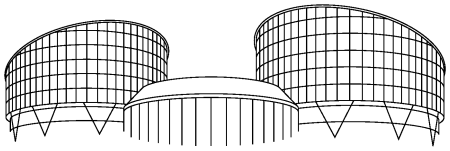

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF X v. THE NETHERLANDS

(Application no. 14319/17)

JUDGMENT

STRASBOURG

10 July 2018

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of X v. the Netherlands,

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Helena Jäderblom, *President,*
Branko Lubarda,
Helen Keller,
Pere Pastor Vilanova,
Alena Poláčková,
Georgios A. Serghides,
Jolien Schukking, *judges,*

and Stephen Phillips, *Section Registrar,*

Having deliberated in private on 19 June 2018,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 14319/17) against the Kingdom of the Netherlands lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Moroccan national, Mr X ("the applicant"), on 21 February 2017. The Vice-President of the Section decided that the applicant's name should not be disclosed to the public (Rule 47 § 4 of the Rules of Court).

2. The applicant was represented by Mr P. Schüller, a lawyer practising in Amsterdam. The Dutch Government ("the Government") were represented by their Agent, Ms B. Koopman, and their Deputy Agent, Ms K. Adhin, both from the Ministry of Foreign Affairs.

3. The applicant alleged that his expulsion from the Netherlands to Morocco would be in violation of his rights under Article 3 of the Convention.

4. On 3 March 2017 the Duty Judge decided to apply Rule 39 of the Rules of Court for a period of four weeks, requesting factual information from the Government and indicating that the applicant should not be expelled to Morocco. On 30 March 2017, after receipt of the information requested, the Duty Judge extended the application of Rule 39 for the duration of the proceedings before the Court. On the same day the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1988 and is currently in the Netherlands.

6. On 6 July 2012 the applicant left his home in Salouin[1] (Morocco), where he had been living with his parents, for the Netherlands. He went to the Netherlands to visit family but overstayed his tourist visa, which was valid until 24 August 2012. During his stay in the Netherlands he lived with his brother and the latter's family in Amsterdam.

A. Criminal proceedings

7. According to an official report (*ambtsbericht*) drawn up by the General Intelligence and Security Service (*Algemene Inlichtingen- en Veiligheidsdienst* – "the AIVD") dated 14 September 2014, information provided by a generally reliable source indicated that a certain Moroccan national residing in the Netherlands, had sworn allegiance to Abu Bakr al-Baghdadi, the Caliph of the so-called Islamic State in Iraq and al Sham ("ISIS"), and that he was trying to obtain a firearm with which to attack the Netherlands police. The information also contained two telephone numbers used by that person. The official report further stated that it appeared from the AIVD's own investigation that the person was the applicant, that he was not registered in the Netherlands and that he did not have a valid residence permit.

8. On 15 October 2014 the applicant was arrested on suspicion of having committed acts in preparation of terrorist offences and placed in police custody. The house where he had been staying was searched by the police, who found and seized notes containing, *inter alia*, instructions on how to make an improvised explosive device (IED) and a written pledge to ISIS. Furthermore, the police seized a computer and found on the applicant's Facebook account conversations in which he had made enquiries into how to make IEDs, projecting himself as a supporter of ISIS and expressing his wish to join the jihad in Syria.

9. On 5 November 2014 the Netherlands investigating authorities sent a request for mutual legal assistance (*rechtshulpverzoek*) to the competent Moroccan authorities in connection with the criminal investigation against the applicant, requesting, *inter alia*, the examination of a number of bank

1. A town situated about 10 km from Nador in north-east Morocco. As the phonetic transcription of Arabic names may differ, it is also referred to as Selouane, Silwan, Selwane or Salwane in other documents submitted by the parties. The phonetic transcription of Arabic names of places and persons in this judgment follows the transcription used in the underlying document.

accounts and bank cards. The request contained the number of the applicant's national identity card and specified that the criminal investigation concerned suspicion of (preparation of) murder with a terrorist motive, participation in a criminal organisation with a terrorist aim, preparation of a terrorist offence, and financing of terrorism. On 20 April 2015 a supplementary request was sent to the Moroccan authorities.

10. The applicant's remand in custody was extended. Criminal proceedings against him commenced on charges of several preparatory acts of terrorism, including the criminal offence defined in Article 134a of the Criminal Code (*Wetboek van Strafrecht*), namely the acquisition of information and know-how in preparation of the commission of a terrorist offence.

11. In April 2015 several articles, written in Dutch, Arabic and English, about the dismantling of a terrorist cell and arrest of its members in Selwane were published on Internet news sites. Those articles also mentioned the arrest in the Netherlands of a Moroccan living there, who was planning attacks in the Netherlands and who had links with that terrorist cell. Some of the articles also stated that information provided by the Moroccan intelligence agency (the General Directorate of Surveillance of the National Territory – "the DGST") to the AIVD had led to the person's arrest in the Netherlands.

12. On 8 September 2015 the Rotterdam Regional Court (*rechtbank*) acquitted the applicant of all charges. It found that his intent to commit terrorist offences had not been proven in the light of evidence presented by him showing that his chat messages had been meant to impress and show off. His acquittal was reported by various media outlets in the Netherlands. One of those reports stated that, according to his lawyer, the applicant intended to apply for asylum in the Netherlands, as he feared that, in the event of his removal to Morocco, he would be detained in Morocco as a terror suspect. The public prosecutor (*officier van justitie*) appealed against the acquittal.

13. On 20 June 2016 the Court of Appeal (*gerechtshof*) of The Hague quashed the impugned judgment, convicted the applicant of having committed the offence under Article 134a of the Criminal Code, and sentenced him to twelve months' imprisonment. The applicant's intent to acquire information and know-how in order to use it in the commission of a terrorist offence was found proven on the basis of numerous chat messages and written notes. Referring to the systematic and radical nature of those messages and given the relatively long period during which the applicant had been engaged in the internet conversations, the Court of Appeal dismissed the argument that he had merely been trying to impress and show off.

14. The applicant subsequently lodged an appeal in cassation with the Supreme Court (*Hoge Raad*). On 21 March 2017 the Supreme Court

declared the applicant's appeal inadmissible, providing summary reasoning in application of section 80a of the Judiciary (Organisation) Act (*Wet op de rechterlijke organisatie*).

B. Asylum proceedings

15. On 28 August 2015 the applicant's remand in custody came to an end and he was placed in immigration detention (*vreemdelingenbewaring*). On the same day he applied for asylum, claiming that, if removed to Morocco, he would, *inter alia*, run the risk of being arrested by the Moroccan secret service, detained in inhumane conditions and tortured, as the Moroccan authorities considered him to be a terrorist.

16. In support of his claim, the applicant referred to various press articles about the criminal proceedings against him in the Netherlands, as well as to several Internet news articles written in Dutch, Moroccan and English about a terrorist cell in Salouin – the town where he had been living before going to the Netherlands – which had been dismantled by the Moroccan authorities in April 2015. Some articles also mentioned that a member of that terrorist cell who was residing in the Netherlands had been arrested. According to the applicant, they had been referring to him (see paragraph 11 above). Although the applicant denied that he had any contacts with this cell, he stated that because of these allegations he will be associated with these Moroccan suspects of terrorism.

17. The applicant further submitted that he had learned from his family in Morocco that two acquaintances from his place of birth, Driouch named "A.M." and "B.M.", had been arrested by the Moroccan security service in March or April 2014. According to the applicant, this was a strong indication that he too was a target of the Moroccan security service.

18. By a letter of 15 October 2015, the Deputy Minister of Security and Justice (*Staatssecretaris van Veiligheid en Justitie*) requested the Ministry of Foreign Affairs (*Ministerie van Buitenlandse Zaken*) to conduct an investigation in Morocco in relation to the applicant's asylum application. In so far as relevant for the instant case, the letter contained the following questions:

> "1) Is [the applicant] known by his stated identity ... at his last known address in Morocco ... in Salouin, region of Nador?
>
> 2a) The report about the dismantling of a terrorist cell appeared in Moroccan and international media on 13 April 2015. When were the members of the Moroccan terrorist cell arrested?
>
> 2b) Are A.M. and B.M. among those who were arrested? If so, are they from [the applicant's] birth place, namely Driouch?
>
> 2c) Is it known whether [the applicant] and the persons mentioned under 2b) know each other?

