



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

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## Committee against Torture

### Fifty-first session

28 October–22 November 2013

## Decision

### Communication No. 376/2009

|                                    |  |
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| <i>Submitted by:</i>               | Djamila Bendib, represented by Alkarama for Human Rights   |
| <i>Alleged victim:</i>             | Mounir Hammouche (the complainant's son)   |
| <i>State party:</i>                | Algeria  |
| <i>Date of complaint:</i>          | 12 January 2009 (initial submission)   |
| <i>Date of decision:</i>           | 8 November 2013  |
| <i>Subject matter:</i>             | Torture at a police station, resulting in the death of the victim  |
| <i>Procedural issue:</i>           | Procedure of international investigation or settlement   |
| <i>Substantive issues:</i>         | Torture and other cruel, inhuman or degrading treatment or punishment; obligation of the State party to ensure that the competent authorities conduct a prompt and impartial investigation; right to lodge a complaint; right to redress |
| <i>Articles of the Convention:</i> | 1, 2 (para. 1), 11, 12, 13, 14 and 16 of the Convention  |

[Annex]

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## Annex

### **Decision of the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (fifty-first session)**

concerning

#### **Communication No. 376/2009**

*Submitted by:* Djamila Bendib, represented by Alkarama for Human Rights

*Alleged victim:* Mounir Hammouche (the complainant's son)

*State party:* Algeria

*Date of complaint:* 12 January 2009 (initial submission)

*The Committee against Torture*, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

*Meeting* on 8 November 2013,

*Having concluded* its consideration of communication No. 376/2009, submitted on behalf of Mounir Hammouche under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

*Having taken into account* all information made available to it by the complainant, her counsel and the State party,

*Adopts* the following:

#### **Decision under article 22, paragraph 7, of the Convention against Torture**

1. The complainant is Djamila Bendib. She submits the complaint on behalf of her son, Mounir Hammouche, born on 15 December 1980 in Aïn Taghrout, wilaya of Bordj Bou-Arréridj, where he resided during his lifetime and where he died in 2006. The complainant alleges that Mounir Hammouche was the victim of a violation of articles 2 (para. 1), 11, 12, 13 and 14, read in conjunction with articles 1 and 16, of the Convention. The complainant is represented by counsel.

#### **The facts as submitted by the complainant**

2.1 On 20 December 2006, as he was accustomed to doing, Mounir Hammouche attended evening prayers at one of the mosques in the village of Aïn Taghrout, where he lived. At around 8 p.m., when he was returning home at the end of prayers, several armed men driving a vehicle and dressed in civilian clothing arrested him near the mosque. He was taken to a military barracks of the Intelligence and Security Department (DRS) (the army's intelligence service in charge of counter-terrorism operations). Given that the DRS agents had placed a hood over his head, Mounir Hammouche could not clearly make out where he had been taken. He was released the following day. The complainant does not know whether Mounir Hammouche was subjected to ill-treatment during his first arrest.

The victim told his family only that DRS agents had reproached him, without elaborating any further, for not attending prayers at a mosque closer to his home and for having a beard and wearing Islamic dress.

2.2 On 23 December 2006, upon leaving the same mosque, Mounir Hammouche was arrested a second time, along with six other persons,<sup>1</sup> by the same DRS officials driving the same vehicle. According to later accounts provided by the persons arrested with Mounir Hammouche, everyone, including Mr. Hammouche, was taken to the DRS military barracks, the Territorial Centre for Research and Investigation in Constantine, where they were tortured during the period between 23 December 2006 and 3 January 2007.

2.3 On 29 December 2006, individuals dressed in civilian clothing and accompanied by police officers visited the home of Mounir Hammouche to inform his family that he had died while in police custody. These persons, probably DRS agents, did not reveal their identity or rank, but merely indicated that they were from the security services (Al-Amn). Several hours later, the body of Mounir Hammouche was returned to his family, who were able to detect numerous signs of torture all over his body, in particular a head injury and bruises on his hands and feet. In response to a question by one of Mounir Hammouche's brothers about the circumstances of his brother's death, one of the agents, who appeared to be in charge, said that Mounir Hammouche "had probably committed suicide", that "in any case, an autopsy had been carried out" and that "they [the family] could bury him". The DRS agents and police officers stayed close to the family's home until Mounir Hammouche's burial on 30 December 2006. They appeared to be monitoring the family's reaction, as well as the comings and goings of neighbours and persons close to the family. Numerous DRS agents and police officers also kept watch over the funeral proceedings.

