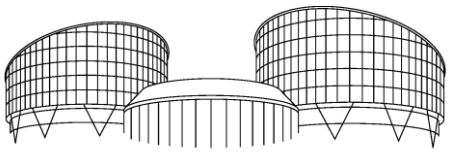

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF EL HASKI v. BELGIUM

(Application no. 649/08)

JUDGMENT
[Extracts]

STRASBOURG

25 September 2012

This judgment is final but it may be subject to editorial revision.

In the case of El Haski v. Belgium,

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

Danutė Jočienė, *President,*
Françoise Tulkens,
Dragoljub Popović,
Isabelle Berro-Lefèvre,
András Sajó,
Işıl Karakaş,
Guido Raimondi, *judges,*
and Françoise Elens-Passos, *Deputy Section Registrar,*

Having deliberated in private on 4 September 2012,

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

PROCEDURE

1. The case originated in an application (no. 649/08) against the Kingdom of Belgium 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 Lahoucine El Haski ("the applicant"), on 27 December 2007.

2. The applicant, who had been granted legal aid, was represented by Mr C. Marchand, a lawyer practising in Brussels. The Belgian Government ("the Government") were represented by their Agent, Mr M. Tysebaert, General Counsel, Federal Public Department of Justice.

3. On 12 January 2009 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

The United Kingdom Government and the non-governmental organisations *European Centre for Constitutional and Human Rights* and *Redress Trust* were granted leave to submit written comments (Article 36 § 2 of the Convention and Rule 44 § 3 of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1975 and is detained in Andenne prison.

5. After studying the Koran and Sharia law, the applicant left his country of birth, Morocco, for Syria. He stayed there from 1993 to 2002 and studied

Islamic theology and Arabic. During that period he travelled on several occasions to Morocco, Turkey and Saudi Arabia. He also visited Afghanistan twice, in 1994 and 1995, for a few months each time. He carried out military training there and – according to his application – took part in "a training programme for the military leader Hekmatyar".

6. The applicant returned to Morocco in 2002. Under the surveillance of the Moroccan authorities, he left the country for Saudi Arabia, arriving there in October 2002. He only remained there until 2003 because – he alleged – he was "wanted by both Moroccan and Saudi intelligence services".

7. The applicant reached Belgium via Turkey in early 2004, with false identity papers. He settled there with his Belgian wife and their son. He lodged an asylum application on 16 June 2004.

8. The applicant was arrested in Belgium on 1 July 2004. He was charged with participating, between 7 January and 2 July 2004, as a leader, in the activity of a terrorist group (the Moroccan Islamic Fighting Group, referred to hereinafter as "GICM" after its French name *Groupe Islamique Combattant Marocain*), and with forgery, conspiring in a leading capacity to commit an offence, handling of stolen goods, use of a false name and illegal entry and residence.

A. The context of the applicant's arrest

9. It can be seen from the report on the facts submitted on 26 April 2006 by the Federal Prosecutor before the Brussels Court of Appeal (see paragraph 27 below) and that court's judgment of 19 January 2007 (see paragraphs 29-41 below) that, on 25 November 2002, the administrator-general of the State security service transmitted to the Federal Prosecutor's office a report noting the presence in Belgium of a group of North African nationals with links to the GICM, made up of individuals who had undergone military training in Afghanistan in camps connected to Al-Qaeda and led by a certain "Shihab", alias "Abdellah". A second report dated 24 December 2002 indicated that B. was part of that group.

10. A judicial investigation was opened on 9 January 2003 against persons unknown on a charge of criminal conspiracy.

11. In a third report, dated 28 March 2003, the State security service informed the public prosecutor's office that a certain O. was the individual known as "Shihab", and that he had spent time in Afghanistan in 2001, where he had followed paramilitary training.

12. In connection with the investigation into the Casablanca bombings of 16 May 2003, which left about fifty people dead, the Moroccan authorities arrested a number of Islamist militants. During an interview on 8 August 2003, one of them, N., alias Abu Muad, who acknowledged that he was one of the leaders of the GICM and that he had contributed to organising the movement in 2001 in Afghanistan, stated that a certain H.

and the applicant had been given responsibilities within the group. He added that after the Western intervention in Afghanistan in 2001 the movement had been split up into small units based in Morocco, France, Belgium, Italy, the United Kingdom and Canada, and that the Belgian unit included H., B. and O. in particular.

In view of those statements, and others made by another suspect on 9 August 2003, Morocco issued, on 3 October 2003, an international arrest and extradition warrant in respect of a number of individuals, including the applicant, H. and B., for, in particular, "conspiring to prepare and commit acts of terrorism, and collecting funds to support terrorist action".

13. On 9 October 2003 the State security service transmitted a fourth report to the investigating judge concerning a certain I., who, on 17 November 2003 reported the loss of his passport to the Moroccan Consulate in Antwerp and applied for a new one. He subsequently stated that he had done so in order to obtain a passport for the applicant to be able to enter Belgium.

14. On 15 March 2004 the State security service issued a fifth report, indicating in particular that B.'s home had been placed under surveillance in the second half of January 2004 and that it was frequented by the applicant, his brother Hassan, O. and H.

15. On 16 March 2004 the Federal Prosecutor's Office filed additional submissions against persons unknown on a charge of participating in terrorist activity.

16. On 19 March 2004 the federal police arrested H., O. and two other persons, after carrying out searches during which forged passports and Belgian identity cards for foreign residents, among other items, had been seized.

17. In the same period in France, in connection with a judicial investigation against persons unknown, opened on 19 May 2003 on a charge of conspiring to commit acts of terrorism, six individuals suspected of taking part in the GICM were arrested on 4 and 5 April 2004 (three of whom had been named in the Moroccan extradition warrant of 3 October 2003).

While they were in police custody, and again before the French investigating judges, the suspects made statements in particular about the international structure of GICM, the military training carried out by some of them in Afghanistan, their meeting in that country with those implicated in the Belgian proceedings, the role played by the latter in the GICM's international structure and their activities in Belgium.

18. In a report of 1 June 2004, the State security service referred to its surveillance on 12 March 2004 of a snack bar ("Le Village") in a suburb of Brussels.

19. A second wave of searches took place on 8 June 2004 and four individuals were arrested.

20. On 26 June 2004, B., who had been arrested in the Netherlands on 27 January 2004 on the basis of a Moroccan warrant of October 2003, was extradited to Belgium.

21. I. was arrested on 16 September 2004. Individuals with links to the applicant or to some of his co-defendants were also arrested in Spain in connection with the investigation into the Madrid bombings of 11 March 2004.

22. The last report of the State security service, dated 6 January 2005, indicated that a certain R. might also be linked to the suspects in the case.

B. The criminal proceedings

23. In a decision of 29 August 2005 the Committals Division (*chambre du conseil*) of the Brussels Court of First Instance committed the applicant and twelve others to stand trial before the Brussels Criminal Court for, in particular, participation in a terrorist group. On the same day, finding that the applicant had provided evidence of low income, it granted him legal aid so that he could receive a free copy of the entire case file.

24. Documents transmitted by the Moroccan authorities in response to an international letter of request were added to the file after the finalising of the pre-trial proceedings. They were reports of interviews with four of the suspects who were held in Morocco.

One of the reports concerned an interview on 14 January 2004 with a certain A., who had been arrested in Saudi Arabia and extradited on that date to Morocco. According to the indications in the Federal Prosecutor's report on the facts (see paragraph 9 above), A. had stated, in particular, that he had met the applicant, who was a childhood friend of his, in Afghanistan in 1998, and then in 2000 had met the defendant H., while the latter was on a training course in the use of explosives and remote-controlled bombs. A. had added that, in early 2000, the GICM had been re-organised around committees, with the applicant chairing the religious affairs committee and H. being a member of the security committee. He had also explained that he had shared accommodation with the applicant for four months in Kabul in early 2001, in a "GICM guest house" where the group's leaders would incite them to "go and carry out jihadist operations in Morocco", and that after the Western intervention in 2001, he had travelled to Morocco, where he had taken part in GICM meetings accompanied, in particular, by the applicant; he had then met up with the applicant again in 2003 in Saudi Arabia. A. had also confirmed the existence of GICM units in France and Belgium, and the fact that B. and O., who he had seen in Afghanistan in 2000 and 2001 respectively, were involved in the Belgian unit.

1. Proceedings before the Brussels Criminal Court

25. The public prosecutor's office set the case down for hearing on 3 November 2005 and then on 16 November 2005. The Criminal Court held a total of twenty-five hearings, which lasted from 3 November 2005 to 16 February 2006, when it sentenced the applicant to seven years' imprisonment and a fine of 2,500 euros (EUR). It also handed down prison sentences and fines against eight of his co-defendants and acquitted the four others.

26. Five of the co-defendants – including the applicant – lodged an appeal, as did the Federal Prosecutor's Office.

2. Proceedings before the Brussels Court of Appeal

(a) Judgment *in absentia* of 15 September 2006

27. The first hearing before the Brussels Court of Appeal was scheduled for 26 April 2006. After briefly questioning the applicant about his identity and the reason for his appeal, the President asked the Federal Prosecutor to give a report on the case. The latter proceeded to read out a report on the facts, extending to several dozen pages, which had been prepared by the Federal Prosecutor's office (even though, the applicant claimed, the usual practice in Belgian criminal courts was for the report on the facts to be presented by a judge of the Court of Appeal). The Court of Appeal subsequently requested the public prosecutor to give his submissions, without there having been any further examination of the applicant or of witnesses.

In view of the voluminous nature of the case file (about a hundred binders containing thousands of pages), the co-defendants submitted in writing that the case should be adjourned until 1 September 2006. As the Court of Appeal denied that request, four of them, including the applicant, decided not to appear.

28. On 15 September 2006, ruling *in absentia* in respect of the four defendants, the Court of Appeal varied the judgment of 16 February 2006 and sentenced the applicant to eight years' imprisonment and a fine of EUR 2,500. The applicant and two of his co-defendants applied to have the judgment set aside.