3) Are the persons mentioned under 2a) still detained since their arrest in April 2015? If so, what are the charges? If not, when were they released?

4) Is [the applicant] known by name in the media in Morocco as the member residing in the Netherlands of the terrorist cell dismantled in Morocco (as referred to in question 2a)?

5a) Is [the applicant] being searched for by the Moroccan authorities in the context of the criminal investigation of the terrorist cell (as meant in question 2a)?

5b) Is there a charge against [the applicant]? If so, what is the charge?

5c) Is [the applicant] being searched for by the Moroccan authorities in relation to offences other than those mentioned under 5a? If so, in relation to what offences is he being searched for? Has he been convicted of those offences and, if so, what is the sentence?"

19. In reply to the above request, a person-specific official report (*individueel ambtsbericht*) was released on 3 December 2015 by the Ministry of Foreign Affairs. The relevant part of the report stated as follows:

"Question 1:

The address ... in Salouin, region of Nador, is [the applicant's] last known address in Morocco.

Question 2:

a) The members of the Moroccan terrorist cell were all arrested on 13 April 2015.

b) A.M. and B.M. do not find themselves in the group [of persons] arrested on 13 April 2015.

Additional information: the above-cited names are not necessarily the actual names of the persons. In the group of persons, there is an A. and a B.. However, these persons do not have the surname M.

c) This question cannot be answered in the light of the above.

Question 3:

At the time of the investigation, the persons referred to in 2a) were still detained. The charge is:

'the establishment of a criminal organisation which supports jihadist ideology, in particular by planning to assassinate persons with opposing religious convictions' ('*la constitution d'une bande criminelle adepte de la pensée djihadiste, projetait notamment l'assassinat de personnes aux convictions religieuses contraires*').

Question 4:

[The applicant] is not mentioned by name in the media reports. It was mentioned in the media reports that a Moroccan national residing in the Netherlands had been arrested in cooperation with the local authorities.

Additional information: nor were the other persons who were arrested on 13 April 2015 mentioned by name in the media reports. ...

Question 5:

a) No, at the time of the investigation [the applicant] was not being searched for by the Moroccan authorities in the context of the criminal investigation as referred to in question 2.

b) No, at the time of the investigation, there was no charge against [the applicant].

c) No, at the time of the investigation [the applicant] was not being searched for by the Moroccan authorities in the context of a criminal investigation into offences other than those as referred to by question 5a."

20. By letter of 12 January 2016, in reply to a request for further clarification, the Minister of Foreign Affairs stated:

"There are no indications that [the applicant] is being searched for by the Moroccan authorities in the context of the criminal investigation referred to in question 2a of your letter of 15 October 2015. There are also no indications of a charge against [the applicant] or indications that [the applicant] is being searched for by the Moroccan authorities in connection with a criminal investigation of facts other than those referred to in question 2a of your letter of 15 October 2015."

21. The asylum application was rejected by the Deputy Minister on 21 July 2016. In addition, an entry ban (*inreisverbod*) of twenty years was imposed on the applicant, the Deputy Minister holding that he posed a threat to public safety on account of his criminal conviction and information from the Netherlands security service that he posed a danger to national security. Furthermore, and referring to the person-specific official report of 3 December 2015, the Deputy Minister held that the applicant had failed to demonstrate that he faced a real and personal risk of treatment contrary to Article 3 of the Convention in Morocco. The applicant was not being searched for by the Moroccan authorities, nor had he been charged with any criminal offences there. The Deputy Minister found that the applicant's fear of being arrested, tortured and detained was based on general reports and assumptions. The Deputy Minister referred to earlier experiences with young Moroccan men who had stood trial in the Netherlands on charges related to Islamic terrorism and who had been removed to Morocco. None of them had encountered any problems from the side of the Moroccan authorities that could be regarded as relevant from an asylum-law perspective. On this point, the Deputy Minister referred to an article published on 10-11 September 2011 in the Netherlands daily newspaper *NRC Handelsblad* about the experiences of four convicted members of the Islamist terrorist "Hofstad group" (*Hofstadgroep*) who, after having served their sentence in the Netherlands, had been removed to Morocco.

22. The applicant lodged an appeal (*beroep*) with the Regional Court, submitting in addition to his previous submissions, *inter alia*, a copy of an email from his Moroccan attorney, E.I., and extracts from a Moroccan police report dated 24 April 2015 concerning a criminal investigation in respect of several persons, including one "B.B." (previously referred to by the applicant as "B.M."). The police report stated that B.B. was the person behind the radicalisation of his neighbour (the applicant), who was being

detained in the Netherlands in connection with terrorism. It further stated that, after the applicant's departure to the Netherlands, they had remained in contact by telephone and that in their conversations, the applicant had indicated his wish to buy a firearm, and that he intended to learn how to make explosives for use in a terrorist act in the Netherlands.

23. On 14 February 2017 the Regional Court of The Hague, sitting in Rotterdam, dismissed the appeal and upheld the impugned decision. As regards the applicant's reliance on Article 3 of the Convention, it held as follows:

> "6. [The appellant] argues that on return he will be at a real risk of a violation of Article 3 of the Convention. He fears that he will be detained and ill-treated because – due to media reports – he is being linked by the Moroccan authorities to terrorist groups and terrorist activities. On this point [the appellant] refers to various documents. In addition, [the appellant] argues that [the Deputy Minister] was not allowed to base his decision on the person-specific official report of the Ministry of Foreign Affairs as insufficient due care had been taken in drawing it up and, in addition, as it lacks clarity.
>
> 6.1. The court states at the outset that it is in principle for [the appellant] to make out a plausible case that he is running a real risk of a violation of Article 3 of the Convention. [The appellant] has submitted a number of documents in substantiation of his claim. In addition, [the Deputy Minister] has met [the appellant] halfway in the discharge of the burden of proof which rests on the latter by having the Ministry of Foreign Affairs conduct an investigation which has resulted in a person-specific official report. The court will discuss below [the appellant's] documents and the person-specific official report of the Ministry of Foreign Affairs.
>
> 6.2. [The appellant] has submitted media reports about a terrorist cell that intended to commit attacks in the Netherlands and about a Moroccan man, [name of appellant], who was arrested in October 2014 in the Netherlands on suspicion of terrorism and convicted by the Court of Appeal. [The appellant] also submitted documents about a Moroccan Dutchman who had been interrogated and tortured in Morocco and referred to information from Amnesty International and Human Rights Watch about torture and ill-treatment of detainees and unfair proceedings for terrorist suspects in Morocco. In addition, [the appellant] has submitted an email message from his Moroccan lawyer about the negative attention which [the applicant] will attract upon return and a copy of (part of) an official report of the police in Morocco in the terrorism case of B.B. in which [the appellant's] name is mentioned. In addition, [the appellant] has submitted part of a judgment of the [*Tribunal Correctionnel de Paris*] concerning G.H., who is suspected of terrorist activities and [the appellant] claims that this person has been convicted again in Morocco for the same set of facts.
>
> 6.2.1. In so far as it appears from the documents submitted by [the appellant] that he is known as a terror suspect or has been convicted of facts relating to terrorism, the court considers that this has already been found credible by [the Deputy Minister]. The circumstance that, because of media reports about this, [the appellant] is known in the Netherlands and Morocco does not mean that therefore he runs a real risk of serious harm when he returns to Morocco. [The appellant] fears that, because of being known [by those authorities], he will upon return be arrested and ill-treated by the Moroccan authorities, but for substantiation purposes has not submitted documents concerning [himself]. [The appellant] has pointed to general information about the treatment of detainees in Morocco and about the proceedings in respect of terrorist

suspects, but this information is only relevant if it is plausible that [the appellant] upon return will be arrested or prosecuted for terrorism. In the court's opinion, [the Deputy Minister] has not unjustly adopted the position that [the appellant] has not made out a plausible case. In the email message from [the appellant's] Moroccan lawyer submitted by [the appellant], this lawyer reports that [the appellant] will be tried when transferred to Morocco, even though he has already been tried in the Netherlands, and refers to two decisions in which the same person was convicted both in France and in Morocco for the same facts. This means that the email message contains no more than a statement from [the appellant's] lawyer, without specific further substantiation relating to [the appellant] from which it follows that [the appellant] will be prosecuted in Morocco. Reference is only made to a case of another person convicted in France, but no documents have been submitted showing that this person has been convicted of the same facts in Morocco. Nor have documents been submitted from which it can be deduced that [the appellant] finds himself in the same situation. It can further not be concluded from the copy of (a part of) a report of the Moroccan police, submitted by [the appellant], that [the appellant] is being searched for in Morocco as a suspect of terrorism. As pointed out rightly by [the Deputy Minister], the document only contains information about the activities of the suspect B.B., including the influencing of [the appellant], but it does not appear from the document that [the appellant] is involved in any criminal proceedings. However, triggered by what [the appellant] has presented about the terror cell dismantled in April 2015, of which B.B. was a member, [the Deputy Minister] asked the Ministry of Foreign Affairs for a person-specific official report, which will be discussed below.

