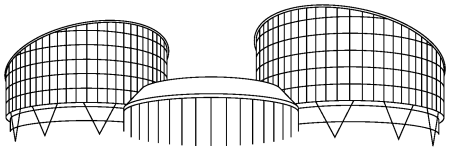

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF X v. SWEDEN

(Application no. 36417/16)

JUDGMENT

STRASBOURG

9 January 2018

FINAL

09/04/2018

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of X v. Sweden,

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

Branko Lubarda, *President*,
Helena Jäderblom,
Luis López Guerra,
Helen Keller,
Pere Pastor Vilanova,
Alena Poláčková,
Georgios A. Serghides, *judges*,
and Stephen Phillips, *Section Registrar*,

Having deliberated in private on 19 December 2017,

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

PROCEDURE

1. The case originated in an application (no. 36417/16) against the Kingdom of Sweden lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Moroccan national, Mr X ("the applicant"), on 27 June 2016. The Vice-President of the Section decided that the applicant's name should not be disclosed (Rule 47 § 4 of the Rules of Court).

2. The applicant was represented by Mr T. Olsson, a lawyer practising in Stockholm. The Swedish Government ("the Government") were represented by their Agent, Ambassador E. Hammarskjöld, of the Ministry for Foreign Affairs.

3. The applicant alleged, in particular, that his expulsion from Sweden to Morocco would be in violation of his rights under Articles 3 and 8 of the Convention.

4. On 13 September 2016 the Duty Judge decided to apply Rule 39 of the Rules of Court, indicating to the Government that the applicant should not be expelled to Morocco until further notice.

5. On 3 November 2016 the complaint concerning Article 3 of the Convention, relating to his expulsion to Morocco, was communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant is currently in Sweden.

7. In 2005 he was granted a temporary residence permit in Sweden which was made permanent in 2007. Both permits were based on the applicant's family ties, but he was not granted Swedish citizenship. In 2009 he married a non-Swedish national who held a permanent residence permit in Sweden.

8. In March 2016 the Swedish Security Service (*Säkerhetspolisen*) applied to the Migration Agency (*Migrationsverket*) requesting the applicant's expulsion. During the Migration Agency's examination of the request, the applicant applied for asylum, claiming that he was in need of international protection. He further contested the Security Service's request alleging that, since the Security Service had branded him a terrorist, he would risk torture and at least ten years' imprisonment in Morocco. He submitted that he would be forced to confess to an act of terrorism that he had not committed. The applicant stated that his parents lived in Morocco and he had visited them a few years earlier. During the visit, police officers had approached him and informed him that they were monitoring him and advised him to "listen to our friends in Sweden or stay away from Morocco forever". He acknowledged that he had left Morocco legally with his own passport, that he had not been wanted in Morocco, that there were no legal proceedings pending against him and that he had never published anything on, for example, religion or politics. Moreover, to his knowledge, his parents had never been approached by the authorities because of him and the Moroccan authorities had never contacted him in Sweden. However, he claimed that the Swedish Security Service would inform the Moroccan authorities of the reasons for his arrest and expulsion and other Moroccans in Sweden might also submit such information. He was not aware if his situation had been noted in Morocco. The applicant referred to country information about Morocco according to which physical ill-treatment and arbitrary detention occurred, in particular of suspected terrorists. Such persons had been tortured into confession and sentenced to lengthy terms of imprisonment. He also referred to the Court's case law.

9. On 22 April 2016 the Migration Agency granted the Security Services' request to expel the applicant and, at the same time, rejected the applicant's demand for asylum and international protection. It noted that the human rights situation in Morocco had improved significantly. Violence at police stations and prisons had decreased. Imprisonment was common in terror-related cases and persons affiliated with Islamic movements ran a higher risk of being subjected to violence. Older reports contained accounts of torture and ill-treatment in cases concerning national security and

terrorism. However, the Moroccan authorities had publicly stated that the fight against terrorism should not be used as a pretext for depriving people of their rights. Torture was illegal and efforts to curb the use of torture had been successful. In terror-related cases, arrested suspects were examined by doctors before and after interrogation to prevent the use of violence by the interrogators.