(b) Judgment of 19 January 2007

29. Some ten hearings were held between 6 October and 10 November 2006 and on 19 January 2007 the Brussels Court of Appeal confirmed the applicant's guilt and his original sentence of seven years' imprisonment and a EUR 2,500 fine.

(i) Criminal procedure issues

...

34. The defendants further protested against the addition to the case file of interview reports from France and Morocco. They argued that the statements had been obtained using treatment in breach of Article 3 of the Convention, adding that, in respect of the interviews conducted in Morocco, they were unlawful under Moroccan law. Invoking their right to a fair trial, they requested the Court of Appeal to remove them from the criminal case file.

...

36. As to the interviews conducted in Morocco, the Court of Appeal first noted that the defendants had not adduced any concrete evidence giving rise to reasonable doubt as to a possible breach of Moroccan law by the police or judicial authorities of that country in the proceedings from which the interview reports in question had emanated. The court found, in particular, that the interview reports recorded the statements in a detailed manner, mentioning the identity of the police officer by whom they were drawn up, the precise duration of the judicial custody periods and the fact that they had been authorised by the relevant public prosecutor. It further found as follows:

> "... Moreover, the fact of citing in general terms various reports of human rights organisations – admittedly respectable ones – does not adduce any concrete evidence that would be capable of giving rise in the present case to the above-mentioned reasonable doubt as to the violence, torture or inhuman or degrading treatment that was allegedly inflicted on the individuals interviewed in Morocco ...
>
> Lastly, it cannot be surmised from those interviews or from the Moroccan court decisions added to the file that ... the above-mentioned persons were questioned or sentenced after an expedited trial for participating in the Casablanca bombings, on the basis of a Moroccan Law of 28 May 2003 on the combating of terrorism that had been applied retroactively in breach both of Article 4 of the Moroccan Criminal Code and of the general principle that criminal legislation cannot have retrospective effect.
>
> An examination of the Moroccan court decisions – and more specifically the judgment of the Rabat Assize Court – reveals, on the contrary, that the eight Moroccan defendants had initially been charged with setting up a criminal association for the preparation and commission of acts of terrorism, forgery of passports, and the collection of funds in aid of terrorist actions, on the basis of legislation that was unconnected with the above-mentioned Law of 28 May 2003.
>
> It can be seen from the foregoing findings that the interview reports and Moroccan court decisions that were added to the file, with the possibility of being freely challenged by the parties, should not be excluded.
>
> In addition, the contradictions allegedly contained in those statements, according to defence counsel's argument, are not capable of justifying the claim that the individuals who were interviewed and/or tried in Morocco were subjected to any inhuman and degrading treatment or torture.

Lastly, the Belgian trial courts are by no means bound by those statements and remain free to decide on their relevance and accuracy."

...

(ii) Examination on the merits

39. In its judgment, the Court of Appeal began by showing that the GICM was a terrorist group within the meaning of Article 139 § 1 of the Criminal Code, explaining that it was an organised association of more than two people, established on a lasting basis, which engaged in concerted action for the purpose of committing terrorist offences covered by Article 137 of the Criminal Code. It observed in particular that the group had set up a coordination committee in Morocco and a number of cells in Europe, which had acted in a concerted manner to commit terrorist offences (in particular, homicide and widespread destruction or damage) with the aim of destroying by violence the fundamental structures of Morocco, so that the caliphate could be restored in that country, and of engaging in a holy war that would spread to other countries.

40. As regards, more specifically, the guilt of the applicant himself, the Court of Appeal first noted that "it [could] be seen with certainty from certain elements of the procedure" that he had taken part in the activity of a terrorist group, within the meaning of Article 140 § 1 of the Criminal Code, by taking a number of initiatives to facilitate transfers of funds that were necessary for the financing of the GICM's unlawful activities, by circulating information about them and acting as a coordinator between the members of the Belgian and French cells, and that he was aware that such participation would contribute to the commission of a criminal offence. It thus concluded that there were a "number of sufficiently strong presumptions of fact", with reference to the following evidence:

- statements made by individuals interviewed in Morocco and information from the Moroccan authorities;
- statements made by individuals interviewed in France;
- statements made by the applicant, from which it transpired that he had participated in GICM meetings in Europe;
- the fact that the applicant had made "a number of journeys in countries known for radical Islamist opinions developed by certain influential groups", had "followed paramilitary training in Jalalabad" and had had "numerous contacts with individuals known for their close relations with extremist Islamist cells or active participation therein";
- the applicant's participation in the extremist activities of Islamist groups that were active on an international scale, based on an international arrest warrant issued against him by the Moroccan authorities in connection with an investigation into terrorist activities, and on the fact that he had fled Saudi Arabia, where he was suspected of

taking part in the Riyadh bombings of 12 May 2003, for which an arrest warrant had also been delivered against him;

- his participation in training specifically given to Islamist terrorist groups, as inferred from his own statements and those of individuals held in Morocco;

- the applicant's links with other members of the GICM's Belgian cell.

The Court of Appeal then noted that the applicant was one of the GICM's leaders, a fact that could be sufficiently inferred from the statements taken in Morocco and France and from his role as coordinator for the GICM members in Belgium.

41. Lastly, the Court of Appeal found that "the acts committed by the defendants fell clearly within the context of a movement whose aim was to further, by violence and intolerance, the cause of a radical form of Islam, directly threatening the religious and philosophical pluralism that existed in democratic societies and the fundamental rights of their citizens, such as freedom of thought and freedom of expression", and that the sanction should be "commensurate with this very serious breach of public safety and democratic order". In sentencing the applicant, the court added as follows:

> "... It should be pointed out that the defendant played a major role within the GICM's religious committee; that he was subsequently responsible for the Belgian and French cells of the GICM, together with the defendant [O].
>
> As has already been mentioned, his duties in the Belgian cell mainly consisted in: directing the collection of funds that would serve to finance the group's activities after the arrest of [N.]; playing a coordinating role between the members of the Belgian cell and those of the Belgian and French cells; and maintaining contact with numerous members of cells based in other countries.
>
> The acts committed by the defendant are clearly of a serious nature because they were committed: by an individual who, in particular, travelled on numerous occasions to Afghanistan, Chechnya, Turkey, Mauritania, Saudi Arabia and Syria to establish international relations between the members of the various cells of the terrorist group; by a professional who followed military training in Afghanistan and training in group leadership and who dispensed religious training as part of the responsibilities entrusted to him within the GICM; by an extremist who has no respect for the physical integrity of others and who is prepared to undermine international public safety, by making possible the use of violent methods to ensure that his opinions prevail.
>
> The features of the defendant's personality, as can be seen from the case file, are a matter of concern. It should be pointed out in this connection that the defendant: has already been known for many years at an international level for his terrorist activities and is also wanted by the Moroccan judicial authorities under an international arrest warrant; resided illegally in Belgium for several months and did not lodge an asylum request with the aliens office until June 2004; cannot prove any means of subsistence and seems to survive only with the support of other members of the terrorist group. .."

42. The applicant and some of his co-defendants appealed on points of law.

(c) Proceedings before the Court of Cassation

43. The Court of Cassation dismissed the appeal by a judgment of 27 June 2007. ...

44. As to the argument concerning treatment in breach of Article 3 that had allegedly been sustained by individuals whose statements had been taken in foreign countries, the Court of Cassation took the view that its examination would entail criticism of the factual assessment of the evidence in the case by the trial judge, or a request for verification of such evidence, and that it did not have jurisdiction in respect of such matters.

45. The court further found ... that, as a whole, the applicant had been given a fair trial within the meaning of Article 6 of the Convention.

II. RELEVANT DOMESTIC LAW AND PRACTICE

46. Articles 139 and 440 of the Belgian Criminal Code read as follows:

Article 139

"A terrorist group shall be defined as an organised association of more than two people, established on a lasting basis and engaged in concerted action with a view to the commission of terrorist offences covered by Article 137.

An organisation whose real purpose is solely of a political, trade union or philanthropic, philosophical or religious nature, or which solely pursues any other legitimate aim, cannot, as such, be considered a terrorist group within the meaning of paragraph 1."

Article 140

"1. Anyone who participates in an activity of a terrorist group, including by providing information or material resources to that group or through any form of financing of a terrorist group's activity, in the knowledge that such participation aids the commission of an offence by the terrorist group, shall be liable to a prison sentence of between five and ten years and to a fine of between one hundred euros and five thousand euros.

2. Leaders of terrorist groups shall be liable to a prison sentence of between fifteen and twenty years and to a fine of between one thousand euros and two hundred thousand euros."

47. Section 13 of the Law of 9 December 2004 on international mutual legal assistance in criminal matters provides that:

It shall be prohibited to use in Belgian criminal proceedings any evidence:

1° that has been illegally obtained in a foreign country, where the illegality:

– arises, under the law of the State in which the evidence has been gathered, from the breach of a procedural requirement prescribed on pain of nullity;

– vitiates the reliability of the evidence;

2° or of which the use violates the right to a fair trial."

...

III. MATERIAL ON THE HUMAN RIGHTS SITUATION IN MOROCCO

A. Findings and recommendations of the United Nations Committee against Torture and Human Rights Committee

50. In its conclusions and recommendations following the third periodic report of Morocco (CAT/C/CR/31/2; 5 February 2004), the United Nations Committee against Torture expressed its concern about, in particular, the increase in the number of allegations of torture and cruel, inhuman or degrading treatment or punishment, implicating the National Surveillance Directorate (DST) (§ 5.d) and the non-existence of a provision of criminal law prohibiting any statement obtained under torture from being invoked as evidence in any proceedings (§ 5.g). It recommended in particular: that the Criminal Code be amended such as to clearly prohibit any act of torture, even if perpetrated in exceptional circumstances or in response to an order received from a superior officer or public authority (§ 6.b), and to incorporate a provision prohibiting any statement obtained under torture from being invoked as evidence in any proceedings (§ 6.h); that all necessary measures be taken to eliminate impunity for public officials responsible for torture and cruel, inhuman or degrading treatment (§ 6.e); that all allegations of torture or cruel, inhuman or degrading treatment be immediately investigated impartially and thoroughly, especially allegations relating to cases and situations verified by the Independent Arbitration Commission and allegations implicating the DST in acts of torture, and that appropriate penalties be imposed on those responsible, with equitable compensation being granted to the victims.