6.3.1. According to the constant case-law of the Administrative Jurisdiction Division (*Afdeling Bestuursrechtspraak*) (including the ruling of 29 July 2016, ECLI:NL:RVS:2016:2171), an official report from the Minister of Foreign Affairs about the situation in a country is an expert opinion for the Deputy Minister for the exercise of the latter's powers. If it provides information in an impartial, objective and transparent manner with an indication, in so far as this is responsible, of the sources from which this information is derived, the Deputy Minister may, in making a decision, assume the correctness of this information, unless there are concrete reasons for doubting that accuracy. As regards person-specific official reports, the Administrative Jurisdiction Division has considered that, if a person-specific official report contradicts the asylum claim which it concerns, it is for the alien concerned to refute the official report.

6.3.2. [The appellant's] argument that [the Deputy Minister] was not allowed to base his decision on the person-specific official report of the Ministry of Foreign Affairs because insufficient due care had been taken in drawing it up, fails. On 8 December 2015 the Deputy Minister carried out a REK-check, which entails [the Deputy Minister] assuring himself that the person-specific official report has been drawn up with due care and is comprehensible. The outcome of the REK check was that this could not be concluded. Subsequently, the Ministry of Foreign Affairs was asked for further clarification, [in response] to which the Ministry of Foreign Affairs supplemented, by letter of 12 January 2016, the person-specific official report. On 14 January 2016 a fresh REK check was carried out and it was concluded that the person-specific official report was comprehensible but that, procedurally, due care had not been exercised in preparing the report, as the investigation in Morocco had taken place without using a trusted local advisor (*vertrouwenspersoon*). Although in the case of an asylum application this falls short of due care, the court finds that in this case [the Deputy Minister] did not have to see reason for not taking into account in the decision making the person-specific official report of the Ministry of Foreign Affairs, as [the Deputy Minister] has given sufficient reasons for holding that the interests of

[the appellant] were not harmed by this failure to exercise due care. [The Deputy Minister] has indicated that the use of a trusted local advisor is to ensure that the authorities of the country of origin are not informed of the alien's stay in the Netherlands and of his asylum application, whereas in this case it can be assumed that the Moroccan authorities, due to reports in the media there, are already aware [of this circumstance]. On this point [the Deputy Minister] has referred to a number of media reports. [The appellant] has not argued or further substantiated that that knowledge by the Moroccan authorities will lead to problems. Also for the remainder, [the appellant] has not indicated why his interests would have been harmed by the lack of due care in the preparation of the person-specific official report.

6.3.3. The person-specific official report of the Ministry of Foreign Affairs states, *inter alia*, that the members of the terrorist cell dismantled on 13 April 2015, which is mentioned in the coverage referred to by [the appellant], were all arrested on that date. This group does not include A.M. or B.M. as mentioned by the applicant, but these names are not necessarily the names of the persons. The group does include an A. and a B., but not with the family name M. In addition, the person-specific official report states that these persons were still in detention at the time of the investigation and that neither [the appellant] nor these persons were mentioned by name in press reports about the dismantled terror cell. It is indeed mentioned in press reports that a Moroccan staying in the Netherlands has been arrested in cooperation with the local authorities. Finally, it has been included in the person-specific official report that at the time of the investigation [the appellant] was not being searched for by the Moroccan authorities in connection with the criminal investigation into the dismantled terror cell, that at the time of the investigation no charge had been brought against [the appellant] and that at the time of the investigation [the appellant] was not being searched for by the Moroccan authorities in connection with a criminal investigation into other facts.

6.3.4. [The appellant's] argument that [the Deputy Minister] was not allowed to base his decision on the person-specific official report of the Ministry of Foreign Affairs because it contains unclear points, also fails. In the opinion of the court, [the appellant] has not presented any concrete arguments for [the court] to doubt the correctness of the person-specific official report. [The appellant] has argued that it is unclear to what extent the [Moroccan] investigating judge (*onderzoeksrechter*) is competent to make statements about [the appellant]. In the first place, this mere remark does not comprise a concrete argument as mentioned above. Irrespective of this, the court considers that, on the basis of the underlying materials of the person-specific official report which the court has consulted, it can be assumed that the investigating judge in question is competent and able to provide the information given. Also the mere assertion of [the appellant] that it is odd that the investigating judge, who apparently holds all information on terrorism cases, is not asked whether [the appellant] is being searched for, is not a concrete argument in the above sense. Moreover, it follows from question 5 in the letter from [the Deputy Minister] to the Ministry of Foreign Affairs of 15 October 2015 that the Ministry has been asked both whether [the appellant] is being searched for by the Moroccan authorities in connection with the criminal investigation into the arrested terror cell and whether [the appellant] is being searched for by the Moroccan authorities in connection with a criminal investigation into other facts. Also, the unclear assertions made by [the appellant] about the names of the persons arrested, mentioned in the person-specific official report and the notion 'at the time of the investigation' offer no concrete reasons to doubt the accuracy of the person-specific official report. The term 'at the time of the investigation' cannot be read otherwise than that the question has been answered by the investigating judge on the basis of the state of affairs at the time of

the investigation. Incidentally, [the appellant] has not argued that the state of affairs would be different at a different (later) point in time. As to the names of the arrested persons, the person-specific official report already states that the names may also be different. Also on this point the court sees no reason for doubting the correctness [of the official report]. As the document from the criminal case file submitted by [the appellant], which possibly refers to him, is of a much earlier date than the person-specific official report of the Ministry of Foreign Affairs, it is not plausible that this reference has given the Moroccan authorities cause to open a criminal investigation against [the appellant]. This is [therefore] not a concrete reason for doubting the correctness and completeness of the person-specific official report.

6.4. In addition to the person-specific report of the Ministry of Foreign Affairs, [the Deputy Minister] has also referred to experiences made with young Moroccan men (including members of the Hofstad group) who had been the subject of a terrorism trial in the Netherlands and/or constituted a danger to Dutch national security in connection with involvement in Islamic terrorism and/or jihad and for that reason [had been] returned to Morocco. According to [the Deputy Minister], no signals to be taken seriously have been received from them that, upon their return, they had encountered problems, relevant from an asylum-law perspective, from the side of the Moroccan authorities. The court notes that [the appellant] has not rebutted this in a substantiated manner and finds that [the Deputy Minister] has correctly taken this into account in his assessment. In this respect, the court refers to the ruling of the [Administrative Jurisdiction] Division of 5 October 2016 (ECLI:NL:RVS:2016:2692). [The appellant] has not established that the Moroccan authorities will act differently in his case.

6.5. The court concludes that it follows from the person-specific official report of the Ministry of Foreign Affairs that [the appellant] is not being searched for by the Moroccan authorities in connection with the criminal investigation concerning the dismantled terror cell or other facts and that [the appellant] has not put forward any concrete arguments for [the court] to doubt the correctness of this information. Nor can it be deduced from the documents submitted by [the appellant] that he is being searched for by the Moroccan authorities and/or will be detained and tortured upon return. This can also not be inferred from previous experiences in similar cases. Thus the fear alleged by [the appellant] upon return has not been made plausible. In view of this, [the Deputy Minister] rightly took the view that [the appellant] has not established that, upon return, he will run a real risk of a violation of Article 3 of the Convention. ...”

24. The applicant lodged a further appeal (*hoger beroep*) against the Regional Court’s decision with the Administrative Jurisdiction Division (*Afdeling bestuursrechtspraak*) of the Council of State (*Raad van State*). He also requested a provisional measure (*voorlopige voorziening*), namely to stay his removal pending the outcome of the further appeal. Neither a further appeal nor a request for a provisional measure has automatic suspensive effect.