10. As concerned the applicant's situation, the Migration Agency found no reasons to question the Security Service's assessment of the applicant. In this regard, it found that the applicant lacked credibility since his submissions relating to his background and previous activities were contradicted by the information submitted by the Security Service. Moreover, the Agency considered that he had not made out that the Moroccan authorities had previously showed an interest in him. It took into account that he had lived outside Morocco for about a decade and that, as he said himself, he had lived an inconspicuous life in Sweden without political or religious activities. Furthermore, after his last visit to Morocco, he had left the country legally using his passport. His parents in Morocco had not reported any visits from the authorities enquiring about him and the Moroccan authorities had never contacted him in Sweden. They had never requested his extradition either, or informed him that he was suspected of terrorism or any other kind of criminality. He had never been convicted of any terror-related crimes in Sweden. The Agency observed that the applicant had submitted that he was not sought in Morocco, that he had not been involved in any legal proceedings there and that the Moroccan authorities had never subjected him to any acts of persecution in the past. As late as towards the end of 2015, the applicant had travelled internationally using his passport, without being stopped. Even though older "country of origin" reports included accounts of ill-treatment, the most recent reports instead spoke of measures taken by the Moroccan authorities aimed at reinforcing the rule of law.

11. As concerned the risk upon return because it was the Security Service which had requested the expulsion, the Migration Agency found that the applicant had not made out that he risked persecution upon return on this ground. It took into account that no objective evidence suggested that the Moroccan authorities were aware of his case and that the legislation had regard to the possible risks of being labelled a terrorist and had been designed to avoid such risks.

12. The Migration Agency concluded that, even taking into account the applicant's submissions, it shared the Security Service's assessment and considered that there were grounds to expel the applicant with reference to Section 1, paragraph 2, of the Special Controls of Aliens Act (*lagen [1991:572] om särskild utlänningskontroll*). It thus rejected his request for asylum and international protection, revoked his permanent residence

permit and ordered his expulsion to either Morocco or another specified country. It also decided on a lifelong ban on returning to Sweden.

13. The applicant appealed to the Government, submitting that the Security Service's assessment had been accepted by the Migration Agency without a careful examination, rendering the proceedings unfair and partial. He maintained his claims and stressed that the use of torture was frequent in Morocco, in particular in relation to suspected terrorists.

14. The Migration Agency forwarded the appeal to the Migration Court of Appeal (*Migrationsöverdomstolen*) in accordance with Section 3 of the Special Controls of Aliens Act. The Agency maintained its stance and stated, *inter alia*, that the applicant had not made it probable that he was of interest to the Moroccan authorities and there was no concrete information indicating that they should be aware of what had happened to him in Sweden. The Security Service stated that it was as transparent as possible but, for reasons of confidentiality, could not reveal its working methods and sources. It added that it was continually assessing whether it was possible to enforce the expulsion. If information were to emerge which raised the issue of impediments to the expulsion, the Government would be informed.

15. On 22 June 2016, after having held an oral hearing, the appellate court shared the reasoning of the Migration Agency and decided to recommend that the Government uphold the Agency's decision. It found, *inter alia*, that there was nothing to support that the applicant at that point in time was known by the Moroccan authorities and of interest to them.

16. On 8 September 2016 the Government upheld the Migration Agency's decision in full. The Government noted the Security Service's submissions concerning the applicant's background and connections and found that there were no grounds for questioning these submissions. In view of what was known about the applicant's former activities and other circumstances, the Government concluded that it was reasonable to fear that the applicant would commit or participate in committing a terrorist offence which warranted his expulsion in accordance with the Special Controls of Aliens Act.

17. On 22 September 2016, following the interim measure indicated by the Court, the Government decided to stay the enforcement of the expulsion order until further notice.

II. RELEVANT DOMESTIC LAW AND PRACTICE

18. The basic provisions applicable in the present case, concerning the right of aliens to enter and to remain in Sweden, are laid down in the Aliens Act (*Utlänningslagen, 2005:716*).