51. The concluding observations of the United Nations Committee against Torture, having considered the fourth periodic report of Morocco (CAT/C/MAR/CO/4; 21 December 2011), read as follows:

> "...
>
> *Use of torture in cases involving security concerns*
>
> 10. The Committee is concerned by numerous allegations regarding torture and ill-treatment committed by police officers, prison staff and, in particular, agents of the National Surveillance Directorate (DST) who are acting as members of the criminal investigation police force when people are deprived of basic legal safeguards, such as access to legal counsel, particularly in the case of people who are suspected of belonging to terrorist networks or of being supporters of independence for Western Sahara and in the course of interrogations carried out in order to extract confessions from persons suspected of terrorism (arts. 2, 4, 11 and 15).
>
> The State party should immediately take substantive steps to investigate acts of torture and to prosecute and punish those who have committed such acts. The State

party should ensure that law enforcement officers do not engage in torture through, inter alia, an unambiguous reaffirmation of the absolute prohibition of torture and a public condemnation of that practice by, in particular, the police, prison personnel and members of DST. It should also be made very clear that anyone who commits such acts or is complicit or otherwise participates in such acts will be held personally responsible before the law and will be subject to criminal prosecution and the appropriate penalties. ...

Secret arrests and detention in cases involving security concerns

14. The Committee is concerned by reports that, in cases involving terrorism, legal procedures for arresting, questioning and holding suspects in custody are not always followed in practice. The Committee is also concerned by information pointing to a consistent pattern whereby suspects are arrested by plain-clothes officers who do not clearly identify themselves, taken in for questioning and then held in secret detention facilities, which in practice amounts to incommunicado detention. The suspects are not officially registered and are subjected to torture and other cruel, inhuman or degrading treatment or punishment. They are held in these conditions for weeks at a time without being brought before a judge and without judicial supervision. Their families are not notified of their arrest, of their movements or of their whereabouts until such time as they are transferred to police custody in order to sign confessions that they have made under torture. It is only then that they are officially registered and their cases are processed through the regular justice system on the basis of falsified dates and information (arts. 2, 11, 12, 15 and 16). ...

The State party should ensure that the proper legal procedures are followed in the case of all persons who are arrested and taken into custody and that the basic safeguards provided for by law are applied, such as access for detained persons to legal counsel and to an independent physician, notification of their family of the arrest and of the location where they are being held and their appearance before a judge.

The State party should take steps to ensure that all register entries, transcripts and statements, and all other official records concerning a person's arrest and detention are kept in the most rigorous manner possible and that all information regarding a person's arrest and remand custody is recorded and confirmed by both the investigative police officers and the person concerned. The State party should ensure that prompt, thorough, impartial and effective investigations are conducted into all allegations of arbitrary arrest and detention and should bring those responsible to justice.

The State party should ensure that no one is held in a secret detention facility under its de facto effective control. As often emphasized by the Committee, detaining persons under such conditions constitutes a violation of the Convention. The State party should open a credible, impartial, effective investigation in order to determine if such places of detention exist. All places of detention should be subject to regular monitoring and supervision.

Prosecution of perpetrators of acts of torture and ill-treatment

16. The Committee is particularly concerned that it has received no reports to date of any person being convicted under article 231.1 of the Criminal Code of having committed acts of torture. It notes with concern that police officers are, at the most, prosecuted for assault or assault and battery, but not for torture, and that the information provided by the State party indicates that the administrative and disciplinary penalties imposed on officers for such acts do not seem to be commensurate with their seriousness. The Committee observes with concern that

allegations of torture, despite their number and frequency, rarely give rise to investigations and prosecution and that a climate of impunity appears to have taken hold, given the failure to impose genuine disciplinary measures or to bring any significant number of criminal cases against State officials accused of committing acts specified in the Convention, including the gross, large-scale human rights violations that took place between 1956 and 1999 (arts. 2, 4 and 12).

The State party should ensure that any and all allegations of torture and of ill-treatment are promptly, effectively and impartially investigated and that the persons who have committed such acts are prosecuted and are given sentences that are commensurate with the grave nature of their acts, as provided for in article 4 of the Convention. The State party should also amend its laws in order to explicitly stipulate that an order from a superior officer or a public authority may not be invoked as a justification of torture. The State party should also take steps to ensure that complainants and witnesses are effectively protected from any ill-treatment or act of intimidation related to their complaint or testimony.

Coerced confessions

17. The Committee is concerned by the fact that, under the State party's current system of investigation, confessions are commonly used as evidence for purposes of prosecution and conviction. The Committee notes with concern that convictions in numerous criminal cases, including terrorism cases, are based on confessions, thus creating conditions that may provide more scope for the torture and ill-treatment of suspects (arts. 2 and 15).

The State party should take all steps necessary to ensure that criminal convictions are based on evidence other than the confession of the persons charged, especially when such persons retract their confessions during the trial, and to make certain that, except in cases involving charges of torture, statements made under torture are not invoked as evidence in any proceedings, in accordance with the Convention.

The State party is requested to review criminal convictions that have been based solely on confessions in order to identify cases in which the conviction was based on confessions obtained under torture or ill-treatment. The State party is also invited to take the appropriate remedial measures and to inform the Committee of its findings. ..."

52. In its final observations (CCPR/CO/82/MAR; 1 December 2004) on the fifth periodic report of Morocco, the United Nations Human Rights Committee was concerned, in particular, about "the numerous allegations of torture and ill-treatment of detainees" and "the fact that the officials who [were] guilty of such acts [were] generally liable to disciplinary action only, where any sanction exist[ed]". It further "note[d] with concern that no independent inquiries [were] conducted in police stations and other places of detention in order to guarantee that no torture or ill-treatment [took] place" (§ 14). The Committee also observed with concern that the independence of the judiciary was not fully guaranteed (§ 19) and that, according to numerous reports, the Terrorism Act of 28 May 2003 was being applied retroactively.

B. Reports by non-governmental organisations ("NGOs")

53. In its report of 28 November 2005 entitled "Morocco's Truth Commission: Honoring Past Victims during an Uncertain Present", which was referred to by the applicant before the Court, as previously before the domestic courts, Human Rights Watch examined the consequences of the Casablanca bombings of 16 May 2003. It made the following points:

> "... The fragility of Morocco's human rights progress was laid bare by the state's response to Morocco's first-ever mass terrorist attack. On the night of May 16, 2003, suicide bombers struck several locations in Casablanca, killing forty-five persons, including twelve attackers.
>
> Less than one week later, parliament unanimously adopted an anti-terrorist law (Law 3/2003), which had been under debate since autumn 2002 and which raised numerous human rights concerns. The law extended the maximum duration of pre-arraignment detention from eight to twelve days in cases considered to involve terrorism. It also defined the term in a very broad manner. The law considers an act as terrorist if its 'main objective is to disrupt public order by intimidation, force, violence, fear or terror' and is composed of one or more acts listed in the article. These include, in addition to physical attacks on other persons, 'the involvement in organized groups or congregations with the intent of committing an act of terrorism,' and 'the promulgation and dissemination of propaganda or advertisement in support of the above-mentioned acts.' In the months following the Casablanca attacks, the government used this broad definition to convict hundreds of suspected members of terrorist cells, as well as several journalists accused of being apologists for terror.
>
> Various human rights organizations documented widespread abuses of the rights of the more than 2,000 suspected Islamists detained by the security forces and the Moroccan courts in the weeks following the attacks in Casablanca. [Human Rights Watch referred to the following reports: Moroccan Human Rights Organization, '*Muhakamat ikhtal fiha mizan al-`adalah*' (Trials in which the scales of justice have been tipped), Rabat, November 2003; Human Rights Watch, 'Morocco: Human Rights at a Crossroads', *A Human Rights Watch Report*, New York, October 2004; Amnesty International, Morocco/Western Sahara: 'Briefing to the Committee against Torture' (London, November 2003); Amnesty International, 'Morocco/Western Sahara: Torture in the 'anti-terrorism' campaign - the case of Témara detention centre'; International Human Rights Federation, '*Les autorités marocaines à l'épreuve de terrorisme: la tentation de l'arbitraire*', (Paris: FIDH, February 2004), no. 379.] Many were held for days or weeks in secret detention, where the police subjected them to various forms of illtreatment and in some cases to torture in order to extract confessions. The courts denied them their right to a fair hearing. They routinely refused defense motions to call witnesses, and refused to order medical examinations of those who claimed to have been tortured. Many were tried in haste and convicted before October 2003, when legal reforms took place giving defendants the right to appeal their conviction on the basis of the facts ..."

Human Rights Watch, commenting that the "crackdown on suspected [Islamist] militants after the Casablanca bombings constituted an alarming deterioration in rights conditions" and that, more generally, the "authorities instrumentalize[d] the courts to serve political ends", also observed as follows:

"... The mistreatment and unfair trials of suspected militants who were rounded up after the suicide bombings of May 16, 2003, recalled in some ways the grave violations of the past ...

... while some of the suspects arrested in 2003 went missing in police custody for up to several months, they were all accounted for eventually. However, many were subjected to torture or mistreatment while under interrogation. Some were held in an unacknowledged detention center in Temara, a facility under the auspices of the National Surveillance Directorate (*Direction de la Surveillance du Territoire*, DST). Some 900 of the suspects were sentenced to prison terms, many in hasty proceedings that did not provide defendants their basic due process rights. Seventeen were sentenced to death, sentences that have not been carried out yet. ...

Authorities have responded to reports of present-day abuses by characterizing them as isolated phenemona. [footnote: For example, [the] Justice Minister ... said abuses in the context of the round-up of terror suspects were 'rare' and 'isolated,' but vowed, 'We will respond to reports of violations.' ...] Mohamed VI, in an interview published in the Spanish daily *El País* on January 16, 2005, acknowledged the existence of 'twenty cases of abuse' that he said were being handled by the courts. No details of these twenty cases have been disclosed, to Human Rights Watch's knowledge, making it difficult to verify whether and for what offenses officials were being held accountable.