25. On 21 February 2017 the applicant asked the Court to apply an interim measure under Rule 39 of the Rules of Court, in order to stay his removal to Morocco. The determination of that request was adjourned by the Court on the same day and the Government were requested to submit factual information.

26. On 22 February 2017 the Administrative Jurisdiction Division granted the applicant’s request for a provisional measure by revoking the

order to expel the applicant to Morocco scheduled for 25 February 2017. In view of that decision, the Court decided on 23 February 2017 to suspend until further notice the determination of his Rule 39 request.

27. On 28 February 2017 the Administrative Jurisdiction Division rejected the applicant's further appeal. It held that under section 91 § 2 of the Aliens Act 2000 (*Vreemdelingenwet 2000*), no further reasoning was called for, as the arguments submitted did not raise any questions requiring determination in the interest of legal unity, legal development or legal protection in the general sense. No further appeal lay against this ruling. On the same day the Administrative Jurisdiction Division rejected the applicant's request for a provisional measure.

C. Subsequent developments

28. On 2 March 2017 the applicant's lawyer was informed that the applicant's removal to Morocco had been scheduled for 4 March 2017.

29. On 3 March 2017 the Court applied Rule 39 for a period of four weeks and requested further factual information from the Government. The requested information was received on 22 March 2017.

30. The Government informed the Court that in the context of the criminal proceedings against the applicant information had been exchanged between the Moroccan and the Dutch authorities through a legal assistance request submitted by the Dutch authorities on 5 November 2014 and a supplementary request on 20 April 2015 (see paragraph 9 above). They added that the Immigration and Naturalisation Service (*Immigratie- en Naturalisatiedienst*), in establishing that there was no Article 3 risk for the applicant were he to be removed to Morocco, had taken into account that the Moroccan authorities had been apprised of the criminal proceedings and that they were likely to be aware of the outcome thereof. The Government added that the Moroccan authorities had not sought the applicant's extradition. The Government had not sought specific guarantees from the Moroccan authorities as they took the view that the applicant's removal would not result in a violation of Article 3 of the Convention. The authentic and valid ID-card held by the applicant was sufficient for him to be accepted onto a flight to Morocco. No special procedure had been put in place for his removal, but during his transfer he would be accompanied by officers of the Royal Netherlands Military Constabulary (*Koninklijke Marechaussee*) and after arrival he would be handed over to the authorities at the destination airport. The Government lastly informed the Court that they had not been able to obtain further information regarding the criminal proceedings against the members of the terrorist cell which had been dismantled in Morocco in April 2015.

31. On 29 March 2017 the applicant informed the Court that, through his Moroccan attorney E.I., he had been able to obtain a copy of the judgment

by which B.B. and eight others had been convicted of, *inter alia*, the establishment of a terrorist group loyal to the Islamic State intended to commit terrorist activities against the public order of Morocco. B.B. had been sentenced to five years' imprisonment. The judgment in Arabic, which runs to twenty-three pages, contains the following passage:

> "B.B. has several connections with jihadis. In particular, he recruits young men in his area for his terrorist organisation. In 2015 a befriended policeman in Nador informed B.B. – after receiving secret Government information – that he should break off his contact with people involved with terrorist organisations, including amongst others [the applicant's name] who lives in the Netherlands."

32. On 30 March 2017 the interim measure under Rule 39 staying the applicant's removal to Morocco was extended for the duration of the proceedings before the Court.

33. On 15 November 2017 the Government submitted a copy of a judgment given on 21 December 2016 by the criminal division of the Rabat Court of Appeal for Terrorism Cases on an appeal lodged by G.H. (see paragraph 23 above at point 6.2) – assisted by the attorney E.I. – against a judgment given on 10 March 2016 by the criminal division of the Rabat First Instance Court for Terrorism Cases. The appellate court overturned the impugned judgment, finding that pursuant to Article 707 of the Moroccan Criminal Code, which contains the *ne bis in idem* rule, the appellant could no longer be tried for facts in respect of which he had already been convicted by a criminal court in France and had already served the sentence imposed by that court. Consequently, it acquitted him of the charges of the establishment of a criminal group for the preparation and commission of terrorist offences, illegal use and possession of fire arms and ammunition in the context of a joint project aimed at endangering public order, and inciting and persuading others to commit terrorist offences. It did, however, convict him of complicity in providing support to those who commit a terrorist offence and imposed a conditional one-year prison sentence.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Asylum proceedings

34. The admission, residence and expulsion of aliens are regulated by the Aliens Act 2000 (*Vreemdelingenwet 2000*). Further rules are laid down in the Aliens Decree 2000 (*Vreemdelingenbesluit 2000*), the Regulation on Aliens 2000 (*Voorschrift Vreemdelingen 2000*) and the Aliens Act Implementation Guidelines 2000 (*Vreemdelingencirculaire 2000*). The General Administrative Law Act (*Algemene Wet Bestuursrecht*) applies to proceedings under the Aliens Act 2000, unless indicated otherwise in that Act.

35. Section 28 § 1 of the Aliens Act provides that the competent Minister has the authority, *inter alia*, to grant, reject or decline to process an application for a fixed-period (asylum-based) residence permit (*verblijfsvergunning voor bepaalde tijd*) for a maximum duration of five consecutive years.

36. Under section 29 § 1 of the Aliens Act 2000, a fixed-period (asylum-based) residence permit as referred to in section 28 may be issued to an alien:

(a) who is a refugee within the meaning of the 1951 Geneva Convention relating to the Status of Refugees ("the 1951 Refugee Convention");

(b) who has shown substantial grounds for believing that, if expelled, he/she will face a real risk of being subjected to serious harm, consisting of:

1. death penalty or execution;
2. torture or inhuman or degrading treatment or punishment;
3. serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.

37. The grounds for asylum set out in section 29 § 1(b) 2 are derived from Article 3 of the Convention. Accordingly, asylum proceedings include an assessment of the risk of a breach of Article 3 in which the relevant case-law under this provision is taken into account.

38. Pursuant to section 30b § 1 (j) of the Aliens Act 2000, an application for a fixed-period residence permit may be rejected as manifestly ill-founded when there are serious reasons for considering that the person concerned constitutes a danger to public order or national security (*openbare orde of nationale veiligheid*).

39. Until 20 July 2015, when the Aliens Act 2000 was amended (in order to implement Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection), any judicial review by the Regional Court of The Hague – and subsequently the Administrative Jurisdiction Division – in administrative law proceedings would only address whether the executive authority concerned had exercised its administrative powers in a reasonable manner and, in the light of the interests at stake, could reasonably have taken the impugned decision (*marginale toetsing*). As from 20 July 2015, the Regional Court of The Hague carries out a full *ex nunc* examination of both facts and law as these stand at the moment the appeal is lodged (see, Administrative Jurisdiction Division, 13 April 2016, ECLI:NL:RVS:2016:890).

40. Under sections 42 and 44 of the Act on the Council of State (*Wet op de Raad van State*), the Administrative Jurisdiction Division may either uphold a judgment of the Regional Court (including the possibility of adapting or improving the reasoning supporting that judgment), quash the

impugned judgment in whole or in part and do that which the Regional Court ought to have done, or remit the case to the Regional Court for a fresh judgment. Where it concludes that the further appeal does not provide grounds for quashing the impugned ruling (*kan niet tot vernietiging van de aangevallen uitspraak leiden*), the Administrative Jurisdiction Division can decide to uphold the impugned judgment without having to give any additional reasons (section 91 § 2 of the Aliens Act 2000).

B. Entry bans

41. The implementation with effect from 1 January 2012 of EU Directive 2008/115/EC of 16 December 2008 (on common standards and procedures in Member States for returning illegally staying third-country nationals) entailed the replacement of exclusion orders (*ongewenstverklaringen*) for non-EU nationals – valid only on the territory of the Netherlands – by entry bans (*inreisverboden*) which are valid throughout the entire Schengen area.

42. In accordance with section 66a of the Aliens Act 2000, the Minister can issue an entry ban, *inter alia*, against a rejected asylum-seeker who has failed to leave the country voluntarily within the grace period of four weeks or against an alien who must leave the Netherlands immediately as he/she is considered to pose a risk to public policy, public security or national security (*een gevaar vormt voor de openbare orde, de openbare veiligheid of de nationale veiligheid*). An entry ban will be issued for a specific duration of, in principle, not longer than five years unless the alien concerned is found to pose a risk to public policy, public security or national security. In the latter situation, an entry ban may be imposed for a period of up to twenty years (section 6.5a § 6 of the Aliens Decree 2000).