19. An alien who is considered to be a refugee or otherwise in need of protection is, with certain exceptions, entitled to a residence permit in Sweden (Chapter 5, section 1, of the Act). The term "refugee" refers to an

alien who is outside the country of his or her nationality owing to a well-founded fear of being persecuted on grounds of race, nationality, religious or political beliefs, or on grounds of gender, sexual orientation or other membership of a particular social group, and who is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country (Chapter 4, section 1). This applies irrespective of whether the persecution is at the hands of the authorities of the country or if those authorities cannot be expected to offer protection against persecution by private individuals. By "an alien otherwise in need of protection" is meant, *inter alia*, a person who has left the country of his or her nationality because of a well-founded fear of being sentenced to death or receiving corporal punishment, or of being subjected to torture or other inhuman or degrading treatment or punishment (Chapter 4, section 2).

20. As regards the enforcement of a deportation or expulsion order, account has to be taken of the risk of capital punishment or torture and other inhuman or degrading treatment or punishment. According to a special provision on impediments to enforcement, an alien must not be sent to a country where there are reasonable grounds for believing that he or she would be in danger of suffering capital or corporal punishment or of being subjected to torture or other inhuman or degrading treatment or punishment (Chapter 12, section 1). In addition, an alien must not, in principle, be sent to a country where he or she risks persecution (Chapter 12, section 2).

21. Under certain conditions, an alien may be granted a residence permit even if a deportation or expulsion order has acquired legal force. This is the case where new circumstances have emerged which indicate that there are reasonable grounds for believing, *inter alia*, that enforcement would put the alien in danger of being subjected to capital or corporal punishment, torture or other inhuman or degrading treatment or punishment, or where there are medical or other special reasons why the order should not be enforced (Chapter 12, section 18). If a residence permit cannot be granted under these criteria, the Migration Agency may instead decide to re-examine the matter. Such re-examination is to be carried out where it may be assumed, on the basis of new circumstances relied upon by the alien, that there are lasting impediments to enforcement of the nature referred to in Chapter 12, sections 1 and 2, and that these circumstances could not have been raised previously or the alien shows that he or she has a valid excuse for not having done so. Should the applicable conditions not have been met, the Migration Agency will decide not to grant re-examination (Chapter 12, section 19).

22. A refugee or an alien otherwise in need of protection may be refused a residence permit in certain cases. Such a decision may be taken if the alien, through a particularly aggravated crime (*synnerligen grovt brott*), has shown that it represents a serious danger for public order or security to allow him or her to remain in Sweden, or if the alien has conducted

activities which have entailed danger for national security and there is reason to assume that he or she would continue the activity in the country (Chapter 5, section 1, paragraph 2, points 1 and 2). However, it follows from Chapter 8, section 7, that no person at risk of being tortured may be refused a residence permit.

23. Moreover, according to Section 1 of the Special Controls of Aliens Act, an alien may be expelled from Sweden if this is particularly warranted with respect to national security or if, due to what is known about the aliens' earlier activities and other circumstances, it may be feared that he or she will commit or participate in committing a terrorist offence under Section 2 of the Act on Penalties for Terrorist Offences (*lag [2003:148] om straff för terroristbrott*) or attempt, prepare or conspire to commit such an offence.

24. Matters concerning the right of aliens to enter and remain in Sweden are dealt with by three instances; the Migration Agency, the Migration Court and the Migration Court of Appeal (Chapter 14, section 3, and Chapter 16, section 9, of the Aliens Act). However, according to Section 2a of the Special Controls of Aliens Act, in a so-called security case (defined in Chapter 1, section 7, of the Aliens Act, as a case in which the Swedish Security Service, for reasons relating to national security or otherwise having a bearing on public security, recommend that an alien be deported or expelled, or that his or her application for a residence permit should be rejected or that an alien's residence permit be withdrawn), a decision of the Migration Agency on deportation, expulsion, a residence permit or a work permit may not be appealed against to the migration courts, but may instead be appealed against to the Government. The Migration Agency shall promptly turn over an appeal against such a decision to the Migration Court of Appeal. This court shall, if it is not clearly unnecessary, hold an oral hearing in the case and shall then pass on the case, along with its opinion, to the Government for examination. The opinion shall specifically state whether there is an impediment to enforcement under Chapter 12, section 1, 2 or 3 of the Aliens Act. If the Migration Court of Appeal finds that there is such an impediment, the Government may not diverge from the assessment of the Migration Court of Appeal in its examination (Section 3 of the Special Controls of Aliens Act).