Overall, the pattern of continuing abuses, criticized by various human rights organizations as well as by the U.N. Human Rights Committee, [footnote: See the Concluding Observations of the Human Rights Committee on Morocco, November 5, 2004, CCPR/CO/82/MAR] shows that security forces continue to operate in a climate of impunity and disrespect for the law, and that the executive branch continues to exercise considerable influence over the courts. ..."

54. In the above-mentioned report, published in February 2004 and entitled "*mission internationale d'enquête – les autorités marocaines à l'épreuve du terrorisme : la tentation de l'arbitraire – violations flagrantes des droits de l'Homme dans la lutte anti-terroriste*" (international fact-finding mission – the Moroccan authorities' response to terrorism: the temptation to act arbitrarily – flagrant human rights violations in the counter-terrorism context", the International Human Rights Federation (FIDH) analysed the human rights situation in Morocco in the context of the crackdown on terrorism after the bombings of 16 May 2003. It reported that there had been thousands of arrests, many of which were illegal, followed by numerous cases of arbitrary deprivations of liberty in secret centres. Chapter 2-4, entitled "torture and cruel, inhuman and degrading treatment", reads as follows [translation by the Registry]:

"In such centres, interrogations are carried out in breach of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by the United Nations in 1975, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984, ratified by Morocco.

At the Témara centre, where most prisoners are taken after their arrest, ill-treatment, violence and torture is, by all accounts, common practice. The cells, situated in the basement, are lit day and night. When they move around, as well as during

interrogation, the prisoners are blindfolded. Interrogations are often very long, 16 hours a day, we have been told, with police officers taking it in turns to interrogate.

Insults and blows are commonplace, with prisoners sometimes being stripped naked. A number of cases of electrical torture have been reported. 22 defendants from the Fikri group wrote in March 2003 to the AMDH to testify. 'The cell at Témara where I was held had a high ceiling and a small window at the top with thick bars. There was a hole for a toilet and a bucket of water'. Having being assaulted during his arrest, and still having a sprained knee, the witness continued 'I was in agony and was asking for treatment, as my knee had become very swollen and blue. A warder then answered me "I'll saw off your bloody knee, then"'.

Abderrazek Fawzi had been held since his arrest on 18 September 2002 in a single cell with no windows. There was only a foam mattress and a dilapidated blanket lying on the floor. Blindfolded and handcuffed, he was 'grilled'. 'During that interrogation in Temara', he wrote, 'I was punched and kicked, humiliated and insulted and left with cigarette burns on my hands. These twice-daily practices resulted in physical and mental suffering, of which I still have obvious signs, not to mention the nightmares and lack of sleep'.

'... They took me in secret to Tamara, where I underwent a number of interrogations using terrible methods because I would never see the sun again, according to them', said Salah Zarli. 'I acknowledged that I had been to Afghanistan . They asked me to work with them to better understand the "Afghans", especially the Afghan Moroccans and the Islamists in Milan, where I worked at the Islamic Institute. Four days later, they let me go and asked me to keep them informed.' After being released, S. Zarli was arrested again on 3 September 2002: 'Four people accompanied me home, searched everywhere and took away all my papers. Once again they took me to Temara, where they kept me a month and a half locked in a single cell that I would leave only for interrogation, which lasted 16 hours at a time; the interrogation began at 8 in the morning and went on until midnight. I was beaten all over, stripped naked, insulted, spat at, threatened and so on. All this without seeing the faces of my torturers. What interested them was the Islamists in Italy and those who were going to Afghanistan or Bosnia. They tried to bribe me by promising to help me set up a business.'

Cases of rape have been reported. Abdelghani Bentaous claimed to have been raped three times. Abdelmajid Rais said he was raped with a bottle and burned with cigarettes. Other detainees said they had been burned with cigarettes and suspended for hours or tortured by water-boarding.

Bouchaïeb Kermej told his sisters that, in addition to the beatings and threats, he had once been given an injection at the top of the spine, as a result of which he thought he must have fainted.

Several detainees who had refused to sign their statements were finally tortured into signing. This was claimed, for example, by Abdelghani Bentaous and Atchane to their lawyers and to the judge. '... Handcuffed and blindfolded, I was taken to the torture chamber where I was made to kneel and put my arms on my head to keep me like that during the long interrogation that followed. Whenever I hesitated and stuttered or made a mistake, I was beaten with a braided electric wire. I was struck on the head, back, soles of the feet, buttocks and thighs, also being slapped and punched on the face, which left me deaf in my left ear. A doctor then came to see me and prescribed medication. When I went back the torture room, one of the torturers tore my shirt off in front of my younger brother, who was screaming – I heard him but could not see him because I was still blindfolded. I was taken to torture sessions, where I spent the

first night without sleeping because I was interrogated virtually non stop' (Kamel Chtoubi).

The family of Mohamed Chtoubi has claimed that he was raped with a bottle and has insisted on telling us that he was denied treatment in Okasha prison even though he could no longer sit down, as they noticed during his trial. Mohamed Chtoubi was subjected to constant blackmail, being told: 'confess and your brother will be released'.

'The day I saw him', his sister recounts, 'his nose and mouth were distorted by the blows'.

'They became more and more perverse as the nightmare went on', recounted Mohamed Chtoubi, 'threatening to rape my mother, my wife and my sisters in front of me. They did not, however, forget the physical torture, using electricity, hanging me, choking me with wet rags ... I was abandoned because my condition seriously deteriorated and I spent whole nights screaming after horrible nightmares haunted me as soon as I tried to sleep, as well as not being able to eat anything. They refused me sleeping pills, just like they refused to give me a Koran ... The most difficult thing was above all the fear of being raped, with which I was constantly threatened, and the screams of those being tortured ... After 40 days of this, I no longer knew what was going on or what I was saying or what I was doing ... One day in the month of Ramadan (November 2002) I removed the cover of my mattress to turn it into a rope, which I then tied to the window to hang myself ... My groans attracted the attention of the warders. The doctor who I was taken to see, blindfolded, told them that my low blood pressure could have serious consequences.' At that point the prison directors summoned Mohamed Chtoubi to tell him than any other attempt on his part would cost him his life and that he would be 'buried in the nearby forest without anyone knowing what became of him ...'. Three or four days later, new torturers took over with the same methods ...

Abderrahman Majdoubi, who was arrested in Tangiers on the night of 2 July 2002, spoke of a place where he was taken from the second day of his arrest, in the presence of five individuals 'some of whom interrogated me and others beat me. One of them used the edge of a chopper to strike me and another a rubber-coated metal pipe to tap my knees ... then I was pulled and dragged along the ground to be taken to another cell where a torturer hit my face with his boots while his accomplice interrogated me ... In the evening, I was put into a car and when we arrived on the outskirts of Rabat, I was blindfolded.' He found himself there in a situation of extreme violence and one of the torturers promised Abderrahman Majdoubi that by the time he got out he would weigh just a few kilos. 'At night, I heard animal sounds ...'. On the same night, they resumed the interrogation with slapping and kicking and the threat of rape using a bottle, up until daybreak. '... The torture lasted for 20 days ... My knee hurt so badly that I prayed sitting down and I had to be taken to see a doctor. In that place, I spent my last three days, handcuffed and blindfolded. When I asked for some water for my ablutions and to say my prayers, I was told that I could do it without water and without moving ...'

Kamel Hanouichi, who was sentenced to the death penalty at the trial of Youssef Fikri, testified for his part that when he was taken to Témara, after being arrested in Casablanca, he was, like most of his accomplices, kept in solitary confinement, which was characterised by 'conditions of extreme cold'. Once his fingerprints had been taken, Kamel Hanouichi did not escape the ritual of blindfolding and also had his feet bound. As he could not walk very quickly, he was beaten, even before being interrogated. 'When they beat me on the arms and on the soles of my feet with electric

cables as hard as rope it was still less painful than the idea that they could go through with their threat to rape my sisters ... for 15 days in a row I endured the same torture and the same questions: my life, my commitments, my friends – 15 days after which I was taken to another place still handcuffed and blindfolded. There I remained, from Thursday evening to Monday morning, in a stinking dirty cell with three other inmates in the same state as me and guarded 24-hours a day by three shifts of 10 to 12 warders. It was only on the Monday that we were examined by the investigating judge and sent to Okacha prison in Casablanca.'"

The FIDH further indicated that, according to its own findings, "acts of violence, including torture and cruel, inhuman and degrading treatment, committed against accused persons, together with breaches of the right to a fair trial, including defence rights ... [were] flagrant". It noted in particular the hurried nature of the investigation phase and non-compliance with safeguards enshrined in Moroccan law, such as the right to have a lawyer and to see a doctor, before both the public prosecutor and the investigating judge. It observed in particular as follows:

"... Apparently being bound by an immediate obligation to produce a result, investigating judges have clearly taken liberties with the provisions of Moroccan law: 'the judicial investigation certainly took place in atrocious conditions, often after midnight and even at 3 or 4 in the morning' said one lawyer. The accused would wait for hours in the police van, where they would occasionally be allowed to drink. As to the interrogation itself, it was based, according to a lawyer, on a questionnaire that was practically completed beforehand, and the accused had to be precise in answering. 'Don't talk to me about anything that's not connected with the case', a judge told an accused who was trying to give an explanation. The charges were sometimes supported only by a denunciation or a mention by a third-party or other accused person, usually following ill-treatment or torture. The files rarely contained documents proving possession of weapons or explosives or participation in prohibited associations. ...

According to the lawyers ..., the reports drafted by the investigating judges during the preliminary investigation stage were based mainly or exclusively on the reports of the DST, and the judges did not allow them to be challenged, or obliged some of the accused to sign them without being able to read them first ...

Neither the public prosecutor nor the investigating judge ordered a medical examination in any of the numerous sets of proceedings, which concerned, as has already been mentioned, hundreds of individuals. Such examinations would have constituted not only a safeguard for the accused, but also for the police officers accused of torture. Similarly, the lawyers found their requests for experts' reports and for the summoning and appearance of witnesses systematically denied. ...