43. An entry ban may be challenged in administrative law appeal proceedings under the terms of the General Administrative Law Act. Such appeal proceedings do not have automatic suspensive effect.

44. Both before the Regional Court and the Administrative Jurisdiction Division it is possible to apply for a provisional measure (*voorlopige voorziening*) pending the outcome of the appeal proceedings.

45. Section 197 of the Criminal Code (*Wetboek van Strafrecht*) provides that an alien staying in the Netherlands while knowing or having serious reason to suspect that an entry ban has been imposed on him or her for *inter alia* posing a risk for public order or national security commits a criminal offence punishable by up to six months' imprisonment or a fine of up to 8,200 euros. In accordance with the discretionary powers held by the public prosecution service (*opportuniteitsbeginsel*), it remains for that service to decide in each individual case and in line with the general policy rules defined by the Board of Procurators General (*College van procureurs generaal*) whether to prosecute or not.

46. Under section 66b of the Aliens Act 2000, the Minister may decide, either *ex officio*, due to changed circumstances, or at the request of the alien concerned to lift or temporarily suspend the entry ban.

III. RELEVANT COUNTRY INFORMATION ON MOROCCO

47. In its report on Morocco (UN doc. A/HRC/27/48/Add.5, dated 4 August 2014), the United Nations Working Group on Arbitrary Detention welcomed the adoption of the Constitution in July 2011, marking an important step towards the strengthening of human rights, and the establishment of the National Human Rights Council (CNDH) as the independent national institution responsible for the protection and promotion of human rights. It found that CNDH and its various regional offices were making a significant contribution to the promotion and protection of human rights in the country. It further noted:

> "... the important and ongoing efforts of the Government to establish and consolidate a culture of human rights in Morocco. The Working Group encourages that process and expresses the hope that it will lead to the prevention and combating, in law and in practice, of any kind of violation that would constitute arbitrary deprivation of liberty. The Working Group appreciates that the extensive structural reform undertaken by Morocco to consolidate the promotion and protection of human rights has continued since its visit in December 2013."

48. However, as concerned cases involving allegations of terrorism or threats to national security, the Working Group noted as follows:

> "21. The Anti-Terrorism Act (No. 03-03), adopted in the wake of the Casablanca bombings of 16 May 2003, has, as a legal framework, been responsible for numerous violations of human rights and it remains in force in its original form.
>
> 22. The Anti-Terrorism Act extends the time limits on custody to up to 96 hours, renewable twice. This means that detainees maybe held for up to 12 days upon written consent from the prosecution before being brought before the investigating judge. In addition, communication with a lawyer is only possible 48 hours after the renewal of custody is granted. Hence suspects may be deprived of all contact with the outside world for six days before being allowed to communicate for half an hour with a lawyer and, even then, under the control of a police officer (Code of Criminal Procedure, art. 66, para. 6). The Working Group notes that those provisions, which restrict crucial safeguards, such as early contact with counsel, significantly increase the risk of torture and ill-treatment. The Working Group also notes with concern that the definition of the crime of terrorism is rather vague.
>
> 23. The Working Group heard several testimonies of torture and ill-treatment in cases involving allegations of terrorism or threats against national security. In those cases, the Working Group concurs with the Special Rapporteur on torture that a systematic pattern of acts of torture and ill-treatment during the arrest and detention process can be detected.
>
> 24. In such cases, it appears that suspects are often not officially registered, that they are held for weeks without being brought before a judge and without judicial oversight, and that their families are not notified until such time as the suspects are

transferred to police custody in order to sign confessions. In many cases, victims are then transferred to a police station, where a preliminary investigation is opened, dated from the transfer to avoid exceeding the limits placed on the custody period. ...

25. Article 293 of the Code of Criminal Procedure states that a confession, like any other evidence, is subject to the discretion of the judge and that any confession obtained under torture is inadmissible.

26. The Working Group notes the considerable importance accorded to confessions in the context of a trial. Through interviews with detainees serving long sentences, the Working Group found that confessions had often been obtained as a result of torture. Such confessions were set out in the police records and served almost exclusively as evidence for prosecution and conviction."

49. Concerning State security cases, the Working Group found in its conclusions (paragraph 74 of the report):

"... there is a pattern of torture and ill-treatment during arrest and in detention by police officers, in particular agents of the National Surveillance Directorate (DST). Many individuals have been coerced into making a confession and have been sentenced to imprisonment on the sole basis of that confession."

50. The United Nations Human Rights Committee, in its concluding observations on the sixth periodic report on Morocco (UN doc. CCPR/C/MAR/CO/6, adopted on 2 November 2016), welcomed, among other measures, the adoption of the new Constitution in 2011, which strengthened democratic institutions and the status of human rights in the legal system. It also welcomed the ratification by Morocco of the Optional Protocol to the Convention against Torture in 2014.

51. However, the UN Human Rights Committee also raised a number of concerns, including the following:

"**Counter-terrorism**

17. The Committee remains concerned about the broad and unclear wording of the provisions in the Criminal Code that define what acts constitute acts of terrorism and the introduction of new, vaguely defined offences in 2015. ... The Committee is also disturbed by the excessive length of time that persons may be held in police custody in connection with terrorism-related offences (12 days) and by the fact that such persons are allowed to consult a lawyer only after 6 days have elapsed (arts. 9, 14 and 19). ...

Prohibition of torture and ill-treatment

23. The Committee welcomes the authorities' efforts to combat torture and ill-treatment and notes that there has been a marked reduction in such practices since the time that its last concluding observations (CCPR/CO/82/MAR) were issued. It is nonetheless concerned by continued reports of torture and cruel, inhuman or degrading treatment being perpetrated by agents of the State in Morocco and Western Sahara, particularly in the case of persons suspected of terrorism or of endangering State security or posing a threat to the territorial integrity of the State. The Committee notes with particular concern that: (a) confessions obtained under duress are reportedly sometimes admitted as evidence in court even though, by law, they are inadmissible; (b) in cases of alleged torture or of the extraction of confessions under duress, judges and prosecutors do not always order that medical examinations be

performed or that investigations be undertaken; (c) persons who report cases of torture are sometimes the object of intimidation, threats and/or legal proceedings; and (d) the number of cases in which charges have been brought and the number of convictions that have been handed down seem quite low given the number of complaints filed and the extent to which torture and ill-treatment have occurred in the past (arts. 2, 7 and 14). ...

Police custody and access to a lawyer

25. The Committee is concerned about the unduly prolonged periods of police custody and that access to a lawyer is permitted only in cases in which the period of police custody is prolonged and for a maximum of 30 minutes (arts. 9 and 14). ...

Right to a fair trial and the independence of the judiciary

33. The Committee is concerned about cases in which irregularities appear to have occurred in court proceedings, including the admission of confessions obtained under duress and refusals to hear witnesses or to consider evidence. It is also concerned about cases in which lawyers and judges have been the target of threats and intimidation and of interference in their work and about the imposition of arbitrary or disproportionate disciplinary measures."

52. The US Department of State, in its Country Reports on Human Rights Practices for 2016, Morocco (released on 3 March 2017), noted, *inter alia*:

"The constitution and the law prohibit such practices, and the government denied it used torture. The law defines torture and stipulates that all government officials or members of security forces who 'make use of violence against others without legitimate motive, or incite others to do the same, during the course of their duties shall be punished in accordance with the seriousness of the violence.' A 2006 amendment to the law provides a legal definition of torture in addition to setting punishments for instances of torture according to their severity. The government also enacted measures designed to eliminate torture. For example, in November 2014 the government deposited its ratification of the Optional Protocol to the Convention against Torture with the United Nations--with the CNDH [the National Council on Human Rights] filling the role of investigative organ for the prevention of torture. Reports of torture have declined over the last several years, although government institutions and NGOs such as Amnesty International (AI) and Human Rights Watch (HRW) continued to receive reports about the mistreatment of individuals in official custody. The UN Human Rights Committee monitoring implementation of the International Covenant on Civil and Political Rights final observations on the country's sixth periodic report issued December 1 noted that the government has taken steps to combat torture and mistreatment and that there was a 'marked reduction' in such practices since its 2004 report. The Committee remained concerned by continued allegations of torture and mistreatment by government agents, in particular on persons suspected of terrorism or threats to national security or territorial integrity.