25. If, during the enforcement of a deportation or expulsion order in a security case, information comes to light that might constitute an impediment to the enforcement of that order, the Government shall decide to stay the enforcement of the order or grant a temporary residence permit (Sections 10 and 13a of the Special Controls of Aliens Act).

III. RELEVANT COUNTRY INFORMATION ON MOROCCO

26. In its report on Morocco (UN doc. A/HRC/27/48/Add.5, dated 4 August 2014), the United Nations Working Group on Arbitrary Detention

welcomed the adoption of the Constitution in July 2011, marking an important step towards the strengthening of human rights, and the establishment of the National Human Rights Council (CNDH) as the independent national institution responsible for the protection and promotion of human rights. It found that CNDH and its various regional offices were making a significant contribution to the promotion and protection of human rights in the country. It further observed:

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

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

> "21. The Anti-Terrorism Act (No. 03-03), adopted in the wake of the Casablanca bombings of 16 May 2003, has, as a legal framework, been responsible for numerous violations of human rights and it remains in force in its original form.
>
> 22. The Anti-Terrorism Act extends the time limits on custody to up to 96 hours, renewable twice. This means that detainees maybe held for up to 12 days upon written consent from the prosecution before being brought before the investigating judge. In addition, communication with a lawyer is only possible 48 hours after the renewal of custody is granted. Hence suspects may be deprived of all contact with the outside world for six days before being allowed to communicate for half an hour with a lawyer and, even then, under the control of a police officer (Code of Criminal Procedure, art. 66, para. 6). The Working Group notes that those provisions, which restrict crucial safeguards, such as early contact with counsel, significantly increase the risk of torture and ill-treatment. The Working Group also notes with concern that the definition of the crime of terrorism is rather vague.
>
> 23. The Working Group heard several testimonies of torture and ill-treatment in cases involving allegations of terrorism or threats against national security. In those cases, the Working Group concurs with the Special Rapporteur on torture that a systematic pattern of acts of torture and ill-treatment during the arrest and detention process can be detected.
>
> 24. In such cases, it appears that suspects are often not officially registered, that they are held for weeks without being brought before a judge and without judicial oversight, and that their families are not notified until such time as the suspects are transferred to police custody in order to sign confessions. In many cases, victims are then transferred to a police station, where a preliminary investigation is opened, dated from the transfer to avoid exceeding the limits placed on the custody period.
>
> ...
>
> 29. Article 293 of the Code of Criminal Procedure states that a confession, like any other evidence, is subject to the discretion of the judge and that any confession obtained under torture is inadmissible.

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

28. The Working Group found in its conclusions (paragraph 74 of the report) that:

"... in cases related to State security, such as cases involving terrorism [or] membership in Islamist movements ... there is a pattern of torture and ill-treatment during arrest and in detention by police officers, in particular agents of the National Surveillance Directorate (DST). Many individuals have been coerced into making a confession and have been sentenced to imprisonment on the sole basis of that confession."

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

30. However, it also raised a number of concerns, among them the following:

"**Counter-terrorism**

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

...

Prohibition of torture and ill-treatment

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

the extent to which torture and ill-treatment have occurred in the past (arts. 2, 7 and 14).

...

Police custody and access to a lawyer

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

...

Right to a fair trial and the independence of the judiciary

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

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

"Reporting in previous years alleged more frequent use of torture. A May 2015 report by [Amnesty International] AI claimed that between 2010 and 2014, security forces routinely inflicted beatings, asphyxiation, stress positions, simulated drowning, and psychological and sexual violence to "extract confessions to crimes, silence activists, and crush dissent." Since the AI interviews, the government has undertaken reform efforts, including widespread human rights training for security and justice sector officials. In June 2015 Minister of Justice Mustapha Ramid publicly announced that torture would not be tolerated, and that any public official implicated in torture would face imprisonment.