Before [the trial courts], the judges systematically refused to take account of the documents that the defence wished to present, or to hear witnesses for the defence and arrange confrontations that were necessary for the establishment of the facts, basing their findings exclusively on unilateral accusations that remained unsupported by evidence. Systematically, the courts first deferred the calling of witnesses until the end of the proceedings, then decided, after they had finished, to join the lawyers' requests to the merits, delivering verdicts without ultimately allowing such hearings, even though they were guaranteed by a number of Articles (319, 430, 464, etc.) of the Code of Criminal Procedure. ...

It unfortunately goes without saying that all the defence's objections concerning the above-mentioned violations occurring during the periods of police custody and judicial investigation, were also dismissed in all the sets of proceedings, without exception as far as we know. In this connection, no request for a medical opinion, in order to support the allegations of ill-treatment, was accepted. ..."

55. In the above-mentioned report, published on 24 June 2004 and entitled "Morocco/Western Sahara: Torture in the 'anti-terrorism' campaign - the case of Témara detention centre", Amnesty International indicated in particular as follows:

"... The sharp rise in reported cases of torture or ill-treatment in the context of 'counterterrorism' measures in Morocco/Western Sahara since 2002 has been well documented. Reports on the subject have been published in recent months by Amnesty International and other international human rights organizations, as well as by Moroccan human rights groups, including the Moroccan Human Rights Association (Association marocaine des droits humains, AMDH), and the Moroccan Human Rights Organization (Organisation marocaine des droits humains, OMDH). Human rights lawyers and victim support groups such as the Forum for Truth and Justice (Forum pour la vérité et la justice, FVJ), have spoken out about the violations, and the Moroccan and international press have highlighted the problem in numerous articles.

The torture or ill-treatment is generally reported to take place in the custody of the security forces, particularly the Directorate for the Surveillance of the Territory (Direction de la surveillance du territoire, DST), and the police, where it is allegedly perpetrated in order to extract confessions or information, or to force the detainee to sign or thumb-print statements, the content of which they reject, deny or do not know.

The scores of people allegedly tortured or ill-treated have been among hundreds of Islamists or presumed Islamists arrested and detained on suspicion of belonging to 'criminal gangs' or of involvement in planning, inciting or carrying out violent acts. The arrests, numbering some 2,000 according to official sources, began in 2002 when the authorities began a clampdown on individuals accused of being part of groupings of Islamist activists who, in the case of one particular group, were planning bomb attacks or who had reportedly been involved in a number of targeted killings of people whose behaviour they disapproved of. Since May 2003, many of those arrested have been accused in connection with the bomb attacks in Casablanca on 16 May 2003, which killed 45 people, including the 12 assailants. Scores have been sentenced to long prison sentences and over a dozen to the death penalty following trials in which evidence reportedly extracted by torture or ill-treatment has been used to obtain convictions.

The detention centre of Témara, operated by the DST, is one of the main places where torture is reported to occur. Dozens of those arrested in the context of 'counterterrorism' measures have allegedly been subjected to torture or ill-treatment while being held there. Their detention at the centre has been both secret and unacknowledged, and consequently in breach of both Moroccan law and international human rights standards. ..."

Amnesty International reported that many former prisoners from Témara had complained of being tortured or ill-treated during interrogation sessions, in an attempt to extract confessions or information from them or to force them to sign or thumb-print statements which they rejected or denied. It

added that in many cases the statements had been signed or thumb-printed after the detainees had been transferred from the Témara centre to a police station, where they were threatened with being returned to Témara and with further torture should they refuse to comply. As to the treatment inflicted, Amnesty International explained as follows:

> "... The torture or ill-treatment has taken a number of forms during interrogation sessions. Some detainees have allegedly been blindfolded and handcuffed throughout the session; others have been stripped or suspended from the ceiling of the interrogation room in contorted positions. Many have reported being beaten around the body and the head with fists or an implement, such as a wooden stick or a metal ruler. Reports have also indicated that electricshock batons or live electrodes were applied to the body of some of the detainees. One former detainee, Abdellah Meski, told Amnesty International that he had his head repeatedly plunged into a sink containing water.
>
> Some have reportedly had an object, such as a bottle, forcibly inserted into the anus or been threatened with this treatment and other sexual abuse. Some say that they were also threatened with the arrest and rape or other sexual abuse of their wife or other female relative. Some former detainees have even reported hearing screams which they believed at the time might have been those of a female relative in an adjoining room, but later, after leaving the Témara centre and confirming that no female relative had been detained there, concluded this might have been a tape recording meant to dupe them. ...
>
> Former detainees have reported that, throughout their time at the Témara centre, whether for a few days or a few months, they were held in solitary confinement in basic cells, containing blankets on the floor rather than a bed, and a toilet and tap in one corner. They say they never saw other detainees and were not allowed outside the cell to enjoy fresh air or exercise. In addition, they were held in secret detention and denied contact with the outside world. Such conditions of detention may themselves amount to cruel, inhuman or degrading treatment, or even torture. ...".

Amnesty International further noted that government officials had, in press interviews, stressed that no complaints were made about torture or ill-treatment or secret detention when detainees were brought before the prosecutor after the police custody, explaining that if such complaints were made following the initial questioning they were dismissed as being merely a means of defence. On the first point, Amnesty International explained this situation by the fact, in particular, that the judicial authorities failed to inform the persons concerned of their right to be assisted by a lawyer and that, appearing alone, many were unaware that they were entitled to make such a complaint. On the second point, it criticised the judicial authorities' attitude as follows:

> "... When, during the pre-trial investigation, they have appeared again before the examining magistrate for detailed questioning, they have in many cases complained about the alleged torture or ill-treatment or secret detention. When their cases have come to court, many of the accused have complained again, this time in front of the trial judges, about the treatment they were subjected to and the illegally prolonged nature of the period of *garde à vue*. Defence lawyers have requested that family members who witnessed the arrests and police officers who drew up the police

statements be called to testify before the court to help establish the facts surrounding the contested arrest dates and the circumstances in which declarations were made to the police. The requests have been systematically rejected, however, on the basis that the proposed testimonies did not relate directly to the alleged crimes.

Despite the persistent nature of allegations of torture or ill-treatment and secret detention, the judicial authorities appear to have repeatedly dismissed these allegations, without ordering investigations or medical examinations. Amnesty International is not aware of a single case in which an investigation or medical examination has been carried out. ...”

Amnesty International further observed that statements obtained by torture or ill-treatment were often used in court as evidence to obtain convictions, even though the accused generally retracted them in the courtroom. It added that during their trials many accused challenged evidence against them which had been taken from statements made by others who had been arrested and detained by the security forces on similar charges. Given the persistent allegations of statements being made to the security forces under duress, defence lawyers had requested that those who made statements be summoned to the court as witnesses in order to test the veracity of their evidence. Such requests had, however, been denied by the courts on a systematic basis.

THE LAW

...

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

58. The applicant complained that the domestic courts had principally and essentially based his conviction for participation in a terrorist organisation on evidence that was vitiated and obtained in conditions that were incompatible with the requirements of the Convention. Alleging a violation of his right to a fair trial, he relied on Article 6 of the Convention, of which paragraphs 1 and 3 (d) read as follows:

“1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. ...”

“3. Everyone charged with a criminal offence has the following minimum rights: ...

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; ...”

...

Secondly, he complained that, in finding that he had participated in a leading capacity in the activities of the Moroccan Islamic Fighting Group, the Brussels Court of Appeal, in breach of section 13 of the Belgian Mutual Legal Assistance Act of 9 December 2004, had based its findings decisively on statements that had been obtained in proceedings to which he was not a party, which had taken place in France and Morocco. ... Those statements, he claimed, had been made as a result of treatment in breach of Article 3 of the Convention.

...

A. The parties' submissions

1. The Government

...

63. Thirdly, the Government asked the Court to dismiss the applicant's argument that the Belgian courts had invoked statements that had been taken in France and Morocco in conditions that breached Article 3 of the Convention.

The Government did not dispute the fact that, according to the Court's case-law, the use by a court of evidence thus obtained would entail a violation of Article 6 § 1, even if the admission of such evidence was not decisive in securing a conviction. In addition, referring in this connection to the judgment of the United Kingdom House of Lords in the case of *A. and Others v. Secretary of State for the Home Department (no. 2)* and to Article 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, of 10 December 1984, they took the view that this principle should also apply where the breach of Article 3 had not been committed by the respondent State.

64. Relying on that same judgment and provision, and also on the *El Motassadeq* judgment of 14 June 2005 of the Hanseatic Court of Appeal of Hamburg and on the Court's case-law, the Government nevertheless argued that the exclusionary rule did not apply unless it was clear that the statements in question had been obtained by torture. In their opinion, it was incumbent upon the applicant first to adduce evidence in support of his allegation. In that connection, a mere suspicion was insufficient: the standard of proof "beyond reasonable doubt" applied, bearing in mind that such proof might "follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact"; the applicant must at least be able to allege "on arguable grounds" that such evidence had been obtained as a result of torture.

The Government emphasised that the argument whereby an item of evidence had to be excluded if there was a "real risk" that it had been obtained by torture could not be upheld, in the light of the wording of

Article 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. They further observed that the "test of real risk" was in fact the test applied by the Court when it examined allegations of a potential violation of Article 3 in the event of the extradition or expulsion of an individual to a State where he might be subjected to treatment or punishment in breach of that Article. In cases such as the present, it was not a matter of determining whether there was a risk of such treatment, but whether such treatment had actually been inflicted on those individuals whose testimony was at issue.

65. In the Government's submission, even supposing that the applicant's allegations concerning the interviews carried out in France were "arguable", within the meaning of the Court's case-law, the Court of Appeal had found, after a detailed examination of the available documents, that it not been established that the French authorities had breached Article 3. The court had begun by finding, in the light of the documents from the French proceedings, that all the procedural safeguards and the rights of the persons interviewed had been respected (the right to be immediately informed of the "complaint" and of one's rights in police custody, the right to request an examination by a doctor, the right to have a lawyer, etc.). It had then found that the conditions in which the impugned interviews had taken place were acceptable and that the allegations of violence, intimidation and torture or inhuman and degrading treatment on the part of the police officers at the time of arrest and questioning, judging from the statements in question and from the file, lacked credibility. It had moreover taken the view that it did not suffice for the applicant to refer to general considerations contained in reports by NGOs on the functioning of the French judicial system in order to show that there had been a breach of Article 3 of the Convention. The Government further pointed out that the French witnesses had not brought proceedings before the Court for a violation of that provision.