Reporting in previous years alleged more frequent use of torture. A May 2015 report by AI claimed that between 2010 and 2014, security forces routinely inflicted beatings, asphyxiation, stress positions, simulated drowning, and psychological and sexual violence to 'extract confessions to crimes, silence activists, and crush dissent.' Since the AI interviews, the government has undertaken reform efforts, including widespread human rights training for security and justice sector officials. In June 2015

Minister of Justice Mustapha Ramid publicly announced that torture would not be tolerated, and that any public official implicated in torture would face imprisonment.

In the event of an accusation of torture, the law requires judges to refer a detainee to a forensic medical expert when the detainee or lawyer requests it or if judges notice suspicious physical marks on a detainee. The UN Working Group on Arbitrary Detention, human rights NGOs, and media documented cases of authorities' failure to implement provisions of the anti-torture law, including failure to conduct medical examinations when detainees allege torture. Following the recommendations of the Special Rapporteur for Torture's 2013 report, the Ministries of Justice, Prison Administration, and National Police each issued notices to their officials to respect the prohibition against maltreatment and torture, reminding them of the obligation to conduct medical examinations in all cases where there are allegations or suspicions of torture. Since January 2015 the Ministry of Justice has organized a series of human rights trainings for judges, including on the prevention of torture. In June the Ministry of Justice issued a notice to courts instructing them to implement the recommendation from the Special Rapporteur to visit local jail and detention facilities at least twice per month.

During the year the CNDH reported that it received 34 complaints alleging torture in internationally recognized Morocco, a 56 percent decrease from the previous year. After investigating all 34 allegations, the CNDH substantiated four allegations, one instance each in Khouribga, Tetouan, Toulal 2, and Sale 1 prisons. The CNDH referred one case (Sale 1) to the public prosecutor's office, while two other cases were opened by detainees' lawyers (Khouribga and Tetouan). In the case of Toulal 2, the CNDH was unable to obtain sufficient evidence to refer the case to the prosecutor and, instead, submitted recommendations to the Prison Administration (DGAPR). Regarding the four cases referred by the CNDH to the public prosecutor in 2015, the cases remained in the judicial system at year's end. The DGAPR indicated that it referred one prison official to the judicial system for causing injury to a detainee during the year.

In 2015 the government investigated 42 public officials for torture or abuse. Of those officials 19 remained under investigation, three cases before the courts, and 20 completed the judicial process at year's end. For example, on June 7, courts sentenced five gendarmes to sentences between five and 10 years for murder and falsifying evidence in relation to the death of an individual in custody in September 2015. According to a Ministry of Interior statement regarding the death, which was shared with media, they abused the individual during his arrest, and he died during transfer to a hospital. Three prison officials who were referred to the courts in September 2015 for abuse of detainees received sentences of four months' detention and fines of 500 dirhams ($50.20) in March. They have appealed the decision. The government prosecuted 14 police officers in relation to the death of a detainee in custody in August 2015. On November 30, eight of the officials were convicted of torture and 'use of violence against a detainee in a fragile psychological state resulting in unintentional death,' while a ninth official was convicted of failure to report a felony. Five other officers were acquitted. The nine received sentences ranging from one to 10 years in addition to fines of 150,000 dirhams ($15,625) each."

53. A report released on 21 March 2017 by the Danish Immigration Service on the "Risk of Double Jeopardy in Morocco" states in its relevant part as follows:

"**1. Legislation on the principle of double jeopardy**

In the national legislation the principle of double jeopardy (n*on bis in idem/ne bis in idem*) is laid down in the Moroccan Code of Penal Procedure, Act no. 22-01 enacted by decree [*dahir*] no. 1.02.155 on 3rd October 2002, Articles 704 to 749 in the chapter about international cooperation. An anonymous well-informed legal adviser in Rabat and the Liaison Judge at the Embassy of Spain both stated that the principle of *non bis in idem* is stipulated in the Code of Penal Procedure, Article 707.

International legislation ratified by Morocco, according to which no one can be prosecuted or punished twice for the same violation in the country of origin or abroad (double jeopardy), is stipulated in the Palermo Convention.

2. Risk of double jeopardy

All sources confirmed that Morocco respects the principle of *non bis in idem*. The well-informed legal adviser noted, however, that it may be that Morocco has information about other matters that would allow a prosecution. The same source further explained that if a terrorist was expelled from a foreign country, he would be monitored closely by the Moroccan security service. He would not be prosecuted and punished for terrorism. However, the Moroccan authorities might know of other violations committed by the person in question for which he would be sentenced. Concerning extradited Moroccan citizens who were convicted of terrorism, it is in no way a rule that they will be prosecuted and convicted for other violations.

According to the Ministry of Justice and Liberties, the consequence for a Moroccan who has committed an offence abroad, but who has not been punished and who subsequently returns to Morocco, is that he or she will be punished pursuant to the Code of Penal Procedure.

The consequence for a Moroccan who has been punished for an offence abroad, but who has not served his or her sentence and who returns to Morocco, is that he or she will be punished pursuant to the Code of Penal Procedure. The Liaison Judge at the Embassy of Spain added that where a sentence had been imposed but not served entirely, the person can be sentenced in Morocco.

No examples of violation of the principle of *non bis in idem* were known to the Liaison Judge at the Embassy of Spain.

3. Monitoring

According to the Ministry of Justice and Liberties, in cases where a Moroccan national has been sentenced for an offence related to terrorism abroad and who is expelled to Morocco for that reason, the person in question will be monitored by the relevant authorities.

A well-informed legal adviser commented that few things remain undisclosed in Morocco as the security service is highly efficient. Many ordinary people, including the neighbourhood guards (*concierges du quartier*), provide information to the security service about their neighbours on a voluntary basis. However, there is no 'surveillance psychosis'."

54. In its World Report 2018, published on 18 January 2018, Human Rights Watch stated, in respect of Morocco and Western Sahara, *inter alia*:

"**Police Conduct, Torture, and the Criminal Justice System**

Courts failed to uphold due process guarantees in political and security-related cases.

> The Code of Penal Procedure, amended in 2011, gives a defendant the right to contact a lawyer after 24 hours in police custody or a maximum of 36 hours if the prosecutor approves this extension. In cases involving terrorism offenses, the prosecutor can delay access to a lawyer for up to six days. The law does not give detainees the right to a have a lawyer present when police interrogate or present them with their statements for signature.
>
> The 2003 counterterrorism law contains an overly broad definition of 'terrorism' and allows for up to 12 days of garde à vue (precharge) detention in terrorism related cases.
>
> The Rabat Appeals Court conducted a new trial of 24 Sahrawis convicted by a military court in 2013 for their alleged role in violence that erupted after security forces entered to dismantle a protest encampment set up in Gdeim Izik, Western Sahara. The violence resulted in the deaths of 11 security force members. The appeals court sentenced nearly all of the defendants to prison terms of between 20 years and life, similar to the sentences that the military court handed them in 2013. In its verdict, the court relied on the original police statements from 2010, which the defendants rejected as false. They said they were either coerced or physically forced into signing the statements, including through the use of torture. The court ordered medical examinations, which concluded that torture could neither be proven nor disproven, an unsurprising conclusion given that these examinations, the first of a forensic nature of these defendants, were taking place seven years after the alleged torture took place.
>
> On March 9, a Rabat court of appeals upheld the conviction of French citizen Thomas Gallay on charges of materially aiding persons who harboured terrorist aims, but reduced his prison sentence from six to four years. Gallay's lawyer, who was not present when the police questioned him, said that police used pressure and deceit to persuade him to sign statements in Arabic, a language that he could not read. The court also convicted Gallay's eight Moroccan co-defendants, sentencing them to prison terms of up to 18 years. Hundreds of others were serving prison terms on terrorism charges, some of them following unfair mass trials, like those arrested in the 'Bellarij' case in 2008. ..."