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

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

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

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

33. The Government contested that argument.

A. Admissibility

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

B. Merits

1. The parties' submissions

(a) The applicant

35. The applicant maintained that he would face a real and personal risk of being subjected to torture or other inhuman treatment if he were expelled to Morocco since he was considered a national security threat in Sweden and the Security Service had transmitted this information to the Moroccan authorities.

36. Having regard to the prevalence and widespread use of torture by police and security forces in Morocco, as confirmed by reliable international sources, he claimed that even if no specific details had been given about the accusations against him, the general information provided was enough to put him at significant risk in his home country. Moreover, persons suspected of terror-related crimes were at a heightened risk of torture during arrest and interrogation and he strongly disagreed with the Government's argument that the situation had improved significantly in recent years.

37. The applicant further argued that there was a substantial risk that he would be detained and interrogated upon return to Morocco under the Moroccan Anti-Terrorism Act since it provided for jurisdiction also over crimes committed outside the country and the authorities knew that he was considered a national security threat in Sweden. The fact that he had not been convicted of any crime in Sweden was irrelevant, as the accusations by

the Swedish authorities were enough to arouse the Moroccan authorities' interest in him.

38. In this respect, the applicant stressed that he denied all accusations against him, but because the allegations were so vague and general in nature it was impossible for him to rebut them. He had not been able to defend himself properly since much of the information was secret and he had therefore not been granted access to it. However, he underlined that some of the accusations against him amounted to crimes under Moroccan law and were of the kind usually associated with confessions extorted under torture, as reported by international sources. Since a confession, even one made under torture, could be used as evidence in Morocco, it would suffice to convict him.

(b) The Government

39. The Government argued that the applicant's complaints were manifestly ill-founded and that there would be no violation of Article 3 of the Convention if he were to be expelled to Morocco.

40. They stressed that both the Aliens Act and the Special Controls of Aliens Act reflected the same principles as those outlined by the Court when applying Article 3 of the Convention in expulsion cases. Thus, the Swedish authorities carried out the same test in expulsion cases, including in national security cases, as the Court would when it considered these kinds of cases. This examination had also been carried out in the present case and the Government contended that great weight had to be attached to the opinions of the domestic authorities. They underlined that the applicant had been represented by legal counsel throughout the proceedings and that two oral examinations had taken place. The Government added that they shared the national authorities' findings and conclusions.

41. Moreover, according to the Government, information from international sources showed that the human rights situation in Morocco had improved in many areas over recent years. Thus, allegations of torture and physical abuse were being investigated to an increasing extent and educational efforts were being made to raise human rights awareness among the police. Moreover, Moroccan law prohibits torture and prescribes penalties up to life imprisonment for government employees who violate this prohibition. However, they acknowledged that there were reports of physical abuse and torture, mainly relating to persons suspected of terrorist offences.

42. As concerned the applicant, the Government submitted that the applicant had not shown that he was of interest to the Moroccan authorities. He had travelled to Morocco on earlier occasions using his own passport, and he had never been arrested or questioned. He had not been suspected or convicted of any concrete terror-related crime, either in Morocco or in Sweden. The mere fact that he was considered a security threat in Sweden

was not enough to put him at risk of ill-treatment upon return to his home country, as could be seen from international reports. In this respect, the Government considered that the present case was comparable to *A.J. v. Sweden* ([dec.], no. 13508/07, 8 July 2008), where the Moroccan authorities were not aware of the applicant's existence, while it was clearly distinguishable from *Rafaa v. France* (no. 25393/10, 30 May 2013) and *Ouabour v. Belgium* (no. 26417/10, 2 June 2015) where Morocco had requested the applicants' extradition due to suspicion of terrorism.

43. According to the Government, even if the applicant were to be detained and interrogated upon return, or subject to criminal investigation, this did not prevent him from being expelled from Sweden as long as he was not exposed to a real risk of ill-treatment.