As regards the testimony taken in Morocco, the Government pointed out that the Court of Appeal had found that the applicant had not adduced the slightest evidence of a violation of Article 3. They draw attention to the following findings: "... the fact of citing in general terms various reports of human rights organisations – admittedly respectable ones – does not adduce any concrete evidence that would be capable of giving rise in the present case to the above-mentioned reasonable doubt as to the violence, torture or inhuman or degrading treatment that was allegedly inflicted on the individuals interviewed in Morocco ..."; and "... the contradictions allegedly contained in those statements, according to defence counsel's argument, are not capable of justifying the claim that the individuals who were interviewed and/or tried in Morocco were subjected to any inhuman and degrading treatment or torture".

66. The Government were of the view that the authorities could not be criticised for failing to carry out an investigation into allegations that were so poorly substantiated.

They added that, before the Court, as before the domestic courts, the applicant had failed to adduce any concrete evidence to show that the impugned statements had been taken using torture and inhuman or degrading treatment.

2. The applicant

...

69. As regards the application in the present case of the rule that evidence obtained by means contrary to Article 3 must be excluded, the applicant was of the view that it also applied to evidence obtained by such means in a foreign country, if the object and purpose of the Convention were not to be meaningless. He had reached this conclusion in particular from the wording of Article 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, from the case-law of the Committee against Torture and from the above-cited *A. and others* judgment of the House of Lords.

70. The applicant further argued that the Government had been wrong to conclude from the above-cited Article 15 and the *A. and others* judgment that the burden of proof lay fully with him to show that the impugned statements had been obtained by a means contrary to Article 3.

He observed that the standard adopted by the House of Lords in *A. and others* consisted in ascertaining whether it was "established, by means of such diligent enquiries into the sources that it [was] practicable to carry out and on a balance of probabilities, that the information [had been] obtained under torture", and that the highest British court seemed to have concluded that the reports of humanitarian organisations did not suffice to show the "established nature" of torture sustained by a complainant. In his view, having regard to the purpose of the Convention and the need for effective protection of fundamental rights, the burden of proof that lay with a defendant should not, however, be "inaccessible": it should be considered sufficient for him or her to show the existence of a "real risk" that the evidence had been obtained by torture, and to produce for that purpose the reports of respectable NGOs indicating that, in the country in question, torture was practised systematically. To require a defendant to provide more concrete information when he or she had no means of investigating in a foreign country would be asking the impossible. In other words, the defendant should merely be required to show the "likelihood" of what he or she alleged. The applicant claimed that, for his part, he had made such a demonstration.

71. As regards the statements obtained in Morocco, the applicant claimed that it was not in dispute that this country had been severely

criticised by both governmental and non-governmental organisations for torture and ill-treatment inflicted systematically on persons charged with acts of terrorism after the Casablanca bombings in May 2003. The individuals who had given the statements incriminating the applicant had precisely been prosecuted in that context and during that period.

He then pointed out that, before the Belgian courts, he had relied on the following evidence to show the existence of torture:

- Reports condemning a systematic practice of ill-treatment of suspects in the months following the Casablanca bombings, in particular the Human Rights Watch report of 2005 (entitled "Morocco's Truth Commission: Honoring Past Victims during an Uncertain Present"), which noted that, according to various human rights organisations, over 2,000 suspected Islamists had been detained, many in secret detention, for days or even weeks, and had been subjected by the police to various forms of ill-treatment, and in some cases torture, in order to extract confessions.
- The fact that the individuals in question had complained of acts of torture and inhuman or degrading treatment – in particular a certain N., who had apparently been arrested in Mauritania and had been held in secret detention for several months – and that the Moroccan authorities had not carried out any investigation in response to those allegations.
- The fact that they had been held in police custody for twelve days, under the Terrorism Act of 28 May 2003, applied retroactively.
- The fact that the Moroccan proceedings had taken place in a hurried manner, without the use of conventional methods of investigation.

...

73. In the applicant's submission, in view of the likelihood of his allegations relating to the statements taken in Morocco and France, Article 6 of the Convention obliged the Belgian courts either to carry out investigations into those allegations – the principle of the prohibition of torture triggering an obligation to investigate – or to exclude the evidence in question.

B. Observations of third-party interveners

1. The United Kingdom Government

74. Referring to the Court's case-law, the United Kingdom Government invited the Court to confirm the existence, for the purposes of Article 6 of the Convention, of an "exclusionary rule" on statements that had been obtained directly by torture, with the result that a violation of this Article should be found where the rule applied, irrespective of the overall fairness of the proceedings.

However, referring in particular to the decision in *Sharkunov and Mezentsev v. Russia* (no. 75330/01, 2 July 2009), they further asked the

Court to confirm that the alleged torture had to be established "beyond reasonable doubt", and that, while general evidence of the human rights situation in the country from where the statement had been obtained might well be sufficient to trigger an inquiry by the domestic court into the provenance of the statement in issue, this would rarely be sufficient to establish "beyond reasonable doubt" that a particular statement had been obtained using torture: evidence of a direct causal link would in principle be necessary. They added that the standard of proof "beyond reasonable doubt" also corresponded to the requirement of Article 15 of the UN Convention against Torture, under which it had to be "established" that the statement in question had been made as a result of torture for the exclusionary rule to apply. That standard was moreover consistent with the approach taken by other courts and tribunals, in particular the United Kingdom House of Lords in *A. and Others v. Secretary of State for the Home Department (no. 2)*.

75. The United Kingdom Government further observed that it was clear from the Court's case-law – in particular the judgments in *Jalloh v. Germany* ([GC], no. 54810/00, § 105, ECHR 2006-IX) and *Ashot Harutyunyan v. Armenia* (no. 34334/04, 15 June 2010) – that the exclusionary rule did not apply where the domestic court was left with a doubt as to whether the statement had been obtained by torture or where it concluded that the ill-treatment did not reach the necessary threshold of severity to be classified as "torture". It emphasised in this context that the above-mentioned Article 15 applied only in relation to torture and not to cases of other prohibited ill-treatment.

In their view, in any event, the domestic courts retained in such cases some discretion as to the admissibility of and assessment of weight to be given to such a statement, to be exercised bearing in mind the special status of Article 3 and the fact that the use of a statement obtained as a result of a violation of one of the core rights guaranteed by the Convention raised serious issues as to the fairness of the proceedings. The fairness of the proceedings had then to be assessed on a case-by-case basis, considering the proceedings as a whole.

2. NGOs European Center for Constitutional and Human Rights and REDRESS

76. The third-party interveners pointed out that the "exclusionary rule", which prohibited the admission of evidence obtained by torture or cruel, inhuman or degrading treatment or punishment, was enshrined in a number of international instruments: Article 12 of the United Nations Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 15 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Article 10 of the Inter-American Convention to Prevent and Punish Torture, the Robben Island Guidelines for the

Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa, adopted by the African Commission on Human and People's Rights, and the rules of procedure of the ad hoc international criminal tribunals and of the International Criminal Court. They added that the Human Rights Committee and the Committee against Torture had repeatedly emphasised the importance of the exclusionary rule, with the latter taking the view that it was an inherent part of the prohibition of torture and other cruel, inhuman or degrading treatment or punishment.

77. In the submission of the third-party interveners, the exclusionary rule applies to evidence obtained not only by torture but also by other cruel, inhuman or degrading treatment or punishment. Whilst Article 15 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and Article 10 of the Inter-American Convention to Prevent and Punish Torture refer only to torture, Article 12 of the United Nations Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment refers to other forms of prohibited ill-treatment; the position of the Human Rights Committee and the Committee against Torture is, moreover, consistent with the latter. In addition, the rule extends both to confessions by the person against whom evidence is being sought and to witness statements of third parties.

Referring to the above-cited *Jalloh* and *Ashot Harutyunyan* judgments, they pointed out that it was clear from the Court's case-law that the use of evidence obtained by torture automatically rendered the trial unfair. They further drew attention to the Court's finding in *Jalloh* (§ 106) that where the evidence in question had been obtained by treatment contrary to Article 3 not amounting to torture, the impact on the fairness of the proceedings would depend on the circumstances of each individual case. They took the view, however, that the Court had left open the question whether the use of evidence obtained by other prohibited ill-treatment automatically rendered a trial unfair (ibid., § 107).

78. The third-party interveners observed that the Committee against Torture had considered that the forum State was under an obligation to ensure that statements admitted in evidence in any proceedings had not been obtained by torture (they referred in this connection to the Committee's decision in *G.K. v. Switzerland*). They indicated that, whilst there was little international jurisprudence on the burden and standard of proof, it was quite well established that, where a party to proceedings alleged that evidence had been obtained by torture, the forum State had a duty to investigate the circumstances in which it had been obtained; if that proved to be the case, the evidence had to be excluded. The jurisprudence was inconsistent, however, as to the extent to which an individual had to sustain his or her allegations. Referring to the decisions in *Halimi-Nedzibi v. Austria*, *Encarnación Blanco Abad v. Spain*, *P.E. v. France* and *G.K. v. Switzerland*,

they observed that the Committee against Torture seemed to require the author to demonstrate that his or her allegations were "well founded" – adding, however, that some legal writers took the view, in the light of that jurisprudence, that it was sufficient for the alleged victim to submit "some evidence" of ill-treatment – and that this view was supported by domestic case-law. In the United States of America, the US District Court for Columbia had merely verified that the petitioning detainees had made "sufficient allegations" (*Re Guantánamo Detainee Cases*, 31 January 2005); in Canada, the Supreme Court of British Columbia had looked at the "persuasive nature of the allegations" (*India v. Singh*, 8 May 1996); and the Supreme Court of the Netherlands had examined whether the allegations were "plausible" (*Hoge Raad*, judgment no. 103.094, 1 October 1996).