2.4 Convinced that Mounir Hammouche had not committed suicide but had died as a result of torture during his detention in DRS facilities, his family took numerous steps to shed light on the circumstances of his death. They first sought to discover what had happened to the other persons taken into custody on the same day as Mounir Hammouche with a view to obtaining their account of the events. On 3 January 2007, the individuals in question had been taken to the Court of Ras El Oued and brought before the public prosecutor. All had been charged with "advocacy of terrorism" and placed in pretrial detention in Bordj Bou-Arréridj prison. A number of these individuals told the complainant that Mounir Hammouche, like his fellow prisoners, had been brutally tortured by DRS agents in the Territorial Centre for Research and Investigation in Constantine, where they had all been taken following their arrest. These accounts of torture were confirmed by one of the defendants' lawyers, who noted that, on 3 January 2007, the day of the court hearing before the investigating judge, his clients still bore visible signs of torture.

2.5 With the intention of lodging a complaint, Yazid Hammouche, the victim's brother, went to the Court of Ras El Oued, which had territorial jurisdiction in the matter, in order to request that the public prosecutor provide him with a copy of the report of the autopsy which, according to the Intelligence and Security Department, had been performed on Mounir Hammouche's corpse. However, the prosecutor refused this request and referred Yazid Hammouche to the chief prosecutor of Constantine. Yazid Hammouche was then received by the chief prosecutor of Constantine, who confirmed that Mounir Hammouche was believed to have committed suicide and that an autopsy had been carried out and a report prepared. The chief prosecutor of Constantine subsequently produced an unsigned and undated document, which he said was the autopsy report. He refused, however, to let Yazid Hammouche have a copy and denied the latter's request to consult the document at greater length. Yazid Hammouche informed him of his family's wish to lodge a complaint,

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<sup>1</sup> The complainant names these persons.

but the official refused to discuss the matter, adding that, in any event, an investigation was under way and that its results would be made known to the family in due course.

2.6 Given the lack of response to the family's requests, the complainant wrote to the public prosecutor of Ras El Oued on 7 February 2007, asking for a copy of Mounir Hammouche's autopsy report. The complainant also wrote to the chief prosecutor of Constantine. She received no reply from either of the two officials. All of the steps taken by the victim's family have been to no avail, and domestic remedies have proved to be inaccessible and ineffective, owing to the inaction of the prosecution service and the authorities. According to the complainant, the authorities of the State party, including its judicial authorities, clearly refuse to hold the security services responsible, despite the latter's direct implication in the death of Mounir Hammouche. The State party's claim that an investigation was under way, which was the pretext given for refusing to register a criminal complaint, appears to have been made for no other reason than to deny the family its right to know the truth, to lodge a criminal complaint and to obtain redress. Furthermore, neither of the two officials approached by Mounir Hammouche's family informed them of the results of the purported investigation. It is therefore reasonable to assume that no serious investigation has ever been carried out, since the authorities know that Mounir Hammouche most likely died as a result of the torture to which he and the other persons arrested at the same time had been subjected.

2.7 On 16 January 2007, the complainant reported Mounir Hammouche's death in police custody to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. On 18 January 2007, she also reported it to the Special Rapporteur on extrajudicial, summary or arbitrary executions.<sup>2</sup> In addition, the complainant refers to the concluding observations of the Committee against Torture concerning the State party's third periodic report, in which the Committee expressed its concern at the fact that Mounir Hammouche's family had not been granted access to the autopsy report.<sup>3</sup> In the course of the Committee's dialogue with the State party during the consideration of the latter's periodic report in May 2008, Mounir Hammouche's family finally learned the name of the doctor who had reportedly performed the autopsy. On that same occasion, the representative of the Government of the State party also stated that the family could request the autopsy report and records of the preliminary investigation. Armed with this information, in the summer of 2008, Yazid Hammouche once again approached the prosecutor of the Court of Ras El Oued and the chief prosecutor of the Court of Constantine in order to repeat the family's requests. However, despite the State party's official statements, the family has never succeeded in obtaining a copy of the autopsy report. According to the complainant, it seems reasonable to suspect that the autopsy report indicates torture as the cause of death.