44. The Government further noted that it was the Security Service which was responsible for the enforcement of the expulsion of the applicant and that they would hand him over to the Moroccan authorities upon return. The Security Service had thus been in contact with the Moroccan authorities and had, among other things, communicated on the case with them, informed them that the applicant had not committed a crime in Sweden and that there were no suspicions that he had. In this respect, the Security Service would continuously assess whether there were impediments to the enforcement of the expulsion order and, if any impediment were identified, the expulsion would be suspended. However, so far no impediments had emerged.

45. In view of the above, the Government saw no need to take any special measures to ensure that the applicant, once expelled from Sweden, would not be subjected to treatment contrary to Article 3 of the Convention. In their view, the applicant had failed to substantiate his complaint to the Court.

2. The Court's assessment

(a) General principles

46. Throughout its history, the Court has been acutely conscious of the difficulties faced by States in protecting their populations from terrorist violence, which represents, in itself, a grave threat to human rights. As part of the fight against terrorism, States must be allowed to deport non-nationals whom they consider to constitute a threat to their national security. It is no part of this Court's function under Article 3 of the Convention to review whether an individual poses in fact such a threat; its only task is to consider whether that individual's deportation would be compatible with his or her rights under the Convention. It is well established that expulsion by a Contracting State may give rise to an issue under Article 3 and hence engage the responsibility of that State under the Convention where substantial grounds have been shown for believing that the person concerned, if deported, faces a real risk of being subjected to treatment

contrary to Article 3. In such circumstances, Article 3 implies an obligation not to deport the person in question to that country. Article 3 is absolute and it is not possible to weigh the risk of ill-treatment against the reasons put forward for the expulsion (see *Othman (Abu Qatada) v. the United Kingdom*, no. 8139/09, §§ 183-5, ECHR 2012 (extracts), with further references).

47. Moreover, where domestic proceedings have taken place, it is not the Court's task to substitute its own assessment of the facts for that of the domestic courts and, as a general rule, it is for those courts to assess the evidence before them (see, among other authorities, *Giuliani and Gaggio v. Italy* [GC], no. 23458/02, §§ 179-80, 24 March 2011, and *Nizomkhon Dzhurayev v. Russia*, no. 31890/11, § 113, 3 October 2013). As a general principle, the national authorities are best placed to assess not just the facts but, more particularly, the credibility of witnesses since it is they who have had an opportunity to see, hear and assess the demeanour of the individual concerned (see, for example, *R.C. v. Sweden*, no. 41827/07, § 52, 9 March 2010, and *F.G. v. Sweden* [GC], no. 43611/11, § 118, ECHR 2016).

48. The Court must be satisfied, however, that the assessment made by the authorities of the Contracting State is adequate and sufficiently supported by domestic materials as well as by materials originating from other reliable and objective sources such as, for instance, other Contracting or third States, agencies of the United Nations and reputable non-governmental organisations (see, among other authorities, *NA. v. the United Kingdom*, no. 25904/07, § 119, 17 July 2008, and *F.G. v. Sweden*, cited above, § 117).

49. If the applicant has not already been deported, the material point in time for the assessment must be that of the Court's consideration of the case (see *Chahal v. the United Kingdom*, 15 November 1996, § 86, *Reports of Judgments and Decisions* 1996-V). A full and *ex nunc* evaluation is required where it is necessary to take into account information that has come to light after the final decision by the domestic authorities was taken (see, for example, *Maslov v. Austria* [GC], no. 1638/03, §§ 87-95, ECHR 2008, and *Sufi and Elmi v. the United Kingdom*, nos. 8319/07 and 11449/07, § 215, 28 June 2011). The assessment must focus on the foreseeable consequences of the applicant's removal to the country of destination, in the light of the general situation there and of his or her personal circumstances (see, for example, *Salah Sheekh v. the Netherlands*, no. 1948/04, § 136, 11 January 2007; *Vilvarajah and Others v. the United Kingdom*, 30 October 1991, §§ 107 and 108, Series A no. 215; and *F.G. v. Sweden*, cited above, § 115).