In the submission of the third-party interveners, most of the case-law indicated that the burden of proof could not rest with either the individual or the State alone (they referred, *inter alia*, to the Human Rights Committee's decision in *Saimijon and Bazarov v. Uzbekistan*). They said that this had also been the approach of the House of Lords in *A. and others*, cited above.

79. The third-party interveners further observed that under Article 15 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment it had to be "established" that the statement in question had been obtained by torture for the exclusionary rule to apply, and that similar wording was used in Article 10 of the Inter-American Convention to Prevent and Punish Torture and in Article 12 of the United Nations Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as in the jurisprudence of the Committee against Torture and the Human Rights Committee. They added that in the case of *A. and others*, cited above, the House of Lords had considered the meaning of "established" in the context of the above-mentioned Article 15: the majority (four Law Lords out of seven) had interpreted it as requiring evidence to be excluded where it was "more likely than not" that torture had been used to obtain it; in the same vein, the Hamburg Court of Appeal, in its *El Motassadeq* judgment, cited above, had used certain testimonies despite the fact that serious doubts remained as to how they had been obtained.

The interveners were, however, convinced by the opinion of the minority of Law Lords in the above-cited *A. and others* judgment, to the effect that the exclusionary rule had to apply where there was a "real risk" that evidence had been obtained by torture. In their view, the position of the majority of the Law Lords called into question the sharing of the burden of proof between the State and the defendant, by imposing on the latter too high a burden that in most cases would be impossible to meet. In their view, the fact that the evidence in question was intended to be used against someone accused of terrorism-related offences could not justify such a shift; they referred to the Court's finding in *Hulki Güneş v. Turkey* (no. 28490/95,

ECHR 2003-VII) that the need to combat terrorism could not justify a restriction on the very essence of the rights of the defence. This had also been the approach adopted by the Spanish Supreme Court in its judgment of 20 July 2006, reversing the conviction of Hamed Abderrahaman Ahmed on the ground that, because of the disrespect for the fundamental rights of the Guantánamo detainees and for due process safeguards, any act carried out in the Guantánamo context had to be declared completely invalid and as such inexistent. They observed that, similarly, the 2009 report of the Eminent Jurists Panel on Terrorism, Counter-terrorism and Human Rights had expressed concern that, due to the international dimension of recent terrorism attacks, there had been cases where the prosecution had sought to rely on statements of the accused or witnesses obtained abroad under conditions that cast doubt on their reliability. They emphasised that the prevention of torture or other ill-treatment of detainees could only be effectively safeguarded if the judiciary responded urgently and effectively when any allegations concerning such ill-treatment were brought to their attention.

C. The Court's assessment

...

2. Merits

(a) General principles

81. The Court reiterates that its duty, pursuant to Article 19 of the Convention, is to ensure the observance of the engagements undertaken by the Contracting States to the Convention. In particular, it is not its function to deal with errors of fact or of law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention. While Article 6 guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence as such, which is primarily a matter for regulation under national law (see, among other authorities, *Schenk v. Switzerland*, 12 July 1988, §§ 45-46, Series A no. 140; *Teixeira de Castro v. Portugal*, 9 June 1998, § 34, *Reports of Judgments and Decisions* 1998-IV; *Heglas v. the Czech Republic*, no. 5935/02, § 84, 1 March 2007; and *Gäfgen v. Germany* [GC], no. 22978/05, § 162, ECHR 2010).

82. It is not, therefore, the role of the Court to determine, as a matter of principle, whether particular types of evidence – for example, evidence obtained unlawfully in terms of domestic law – may be admissible. The question which must be answered is whether the proceedings as a whole, including the way in which the evidence was obtained, were fair. This involves an examination of the unlawfulness in question and, where the

violation of another Convention right is concerned, the nature of the violation found (see, *inter alia*, *Khan v. the United Kingdom*, no. 35394/97, § 34, ECHR 2000-V; *P.G. and J.H. v. the United Kingdom*, no. 44787/98, § 76, ECHR 2001-IX; *Allan v. the United Kingdom*, no. 48539/99, § 42, ECHR 2002-IX; and *Gäfgen*, cited above, § 163).

83. In determining whether the proceedings as a whole were fair, regard must also be had as to whether the rights of the defence have been respected. In particular, it must be examined whether the applicant was given an opportunity to challenge the authenticity of the evidence and to oppose its use. In addition, the quality of the evidence must be taken into consideration, as must the circumstances in which it was obtained and whether these circumstances cast doubt on its reliability or accuracy. While no problem of fairness necessarily arises where the evidence obtained was unsupported by other material, it may be noted that where the evidence is very strong and there is no risk of its being unreliable, the need for supporting evidence is correspondingly weaker (see, *inter alia*, *Khan*, cited above, §§ 35 and 37; *Allan*, cited above, § 43; *Jalloh*, cited above, § 96; and *Gäfgen*, cited above, § 164). In this connection, the Court further attaches weight to whether the evidence in question was or was not decisive for the outcome of the criminal proceedings (see *Gäfgen*, cited above, § 164).

84. As to the examination of the nature of the Convention violation found, the Court reiterates that the question whether the use as evidence of information obtained in violation of Article 8 rendered a trial as a whole unfair contrary to Article 6 has to be determined with regard to all the circumstances of the case, and in particular to the question of respect for the applicant's defence rights and the quality and importance of the evidence in question (ibid.).

85. However, particular considerations apply in respect of the use in criminal proceedings of evidence obtained in breach of Article 3. The use of such evidence, secured as a result of a violation of one of the core and absolute rights guaranteed by the Convention, always raises serious issues as to the fairness of the proceedings, even if the admission of such evidence was not decisive in securing a conviction (see *İçöz v. Turkey* (dec.), no. 54919/00, 9 January 2003; *Jalloh*, cited above, §§ 99 and 104; *Göçmen v. Turkey*, no. 72000/01, §§ 73-74, 17 October 2006; *Harutyunyan*, cited above, § 63; and *Gäfgen*, cited above, § 165).

Therefore, the use in criminal proceedings of statements obtained as a result of a violation of Article 3 – irrespective of the classification of the treatment as torture, inhuman or degrading treatment – renders the proceedings as a whole automatically unfair, in breach of Article 6 (see *Gäfgen*, cited above, §§ 166-167 and 173). This also holds true for the use of real evidence obtained as a direct result of acts of torture (ibid., § 173); the admission of such evidence obtained as a result of an act qualified as inhuman treatment in breach of Article 3, but falling short of torture, will

only breach Article 6, however, if it has been shown that the breach of Article 3 had a bearing on the outcome of the proceedings against the defendant, that is, had an impact on his or her conviction or sentence (ibid., § 178).

The Court is of the view that these principles apply not only where the victim of the treatment contrary to Article 3 is the actual defendant but also where third parties are concerned. It would point out in this connection that it has already had occasion to indicate in *Othman (Abu Qatada) v. the United Kingdom* (no. 8139/09, §§ 263 and 267, ECHR 2012), with regard more specifically to a flagrant denial of justice, that the use in a trial of evidence obtained by torture would amount to such a denial even where the person from whom the evidence had been thus extracted was a third party.

86. The Court examined the issue of evidence in the above-cited *Othman* case, where it examined, in particular, the question whether the deportation of a Jordanian national to his country of origin, where he claimed he would face conviction on the basis of statements by third parties that had been extracted under torture and would thus be the victim of a flagrant denial of justice, would entail a violation of Article 6 of the Convention. In response to the United Kingdom Government's argument that the applicant had to establish "beyond reasonable doubt" that the evidence in issue had been obtained by torture, it took the view that it would be unfair to impose on the applicant a burden of proof that went beyond the demonstration of a "real risk" that the evidence in question had been thus obtained (ibid., § 273). The Court set out three reasons why it would be unfair to impose any higher burden of proof on the applicant.

First, the Court did not consider that the balance of probabilities test, as applied by the majority of the House of Lords in the above-mentioned *A. and others (no. 2)* judgment, was appropriate, as that case had concerned not criminal proceedings but proceedings before the Special Immigration Appeals Commission (SIAC) to determine whether the Secretary of State's suspicions that an individual was involved in terrorism were correct. It further noted that, in any event, the majority of the House of Lords in that judgment had found that the balance of probabilities test was for SIAC itself to apply and that an appellant before SIAC had only to raise a plausible reason that evidence might have been obtained by torture (ibid., § 274). Second, the Court did not consider that the Canadian and German case-law, which had been submitted by the United Kingdom Government (in particular the *Singh* and *El Motassadeq* judgments, cited also by the parties in the present case), provided any support for their position (ibid., § 275).

Third, describing this as the most important factor, the Court found that it was necessary to have due regard for the special difficulties in proving allegations of torture. It emphasised that torture was uniquely evil, both for its barbarity and its corrupting effect on the criminal process. It was practised in secret, often by experienced interrogators who were skilled at

ensuring that it left no visible signs on the victim. All too frequently, those who were charged with ensuring that torture did not occur – courts, prosecutors and medical personnel – were complicit in its concealment. The Court observed that, in a criminal justice system where the courts were independent of the executive, where cases were prosecuted impartially, and where allegations of torture were conscientiously investigated, one might conceivably require a defendant to prove to a high standard that the evidence against him had been obtained by torture. However, in a criminal justice system which was complicit in the very practices which it existed to prevent, such a standard of proof was wholly inappropriate (ibid., § 276).

87. As to the standard of proof for the application of the exclusionary rule in respect of evidence allegedly obtained as a result of treatment contrary to Article 3, a number of situations may arise. Firstly, such treatment may be imputed to the authorities of the forum State or to those of a third State and the victim may be the actual defendant or a third party. Furthermore, in some cases the Court itself (see, for example, *Levinta v. Moldova*, no. 17332/03, 16 December 2008), the courts of the forum State (see, for example, the *Harutyunyan* judgment, cited above) or the courts of the third State have confirmed the veracity and nature of the alleged ill-treatment; in other cases there has been no such judicial decision.