55. According to the 2017/18 Amnesty International Report "The State of the World's Human Rights", published on 22 February 2018, the UN Subcommittee on Prevention of Torture visited Morocco in October 2017. The report said that Morocco had yet to establish a national preventive mechanism against torture, and that courts continued to rely on statements made in custody in the absence of a lawyer to convict defendants, without adequately investigating allegations that statements had been forcibly obtained through torture and other ill-treatment.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

56. The applicant complained that he would face a real risk of being subjected to treatment in breach of Article 3 of the Convention if he were expelled to Morocco. This provision reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

57. The Government contested that argument.

A. Admissibility

58. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

59. The applicant maintained that he had sufficiently established that he would face a real risk of being subjected to treatment contrary to Article 3 of the Convention if he were expelled to Morocco, given that the Moroccan authorities must be considered to be aware of his conviction for terrorism-related crimes in the Netherlands, his association with a dismantled Moroccan militant cell loyal to the Islamic State and his asylum application in the Netherlands. On this point, he referred, *inter alia*, to the requests for mutual legal assistance of 5 November 2014 and 20 April 2015 (see paragraph 9 above), to various news articles (see paragraphs 11 and 16 above), to an official translation of a report of 24 April 2015 from the Commissioner of the Team combatting terrorism of the police in Salém (Morocco) to the General Prosecutor at the court in Rabat (see paragraph 22 above) and to the judgment by which B.B. and eight others had been convicted (see paragraph 31 above).

60. On the basis of these substantiated facts the applicant claimed to belong to a group systematically exposed to a practice of ill-treatment since the Moroccan authorities will regard him as a person suspected of terrorism. In this context, he referred to case-law of the Court on terrorist suspects and to the respective cases of Mr S. and Mr A., both Moroccan nationals suspected of terrorism-related crimes, who had been removed from the

Netherlands to Morocco where they were subjected to treatment proscribed by Article 3.

61. Given the close collaboration between the Dutch and Moroccan authorities, there was no need for the latter to seek the applicant's extradition, especially as those authorities were aware of the rejection of the applicant's asylum application. In any event, the question as to whether or not extradition had been sought should not constitute a decisive element in his case. Referring to the case of G.H. (see paragraphs 23, at point 6.2, and 33 above), who had been convicted first in France on 22 March 2013 and subsequently in Morocco on 10 March 2016 of the same offence related to terrorist activities, the applicant argued that his removal to Morocco would entail the risk that he would be tried again for the same facts as in the Netherlands. As to the experiences of the members of the Hofstad group after their removal to Morocco (see paragraph 21 above), the applicant submitted that their situation, namely Moroccan nationals convicted abroad of terrorism offences committed abroad, could not be compared to his situation, as he was being associated with a terrorist group convicted in Morocco.

62. The extensive exchange of information between the two intelligence services at an earlier stage, in conjunction with the crimes of which the applicant had been convicted on appeal in the Netherlands, the planned transfer and related procedure, during which he was to be accompanied by officers of the Royal Netherlands Military Constabulary who would hand him over to the Moroccan authorities at the destination airport, showed the close collaboration between the authorities of the two countries and confirmed that he had attracted the negative attention of the Moroccan authorities. Moreover, it clearly appeared from the explicit mention of his name in the judgment by which B.B. and eight others had been convicted (see paragraph 31 above) that the Moroccan authorities were aware of the applicant's link with the terrorist cell of which those convicts had been members.

63. Referring to the concluding observations of the United Nations Human Rights Committee on the sixth periodic report of Morocco (see paragraphs 50-51 above), the applicant argued that torture, ill-treatment and degrading treatment were systematically practised in Morocco during questioning and detention of terrorist suspects and that, given his personal profile, there were substantial grounds for believing that he would be at a real risk of being subjected to such treatment in Morocco. The applicant further argued that the Government had failed to dispel all doubts as to his Article 3 claim by not seeking specific guarantees from the Moroccan authorities. The inquiry on which the person-specific official report had been based was limited to whether he was actively wanted, rather than whether there was any interest in him on the part of the Moroccan

authorities. Moreover, that report had not been drawn up with the required due care.

(b) The Government

64. The Government argued that the applicant had not adduced evidence capable of proving that there are substantial grounds for believing that he would be exposed to a real risk of being subjected to treatment contrary to Article 3 of the Convention if he were expelled to Morocco.

65. They confirmed that information concerning the criminal proceedings against the applicant had been exchanged between the Dutch and Moroccan authorities through a legal assistance request of 5 November 2014 and a supplementary request of 20 April 2015 (see paragraph 9 above). However, although the Moroccan authorities had been apprised of the criminal proceedings against the applicant and were likely aware of the outcome thereof, they had not sought his extradition.

66. As to the question whether the Moroccan authorities were aware of the applicant's asylum application in the Netherlands, the Government considered that there was no information indicating that, in the context of Article 3 of the Convention, the Moroccan authorities would attach negative consequences to an asylum application lodged in another country. The Government further denied that information about the applicant's asylum application in the Netherlands had been provided to the Moroccan authorities by the AIVD. In their opinion, it could be assumed that those authorities had learned about the applicant's asylum application from reports in the media (see paragraph 11 above).

67. As regards the applicant's criminal record related to terrorist activities in the Netherlands and his association with a militant Islamic cell in Morocco, the Government were of the opinion that it had not been satisfactorily established by the applicant that the Moroccan authorities were likely to prosecute him as a terrorist suspect for either of those reasons or that there would be a real risk that, in Morocco, he would be subjected to treatment contrary to Article 3. When the material for the person-specific report had been collected, the Moroccan authorities had not been searching for him and had not taken any criminal proceedings against him. The applicant had not submitted any information showing that the Moroccan authorities' position had changed since then.

68. In so far as the applicant relied on the case of G.H. (see paragraphs 23, at point 6.2, and 33 above) in respect of the alleged risk that he would be prosecuted again in Morocco for the same facts for which he had been prosecuted and convicted in the Netherlands, the Government referred to the ruling given in that case on 21 December 2016 by the criminal division of the Rabat Court of Appeal for Terrorism Cases (see paragraph 33 above). In the Government's opinion, that ruling confirmed the statement in the March 2017 report by the Danish Immigration Service

(see paragraph 53 above) that Morocco respected the principle of *ne bis in idem*.

69. Furthermore, the Government were of the view that Moroccan nationals convicted of terrorist offences abroad who return to Morocco are not on account of that conviction alone subjected to treatment contrary to Article 3 of the Convention. As indicated by various members of the Hofstad group and confirmed by the March 2017 report by the Danish Immigration Service, Moroccan nationals who had been sentenced for a terrorism-related offence abroad and who were expelled to Morocco for that reason were monitored by the relevant authorities there. The fact that the applicant, like members of the Hofstad group, may be closely monitored if he were returned to Morocco had been taken into consideration in the assessment of the claimed Article 3 risk. According to the Government, monitoring does not automatically entail the existence of a risk of being subjected to treatment in breach of Article 3.

70. To the extent that the applicant referred to the cases of Mr S. and Mr A., the Government submitted that those cases were evidently incomparable to the applicant's and that it had not been demonstrated that there had been ill-treatment by the Moroccan authorities in those two cases.

2. The Court's assessment

(a) General principles

71. The Court would reiterate at the outset that it is acutely conscious of the difficulties faced by States in protecting their populations against terrorist violence, which in itself constitutes a grave threat to human rights. It is therefore careful not to underestimate the extent of the danger represented by terrorism and the threat it poses to society. It considers it legitimate, in the face of such a threat, for Contracting States to take a firm stand against those who contribute to terrorist acts. However, this does not affect the absolute nature of Article 3. As the Court has affirmed on several occasions since its judgment in the case of *Chahal v. the United Kingdom* (15 November 1996, §§ 80 and 81, *Reports of Judgments and Decisions* 1996-V), this rule brooks no exception. It is not possible to make the activities of the individual concerned, however undesirable or dangerous, a material consideration or to weigh the risk of ill-treatment against the reasons put forward for the expulsion in order to determine whether the responsibility of the State is engaged under Article 3 (see *Trabelsi v. Belgium*, no. 140/10, §§ 117-118 with further references, ECHR 2014 (extracts)). Expulsion by a Contracting State may give rise to an issue under Article 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person concerned, if deported, faces a real risk of being subjected to

treatment contrary to Article 3. In such circumstances, Article 3 implies an obligation not to deport the person in question to that country.