50. It is for the applicants to adduce evidence capable of demonstrating that there are substantial grounds for believing that, if the measure complained of were to be implemented, they would be exposed to a real risk

of being subjected to treatment contrary to Article 3 (see *Saadi v. Italy* [GC], no. 37201/06, § 129, ECHR 2008, and *F.G. v. Sweden*, cited above, § 120). In this connection it should be observed that a certain degree of speculation is inherent in the preventive purpose of Article 3 and that it is not a matter of requiring the persons concerned to provide clear proof of their claim that they would be exposed to proscribed treatment (see *Paposhvili v. Belgium* [GC], no. 41738/10, § 186, ECHR 2016, and *Trabelsi v. Belgium*, no. 140/10, § 130, ECHR 2014 (extracts)).

51. Where such evidence is adduced, it is for the authorities of the returning State, in the context of domestic procedures, to dispel any doubts raised by it (see *Saadi*, cited above, §§ 129-32, and *F.G. v. Sweden*, cited above, § 120).

(b) Application of these principles to the present case

52. The Court notes at the outset from the international material cited above (see paragraphs 26-31 above) that the human rights situation in Morocco has improved over several years and the country is making efforts to comply with international human rights standards. Thus, the general situation in the country is not of such a nature as to show, on its own, that there would be a breach of the Convention if the applicant were to return there. The Court has to establish whether the applicant's personal situation is such that his return to Morocco would contravene Article 3 of the Convention.

53. In this respect, the Court agrees with the findings of the national authorities, that the applicant has failed to show that he has previously been of interest to the Moroccan authorities. It notes that the applicant has been able to travel in and out of Morocco, legally using his own passport, and to move freely within the country while visiting his parents. Moreover, again legally using his own passport, he has travelled internationally to other destinations than Morocco without encountering problems. It is further undisputed that he is not sought or wanted in his home country, nor are there any legal proceedings pending against him there. In these circumstances, the Court finds no indications that the applicant would be detained and ill-treated by the Moroccan authorities upon return for any reason unrelated to his being considered a security risk in Sweden.

54. Turning to whether he would face a real risk of being subjected to ill-treatment or torture upon return to his home country because he is considered a security risk in Sweden, the Court notes that all instances in Sweden, the Migration Agency, the Migration Court of Appeal, the Security Service and the Government, agree that there are currently no impediments to the enforcement of the expulsion order against the applicant, while the applicant is convinced that he would be detained and tortured upon return and possibly convicted of terror-related crimes.

55. In this connection, the Court stresses that the issue before it is not whether the applicant would be detained and interrogated, or even convicted of crimes later on, by the Moroccan authorities since this would not, in itself, be in contravention of the Convention. Its concern is whether or not the applicant would be ill-treated or tortured, contrary to Article 3 of the Convention, upon return to his home country. In this respect, the Court reiterates that Article 3 enshrines one of the most fundamental values of democratic societies. Even in the most difficult circumstances, such as the fight against terrorism and organised crime, the Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment. Unlike most of the substantive clauses of the Convention and of Protocols Nos. 1 and 4, Article 3 makes no provision for exceptions and no derogation from it is permissible under Article 15 § 2 even in the event of a public emergency threatening the life of the nation (see *Selmouni v. France* [GC], no. 25803/94, § 95, ECHR 1999-V; *Assenov and Others v. Bulgaria*, 28 October 1998, § 93, *Reports of Judgments and Decisions* 1998-VIII; and *Chahal*, cited above, § 79).

56. The Court must therefore carefully examine all the material and evidence presented to it by the parties as well as the material obtained *proprio motu* (see, among other authorities, *Hirsi Jamaa and Others v. Italy* [GC], no. 27765/09, § 116, ECHR 2012). Since it is in principle for the applicant to adduce evidence capable of proving that there are substantial grounds for believing that, if expelled to Morocco, he would be exposed to a real risk of being subjected to treatment contrary to Article 3, the Court will begin by considering his submissions (see *Saadi*, cited above, § 129, and *F.G. v. Sweden*, cited above, § 120).

