mountains, where he was submerged in freezing water and beaten, in particular in the kidneys. He states that he was asked to sign a declaration stating that he had not been tortured in Switzerland, that no agents of the United States Central Intelligence Agency had participated in any interrogation in Switzerland or in the Embassy of Turkey and that he would be willing to receive a laissez-passer from the Embassy in order to be deported. He alleges that he was then taken back to the prison, where he was attacked with a taser and was obliged to have a cold shower and to listen to "satanic music". He declares that he was threatened with being killed and that his death would be presented as a suicide. He further states that his entire body was in pain and that there was blood in his urine. He requested to see a doctor but only a nurse came, who took some urine samples but did not report the torture, even though he informed her about it. He was then placed in solitary confinement. On 1 February 2016, he was transferred to the prison located in Zurich airport. He informed the prison authorities upon arrival about the torture he had suffered and requested medical assistance, as well as the possibility to communicate with the prosecutor. On 2 February 2016, he was again placed in solitary confinement, where he stayed until 10 February 2016. He was visited only by two prison psychiatrists, who, he alleges, threatened him. He further indicates that because he has spent a long time in solitary confinement the torture marks have disappeared. He adds that his correspondence continues to be sabotaged. Finally, he claims that no action has been taken regarding his complaints about torture.

7.3 The complainant claims that on 7 March 2016 three prison guards came to his cell and, after insulting him, one of them undid his own trousers' zip and touched his penis while uttering "provocative" words. He mentions that he denounced that event, as well as other violations to his rights<sup>44</sup> to the prison director, but that no action was taken. On 4 and 21 April 2016, the complainant submitted additional information reiterating his previous claims.

### **Issues and proceedings before the Committee**

#### *Consideration of admissibility*

8.1 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.

8.2 The Committee notes that the State party contested the admissibility of the complaint on the grounds of non-exhaustion of domestic remedies. Regarding the author's allegations that he suffered acts of torture during the criminal proceedings (preventive detention and confession under pressure), the Committee takes note of the State party's argument that they were examined by the domestic courts during the judicial proceedings resulting in the conviction of the complainant to six years of imprisonment, and that the complainant failed to exhaust the domestic remedies as he did not appeal the decision of the Court of Appeal of Ticino dated 30 September 2010. The Committee also notes the complainant's assertion that he did appeal the decision of the Court of Appeal of Ticino, but that he never received a reply. The Committee also notes that the complainant has not provided any documentation or information to substantiate his allegations in that regard. The Committee therefore considers that this part of the complaint is inadmissible for lack of substantiation under article 22 (2) of the Convention.

8.3 Regarding the complainant's allegations of solitary confinement amounting to ill-treatment and torture, the Committee notes the State party's assertion that the complainant

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<sup>44</sup> The complainant claims that the water supply in his cell was intermittently cut.

had the possibility to appeal the solitary confinement decisions to the justice division, the Court of Appeal and the Federal Tribunal, and that he only used such remedies with regard to the solitary confinement decisions of 26 April and 4 August 2011. The Committee further notes that the complainant exhausted all available domestic remedies with regard to the decision of 26 April 2011 but that he did not do so for the decision of 4 August 2011, as he only appealed it to the justice division. The Committee considers that the fact that the complainant appealed the decision of 26 April 2011 demonstrates that he had the necessary information to exhaust all available domestic remedies as regards the decision of 4 August 2011, but also all subsequent solitary confinement decisions, i.e. those dated 21 March 2013, 21 and 29 July 2014, and 25 November 2014. The Committee notes that the complainant does not provide any information to the contrary, and therefore concludes that this part of the communication is inadmissible for non-exhaustion of domestic remedies under article 22 (5) (b) of the Convention.

8.4 Regarding the complainant's allegations of ill-treatment and torture during his transfer between the Canton of Vaud and the Canton of Ticino on 26 June 2014, the Committee notes the State party's statement that the Public Prosecutor investigated those allegations, requesting the University of Varese to examine the causes of the complainant's injuries. The Committee also notes that, in view of the conclusions of that examination, the Public Prosecutor decided on 25 August 2014 to suspend the investigation. The Committee further notes that, according to the State party, the complainant did not exhaust all available domestic remedies because he did not appeal that decision. It further notes the author's submission that he did exhaust all available domestic remedies, but also notes that he did not provide any documentation or information to substantiate that affirmation. Therefore, the Committee considers that the information available does not enable it to conclude that the complainant exhausted all available domestic remedies and that his allegations of ill-treatment and torture during his transfer between Vaud and Ticino are inadmissible for lack of substantiation under article 22 (2) of the Convention.

8.5 As regards the complainant's allegations of torture during his transfer between the Cantons of Ticino and of Bern on 5 January 2015, the Committee notes the State party's statement that it "ignores" whether the complainant appealed the decision of the Supreme Court of Bern dated 22 June 2015 confirming the Public Prosecutor's decision of non-consideration. The Committee also notes the complainant's assertion that he appealed that decision to the Federal Tribunal<sup>45</sup> but that on 17 July 2015 he received a letter from the Tribunal indicating that his envelope only contained blank papers and that his appeal could not, therefore, be considered. The Committee notes that the State party does not contest these allegations. However, the Committee also notes that the information provided by the complainant does not enable it to conclude that he had indeed submitted an appeal in due form. Therefore, the Committee considers that this claim is inadmissible under article 22 (2) of the Convention.

8.6 The Committee notes the State party's assertion that the complainant did not appeal the Public Ministry's decision of non-consideration dated 29 April 2015, in relation to his allegations of torture and ill-treatment following his refusal to go to the Embassy of Turkey. The Committee also notes that the information provided by the complainant does not enable it to conclude that he had indeed submitted such an appeal. Therefore, the Committee considers that this claim is inadmissible for lack of substantiation under article 22 (2) of the Convention.

8.7 Concerning the complainant's removal to Turkey and his submission regarding article 3 of the Convention, the Committee takes note of the State party's assertion that the complainant has not exhausted all available domestic remedies, as the appeal of the

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<sup>45</sup> The date of the appeal has not been provided.

complainant's ban from Swiss territory dated 4 December 2014 was submitted after the deadline.<sup>46</sup> The Committee also notes the complainant's affirmation that he has exhausted all available domestic remedies, as he submitted an appeal to the Federal Administrative Tribunal against the ban from Swiss territory within the deadline.<sup>47</sup> The Committee notes that the information provided by the complainant does not enable it to conclude that the appeal was submitted on time. It therefore considers this part of the complaint inadmissible under article 22 (5) (b) of the Convention for non-exhaustion of domestic remedies.

9. The Committee against Torture therefore decides:

(a) That the communication is inadmissible under article 22 (2) and (5) (b) of the Convention;

(b) That the present decision shall be communicated to the complainant and to the State party.

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<sup>46</sup> The State party indicates that the deadline was 26 January 2015, while the author submitted the appeal on 2 February 2015.

<sup>47</sup> The text of the appeal has not been provided.