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<sup>2</sup> The Special Rapporteur on extrajudicial, summary or arbitrary executions, jointly with the Special Rapporteur on torture, sent an allegation letter regarding the case of Mounir Hammouche to the State party on 20 February 2007. On 26 June 2007, the Government of the State party confirmed the facts and stated that the autopsy carried out by the head of forensic medicine at the University Hospital of Constantine had shown that the death of Mounir Hammouche was the result of mechanical asphyxiation by hanging and that this hanging was considered, *prima facie*, to be a suicide. On 3 August 2007, the Special Rapporteur on extrajudicial, summary or arbitrary executions sent a follow-up letter to the Government of the State party, jointly with the Special Rapporteur on torture, asking the State party to provide them with a copy of Mounir Hammouche's autopsy report. No response was received from the State party to this request. (Summary of cases transmitted to Government and replies received, Addendum to the Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, A/HRC/8/3/Add.1, pp. 21–24.)

<sup>3</sup> CAT/C/DZA/CO/3, para. 14.

2.8 The complainant also stresses that the main witnesses to the incident, namely the other persons arrested and imprisoned under the same circumstances as the victim, have never been asked by investigators about the facts of the case or the conditions of their detention. In addition, the individuals concerned have never had the opportunity to testify as civil claimants, as is standard practice in criminal investigations. Thus, the family never had the legal possibility to file a complaint since, according to the judicial authorities, and as confirmed before the Committee in May 2008, an investigation was already under way. According to the complainant, this is a pretext that seems to have been provided solely as a means of denying the victim's family the right to know the truth, to lodge a criminal complaint with the public prosecutor's office and to obtain redress. As a result, despite all the efforts made by the family, none of the perpetrators of the offences committed against Mounir Hammouche, although they are easily identifiable, has ever been questioned. The complainant reiterates that her family has attempted to use existing legal channels, but that all their efforts have proved to be ineffective,<sup>4</sup> and that, to this day, the family of Mounir Hammouche continues to be denied its right to justice. The complainant therefore requests to be relieved of the obligation to continue pursuing domestic remedies in order for her complaint to be admissible before the Committee.

### **The complaint**

3.1 The complainant alleges that her son, Mounir Hammouche, is a victim of violations by the State party of articles 2 (para. 1), 11, 12, 13 and 14, read in conjunction with article 1, and alternatively, article 16, of the Convention.

3.2 According to the complainant, there is no doubt that Mounir Hammouche was subjected to torture. His fellow prisoners, who were arrested under the same circumstances and detained in the same place, namely the Territorial Centre for Research and Information in Constantine, and under the same conditions, all reported being tortured by DRS agents from the Centre. The complainant maintains that thousands of people have been held at this centre and have subsequently disappeared; many died as a result of torture, while others were summarily executed in the 1990s. According to the consistent accounts of Mounir Hammouche's close friends and relatives, his corpse, which was returned to his family with an official order for immediate burial, bore signs of torture, including a head injury and bruises on his hands and feet. This physical abuse was directly responsible for his death, with the fact that he died constituting unmistakable proof of its violence and intensity. The complainant adds that Mounir Hammouche's torturers intended to cause him intense suffering, since it would be impossible to subject a person to such violence unintentionally. The purpose of the torture was to obtain information or a confession from him, to punish or intimidate him, or to coerce him on the grounds of his purported Islamist affiliation. At the time of his first arrest, he had, in fact, been reproached for having a beard and wearing Islamic dress. Furthermore, there is no doubt that the offences perpetrated against Mounir Hammouche were committed by members of the Intelligence and Security Department, who were agents of the State acting in an official capacity. The complainant concludes that the physical abuses inflicted on the victim constitute acts of torture as defined in article 1 of the Convention.