57. The applicant essentially claims that, since the Moroccan authorities know that he is considered a security threat in Sweden, he will be arrested upon return and tortured as a suspected terrorist. He alleges that the type of activity he is accused of by the Swedish Security Service is a criminal offence under Moroccan terrorist legislation. The Court observes that the Swedish Government have acknowledged that the Security Service has been in contact with the Moroccan authorities and informed them about the applicant. The Moroccan authorities are thus aware that the applicant is considered a national security threat in Sweden and they have certain information about him. This clearly distinguishes the present case from the case of *A.J. v. Sweden*, referred to by the Government (see paragraph 42 above). Moreover, the Court notes that it is the Swedish Security Service which is responsible for the enforcement of the applicant's expulsion and that its officers will escort him back to his home country. In view of this, and having regard to the material from reliable international sources which show that arbitrary detention and torture continue to occur in cases related to persons suspected of terrorism and considered a national security threat (see paragraphs 27, 28 and 30 above), the Court considers that the applicant

has shown that there is a risk of his being subjected to treatment contrary to Article 3 if expelled to his home country.

58. The Government, to dispel doubts as to this risk of ill-treatment (see *Saadi*, cited above, §§ 129-32, and *F.G. v. Sweden*, cited above, § 120), have argued that the Swedish authorities have made a careful examination of the applicant's case and found that, in view of the improved human rights situation in Morocco, he would not face a real risk of ill-treatment in his home country. They have also underlined that the Security Service reviews the situation regularly and would stop the expulsion should any factor emerge to show that the applicant would be at risk.

59. In response to this, the Court first notes that both the Migration Agency and the Migration Court of Appeal, when examining the applicant's case, appear not to have been informed that the Security Service had contacted the Moroccan authorities and informed them about the applicant before his expulsion. It transpires from their decisions that they reached their conclusions without having this essential information which the Court now has before it (see paragraphs 11 and 15 above). In view of this, the Court finds that it cannot rely on the Migration Agency and the Migration Court of Appeal's findings and conclusions in this respect. Moreover, the Court observes that, not only is the Security Service the authority which undertook the security assessment of the applicant, but it is also responsible for the enforcement of the expulsion order against the applicant and, as acknowledged by the Government, it is the authority which will also escort the applicant back and hand him over to the Moroccan authorities. These various roles notwithstanding, and despite having acknowledged the risk of ill-treatment during detention of suspected terrorists in Morocco, the Government have stated that they see no reason to take special measures to ensure that the applicant, once expelled from Sweden, would not be subjected to treatment contrary to Article 3 of the Convention.

60. In view of the above, the Court finds that the Government have failed to dispel the doubts raised by the applicant. On the contrary, the Court considers that the circumstance that the migration authorities appear not to have received all relevant and important information to make their decision raises concern as to the rigour and reliability of the domestic proceedings. Moreover, having regard to the efforts made by the Moroccan authorities to improve the human rights situation in the country over several years, the Court notes that no assurances by the Moroccan authorities relating to the treatment of the applicant upon return, or if he were to be detained, access to him by Swedish diplomats, have so far been obtained in order to help eliminate, or at least substantially reduce, the risk of the applicant being subjected to ill-treatment once returned to his home country.

61. It follows that, in the present circumstances, the applicant's expulsion to Morocco would involve a violation of Article 3 of the Convention.

II. RULE 39 OF THE RULES OF COURT

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

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

64. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

65. The applicant did not submit a claim for pecuniary or non-pecuniary damages. Accordingly, the Court considers that there is no call to award him any sum on that account.

B. Costs and expenses

66. The applicant claimed EUR 3,300 to cover the legal fees of his representative, corresponding to 22 hours of legal work, as costs and expenses incurred before the Court.

67. The Government noted that the applicant had not itemised the particulars of the claim with a detailed description of legal work carried out and its relevance for preventing and obtaining redress for the alleged violation of the Convention. However, they did not question the amount claimed as such.

68. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 3,300 for the proceedings before the Court.

C. Default interest

69. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that, in the present circumstances, the implementation of the expulsion order against the applicant would give rise to a violation of Article 3 of the Convention;

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

4. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amount, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

EUR 3,300 (three thousand three hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 9 January 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Registrar

Branko Lubarda
President