88. The Court will not proceed to examine each of those situations. It is sufficient in the present case for it to observe that, at least in a case where a defendant asks the domestic court to exclude statements obtained in a third State as a result, in his submission, of treatment contrary to Article 3 inflicted on another individual, it is appropriate to follow the approach set out in the *Othman* judgment, cited above. Accordingly, in any event, where the judicial system of the third State in question does not offer meaningful guarantees of an independent, impartial and serious examination of allegations of torture or inhuman and degrading treatment, it will be necessary and sufficient for the complainant, if the exclusionary rule is to be invoked on the basis of Article 6 § 1 of the Convention, to show that there is a "real risk" that the impugned statement was thus obtained. It would be unfair to impose any higher burden of proof on him.

89. The domestic court may not then admit the impugned evidence without having first examined the defendant's arguments concerning it and without being satisfied that, notwithstanding those arguments, no such risk obtains. This is inherent in a court's responsibility to ensure that those appearing before it are guaranteed a fair hearing, and in particular to verify that the fairness of the proceedings is not undermined by the conditions in which the evidence on which it relies has been obtained (see, *mutatis mutandis*, *Stojkovic v. France and Belgium*, no. 25303/08, 7 April 2011, § 55).

(b) Application to the present case

90. The Court finds it appropriate primarily to examine the applicant's allegation that, in violation of Article 6 of the Convention, the Belgian courts, in the context of the criminal proceedings against him, had admitted in evidence certain statements by third parties that had been obtained in Morocco using treatment prohibited by Article 3 of the Convention.

91. It would first observe that it has been established that the domestic courts refused to apply the exclusionary rule to statements of third parties obtained in Morocco by the Moroccan authorities in the course of criminal proceedings in that country, as can be seen from the reasoning of the Brussels Court of Appeal's judgment of 19 January 2007 (see paragraphs 36 and 40 above). This has not been disputed by the Government.

92. It remains to be determined, in the circumstances of the case, whether the Moroccan judicial system afforded, at the material time, meaningful guarantees of an independent, impartial and serious examination of allegations of torture or inhuman or degrading treatment, and, if not, whether there was a "real risk" that the impugned statements might have been obtained as a result of such means (see paragraph 88 above).

93. In the light of the plentiful information before it, the Court has cause to doubt that the Moroccan judicial system did afford such guarantees at the material time. It is at least apparent from that information that this was not the case at the time of the circumstances in question, in so far as the allegations concerned acts committed in the context of general counter-terrorism measures, and, more specifically, in that of the investigations and proceedings that followed the Casablanca bombings of 16 May 2003.

94. The Court observes, in this connection, that in its report of 28 November 2005 (see paragraph 53 above) – to which the applicant referred before the Court, as before the domestic courts – Human Rights Watch explained that individuals tried in that context had been denied a fair hearing, that the courts refused, in particular, to order medical examinations of those who claimed to have been tortured, that it was not aware of any prosecution of officials suspected of torture, and that "[o]verall, the pattern of continuing abuses, criticized by various human rights organizations as well as by the U.N. Human Rights Committee, [CCPR/CO/82/MAR] show[ed] that security forces continue[d] to operate in a climate of impunity and disrespect for the law, and that the executive branch continue[d] to exercise considerable influence over the courts".

Similarly, the FIDH report of February 2004, to which the previous report referred (see paragraph 54 above), commented in particular on the hurried nature of the judicial investigation phase and the failure to comply with safeguards enshrined in Moroccan law, such as the right to have a lawyer and to see a doctor, before both the public prosecutor and the investigating judge. It emphasised that the trial courts had systematically dismissed objections based on alleged problems at the police custody and

judicial investigation stages and that no application for a medical expert's report for the purposes of substantiating ill-treatment allegations had been accepted. Amnesty International made the same observation in its report of 24 June 2004 (see paragraph 55 above) – mentioned in the above-cited report of Human Rights Watch. It reported, in particular, that the judicial authorities appeared to have repeatedly dismissed allegations of torture or ill-treatment, without ordering investigations or medical examinations. Amnesty International further observed that statements obtained by torture or ill-treatment were often used in court as evidence to obtain convictions, even though the accused generally retracted them in the courtroom. It added that during their trials many accused challenged, on the ground that it had been obtained by duress, evidence against them taken from statements made by others who had been arrested and detained on similar charges, and that their requests for confrontation with witnesses were denied by the courts on a systematic basis.

95. In the same vein, the United Nations Committee against Torture and the United Nations Human Rights Committee, in reports covering the relevant period (paragraph 50-51 above), referred to numerous allegations of ill-treatment imputed to agents of the State and expressed concern about the impunity that they enjoyed. The former also noted that there was no provision of criminal law prohibiting a statement obtained under torture from being invoked as evidence in any proceedings, whilst the latter was concerned that the independence of the judiciary was not fully guaranteed.

96. The Court concludes from the foregoing that, in order to seek the application of the exclusionary rule as regards statements taken in Morocco by the Moroccan authorities, it was sufficient for the applicant to demonstrate before the domestic court that there was a "real risk" that they had been obtained using torture or inhuman or degrading treatment.

97. In this connection, the Court notes that the applicant alleged before the domestic courts that the impugned statements emanated from individuals who were suspected of involvement in the Casablanca bombings of 16 May 2003, and who had been interrogated in Morocco in the context of the ensuing investigations and proceedings. He argued that the country had been harshly criticised by governmental and non-governmental organisations for acts of torture and ill-treatment inflicted systematically on individuals arrested after those events, referring in particular to the above-mentioned report of Human Rights Watch. He explained that those who had given the statements in question had complained of being subjected to acts of torture and inhuman or degrading treatment. He added that the Moroccan authorities had not carried out an investigation into those allegations. He further argued that the Moroccan proceedings had been conducted in a hurried manner.

The Brussels Court of Appeal took the view, however, that by merely "citing in general terms" various reports of human rights organisations, the

applicant had not adduced any concrete evidence that would be capable of giving rise in the present case to "reasonable doubt" as to the violence, torture or inhuman or degrading treatment that had allegedly been inflicted on the individuals interviewed in Morocco (see paragraph 36 above).

98. The Court, for its part, takes that view that since those statements emanated from suspects interrogated in Morocco in the context of investigations and proceedings following the Casablanca bombings of 16 May 2003, the above-mentioned reports established the existence of a "real risk" that they had been obtained using treatment contrary to Article 3 of the Convention. It can be seen from those reports that ill-treatment for the purposes of extracting confessions was widely practised against such suspects.

In 2004 the United Nations Human Rights Committee thus expressed concern about the numerous allegations of torture and ill-treatment against detainees in Morocco, as did the United Nations Committee against Torture, which specifically noted the increase in those allegations that implicated the National Surveillance Directorate (see paragraphs 50 and 52 above). In its final observations on the fourth periodic report of Morocco – adopted, however, after the domestic courts had given a final decision in the applicant's case –, the Committee against Torture reiterated that concern, mentioning more particularly the use of such treatment during interrogations of individuals suspected of terrorism with the aim of extracting confessions from them. It further referred to allegations that pointed to a consistent pattern, "whereby suspects [were] arrested by plain-clothes officers who [did] not clearly identify themselves, taken in for questioning and then held in secret detention facilities, which in practice amount[ed] to incommunicado detention. The suspects [were] not officially registered and [were] subjected to torture and other cruel, inhuman or degrading treatment or punishment. They [were] held in these conditions for weeks at a time without being brought before a judge and without judicial supervision. Their families [were] not notified of their arrest, of their movements or of their whereabouts until such time as they [were] transferred to police custody in order to sign confessions that they ha[d] made under torture. It [was] only then that they [were] officially registered and their cases [were] processed through the regular justice system on the basis of falsified dates and information ..." (see paragraph 51 above).

In addition, it can be seen from the report of Human Rights Watch that many of the suspected Islamists who were detained in the weeks following the Casablanca bombings "were held for days or weeks in secret detention, where the police subjected them to various forms of illtreatment and in some cases to torture in order to extract confessions" (see paragraph 53 above). The FIDH reported numerous cases of arbitrary detention in secret centres, where the interrogations were "carried out in breach of the Body of Principles for the Protection of All Persons under Any Form of Detention or

Imprisonment, adopted by the United Nations in 1975, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment". It pointed out that at the Témara centre, where most prisoners were taken after their arrest, ill-treatment, violence and torture were common practice. The cells, situated in the basement, were lit day and night and when they moved around, as well as during interrogation, which often lasted a very long time, the suspects were blindfolded. It added that insults and blows were commonplace, with prisoners under interrogation sometimes being stripped naked, and that several cases of electrical torture and rape had been reported. A number of prisoners had signed statements under torture. The FIDH also reproduced various detailed testimonies describing the poor conditions of detention and mentioning, in particular, beatings, blows, rape, cigarette burns, insults, humiliations, spitting, threats, blackmail, placement in solitary confinement, endless questioning, sleep deprivation and denial of medical care (see paragraph 55 above). Amnesty International gave a similar description of treatment inflicted on detainees at the Témara centre. It indicated that many former prisoners had complained of being tortured or ill-treated during interrogation sessions, in an attempt to extract confessions or information from them or to force them to sign or thumb-print statements which they rejected or denied. It added that in many cases the statements had been signed or thumb-printed after the detainees had been transferred from Témara to a police station, where they were threatened with being returned to Témara and with further torture should they refuse to comply (see paragraph 55 above).

99. In the Court's view, the foregoing information, which emanates from diverse, objective and concurring sources, establishes that there was, at the material time, a "real risk" that the impugned statements had been obtained in Morocco using treatment prohibited by Article 3 of the Convention. Article 6 of the Convention thus required the domestic courts not to admit them in evidence, unless they had first verified, in view of elements specific to the case, that they had not been obtained in such manner. As indicated above, in dismissing the applicant's request for the exclusion of those statements, the Brussels Court of Appeal merely found that he had not adduced any "concrete evidence" that would be capable of raising "reasonable doubt" in this connection.

This is sufficient for the Court to find that there has been a violation of Article 6 in the present case, without it being necessary to ascertain whether, as the applicant contends, that provision has also been breached for other reasons.

...

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

...
2. *Holds* that there has been a violation of Article 6 of the Convention;
...

Done in French, and notified in writing on 25 September 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos	Danutė Jočienė
Deputy Registrar	President