72. The Court further reiterates that where domestic proceedings have taken place, it is not the Court's task to substitute its own assessment of the facts for that of the domestic courts and, as a general rule, it is for those courts to assess the evidence before them. As a general principle, the national authorities are best placed to assess not just the facts but, more particularly, the credibility of witnesses since it is they who have had an opportunity to see, hear and assess the demeanour of the individual concerned (see *F.G. v. Sweden* [GC], no. 43611/11, §118, ECHR 2016). The Court must be satisfied, however, that the assessment made by the authorities of the Contracting State concerned is adequate and sufficiently supported by domestic material as well as by material originating from other reliable and objective sources (ibid, § 117).

73. If the applicant has not already been deported, the material point in time for the assessment must be that of the Court's consideration of the case (see *Chahal*, cited above, § 86). A full and *ex nunc* evaluation is required where it is necessary to take into account information that has come to light after the final decision by the domestic authorities was taken (see, for example, *Maslov v. Austria* [GC], no. 1638/03, §§ 87-95, ECHR 2008; and *Sufi and Elmi v. the United Kingdom*, nos. 8319/07 and 11449/07, § 215, 28 June 2011). The assessment must focus on the foreseeable consequences of the applicant's removal to the country of destination, in the light of the general situation there and of his or her personal circumstances (see, for example, *Salah Sheekh v. the Netherlands*, no. 1948/04, § 136, 11 January 2007; *Vilvarajah and Others v. the United Kingdom*, 30 October 1991, §§ 107-108, Series A no. 215; and *F.G. v. Sweden*, cited above, § 115).

74. It is for the applicant to adduce evidence capable of demonstrating that there are substantial grounds for believing that, if the measure complained of were to be implemented, he or she would be exposed to a real risk of being subjected to treatment contrary to Article 3 (see *Saadi v. Italy* [GC], no. 37201/06, § 129, ECHR 2008; and *F.G. v. Sweden*, cited above, § 120). In this connection it should be observed that a certain degree of speculation is inherent in the preventive purpose of Article 3 and that it is not a matter of requiring the persons concerned to provide clear proof of their claim that they would be exposed to proscribed treatment (see *Paposhvili v. Belgium* [GC], no. 41738/10, § 186, ECHR 2016; and *Trabelsi*, cited above, § 130).

75. Where such evidence is adduced, it is for the authorities of the returning State, in the context of domestic procedures, to dispel any doubts raised by it (see *Saadi*, cited above, §§ 129-132; and *F.G. v. Sweden*, cited above, § 120).

(b) Application of these principles to the present case

76. The Court emphasises that the issue before it is not whether upon his return the applicant risks being monitored, arrested and/or questioned, or even convicted of crimes, by the Moroccan authorities since this would not, in itself, be contrary to the Convention. The issue is whether the applicant's removal to Morocco would expose him to a real risk of being tortured or subjected to inhuman or degrading treatment or punishment as prohibited by Article 3 of the Convention.

77. In examining this matter, the Court observes that from the international material cited above (see paragraphs 47-55 above) it transpires that the human rights situation in general has improved in Morocco over several years and that the authorities are making efforts to comply with international human rights standards. However, it also transpires from, *inter alia*, the findings of the United Nations Working Group on Arbitrary Detention in its August 2014 report on Morocco (see paragraphs 47-49 above), the observations of the United Nations Human Rights Committee on the sixth periodic report on Morocco, adopted on 2 November 2016 (see paragraphs 50-51 above) and the information on Morocco set out in the report released in March 2017 by the US Department of State (see paragraph 52 above) that, despite the efforts undertaken by the Moroccan Government, ill-treatment and torture by the police and the security forces still occur, particularly in the case of persons suspected of terrorism or of endangering State security. Nevertheless, in the Court's opinion, a general and systematic practice of torture and ill-treatment during questioning and detention has not been established. In its assessment of the general situation the Court has further taken into account the actions taken by the Moroccan authorities in response to reported cases of torture (see paragraph 52 above), the right of access to a lawyer of persons placed in detention, as described by Human Rights Watch (see paragraph 54 above), which protects detainees against torture and ill-treatment to the extent that lawyers can report such cases for investigation purposes, and the fact that law-enforcement and security officials have obviously been made aware that such treatment is prohibited and that it carries heavy penalties. Moreover, both national and international organisations present in Morocco monitor the situation and investigate reports of abuse. Thus, the general situation is not of such a nature as to show, on its own, that there would be a breach of the Convention if the applicant were to return there. The Court therefore has to establish whether the applicant's personal situation is such that his return to Morocco would contravene Article 3 of the Convention.

78. The applicant essentially claimed that he is considered a suspect of terrorism by the Moroccan authorities on two grounds: firstly because these authorities are aware of his conviction in the Netherlands for terrorism-related offences and fail to respect the *ne bis in idem* principle and, secondly, because these authorities are aware of his link to a dismantled

terrorist cell in Morocco. On the basis thereof, and referring to case-law of the Court concerning terrorist suspects, the applicant claimed that he had adduced sufficient evidence of proving that there are substantial grounds for believing that if he were to be deported to Morocco, he would be exposed to a real risk of being subjected to treatment contrary to Article 3 of the Convention.

79. The Court notes that, unlike the situation in the cases of *Rafaa v. France* (no. 25393/10, 30 May 2013) and *Ouabour v. Belgium* (no. 26417/10, 2 June 2015), in which Morocco had requested the applicants' extradition on suspicion of terrorism, no such request has been made in the present case. It further notes that, unlike the situation in the case of *X. v. Sweden* (no. 36417/16, 9 January 2018), the applicant has been convicted of terrorism-related offences and it must be assumed that the Moroccan authorities are aware of the nature of his conviction in the Netherlands. Moreover, unlike in the Swedish case, the Dutch authorities conducted an investigation into whether the applicant was being searched for in respect of any criminal offences in Morocco.

80. As regards the alleged risk of the applicant being prosecuted in Morocco as a terrorist suspect because of his conviction in the Netherlands, the Court finds, on the basis of the material before it, that it has not been established that the Moroccan judicial authorities fail to respect the principle of *ne bis in idem* (see, in particular, paragraph 33 above). Accordingly, it finds that it has not been demonstrated that the applicant would risk prosecution in Morocco in respect of the same facts held against him in the criminal proceedings in the Netherlands, as contended by the applicant.

81. As regards the alleged risk of the applicant being prosecuted for terrorist offences due to his link with the dismantled terrorist cell in Morocco, the Court has found no indication in the material before it that the Moroccan authorities – who must be assumed are aware of the applicant's existence, identity and country of residence – have ever taken any steps demonstrating an interest in the applicant. This is not altered by the fact that the applicant's name was mentioned in the Moroccan judgment convicting nine members of the dismantled terrorist cell (see paragraph 31 above), which must be seen in the context of the facts held against B.B.. Accordingly, it finds that it has not been demonstrated that there are grounds to assume that the Moroccan authorities regard the applicant a suspect of terrorism. Moreover, it has not been argued, and the case file contains no such indication, that any of the nine convicted members of the dismantled terrorist cell or G.H. (see paragraphs 23, at point 6.2, 33 and 61 above), to whom the applicant seeks to compare himself, was, in the course of the criminal investigation against them, subjected to treatment prohibited by Article 3 of the Convention.

82. The Court concludes that the assessment by the domestic authorities was adequate and was sufficiently supported by domestic and other reliable

and objective material (compare *F.G. v. Sweden*, cited above, § 117) and that, in the light of the forgoing considerations, the applicant's removal to Morocco would not give rise to a violation of Article 3 of the Convention.

II. RULE 39 OF THE RULES OF COURT

83. In accordance with Article 44 § 2 of the Convention, the present judgment will not become final until (a) the parties declare that they will not request that the case be referred to the Grand Chamber; or (b) three months after the date of the judgment, if reference of the case to the Grand Chamber has not been requested; or (c) the Panel of the Grand Chamber rejects any request to refer under Article 43 of the Convention.

84. The Court considers that the indication made to the Government under Rule 39 of the Rules of Court (see paragraph 4 above) must continue in force until the present judgment becomes final or until the Court takes a further decision in this connection (see operative part).

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that the applicant's removal to Morocco would not give rise to a violation of Article 3 of the Convention;

3. *Decides* to continue to indicate to the Government under Rule 39 of the Rules of Court that it is desirable in the interests of the proper conduct of the proceedings not to expel the applicant until such time as the present judgment becomes final or until further order.

Done in English, and notified in writing on 10 July 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Registrar

Helena Jäderblom
President