3.3 The complainant also invokes article 2, paragraph 1, of the Convention, pursuant to which the State party should have taken all "effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction". She adds that Algerian legislation contains no provision prohibiting the use of confessions or

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<sup>4</sup> The complainant refers, inter alia, to communications No. 238/2003, *Z.T. v. Norway*, decision adopted on 14 November 2005 and No. 195/2002, *Maftoud Brada v. France*, decision adopted on 17 May 2005.

statements extracted under torture as evidence. This does nothing to discourage the investigative police — not to mention the Intelligence and Security Department, which is not accountable to the judicial branch — from using illegal methods to obtain statements for later use in criminal trials against detained persons or third parties. Furthermore, the State party operates a number of secret detention centres,<sup>5</sup> which opens the door to all kinds of abuse<sup>6</sup> and runs contrary to the measures identified by the Committee as those required of States parties in order to prevent the torture and ill-treatment of persons deprived of their liberty, such as maintaining an official register of prisoners.<sup>7</sup> Pursuant to article 2, paragraph 1, of the Convention, the State party must also respect the right of persons deprived of their liberty to promptly receive independent legal and medical assistance, to contact relatives, to have access to legal and other remedies that ensure the prompt examination of their complaint, to defend their rights and to contest the legality of their detention or treatment.<sup>8</sup> The complainant points out that Algerian legislation provides for a period of police custody of up to 12 days, but makes no provision for contact with the outside world, including with relatives, a lawyer or an independent doctor. This long period of incommunicado detention exposes persons held in custody to an increased risk of torture and ill-treatment. Moreover, in such circumstances, they are physically unable to assert their rights through judicial proceedings.

3.4 The complainant also invokes article 11 of the Convention, noting that article 51 of the State party's Code of Criminal Procedure<sup>9</sup> provides for a period of police custody of up to 12 days, which, in practice, is often exceeded.<sup>10</sup> The right to be assisted by a lawyer while in police custody is not guaranteed in Algerian legislation. Moreover, there is no legal provision that prohibits the use of a statement obtained under torture as evidence.

3.5 The complainant also maintains that, in the case of Mounir Hammouche, the State party has violated article 12 of the Convention, which requires States parties to proceed to a prompt and impartial investigation wherever there is reasonable ground to believe that an act of torture has been committed.<sup>11</sup> None of the requests made by the victim's family, in which the facts are brought to the attention of prosecutors, has led to an investigation, whereas such an investigation should have been conducted without delay.<sup>12</sup> Although an autopsy was supposedly ordered following the death of Mounir Hammouche, no report has been transmitted to his family, which raises doubts about the veracity of the State party's claims. Similarly, an investigation was supposedly undertaken, but the results have never

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<sup>5</sup> Houch Chnou, Oued Namous, Reggane, El Harrach and Ouargla, and all military units reporting directly to the Intelligence and Security Department (DRS).

<sup>6</sup> The complainant refers to the concluding observations of the Human Rights Committee concerning the consideration of the third periodic report of Algeria, CCPR/C/DZA/CO/3, para. 11.

<sup>7</sup> The complainant refers to general comment No. 2 (2008) of the Committee against Torture, *Official Records of the General Assembly, Sixty-third Session, Supplement No. 44 (A/63/44)*, annex VI, para. 13.

<sup>8</sup> *Ibid.*, para. 13.

<sup>9</sup> Order No. 66-155 of 8 June 1966 on the Code of Criminal Procedure, as amended and supplemented by Act No. 06-22 of 20 December 2006.

<sup>10</sup> The complainant refers to the concluding observations of the Human Rights Committee, *op. cit.*, para. 18.

<sup>11</sup> The complainant refers to communications No. 187/2001, *Thabti v. Tunisia*, decision adopted on 14 November 2003, para. 10.4; No. 60/1996, *M'Barek v. Tunisia*, decision adopted on 10 November 1999, para. 11.7; and No. 59/1996, *Blanco Abad v. Spain*, decision adopted on 14 May 1998, para. 8.2.

<sup>12</sup> The complainant refers to communications No. 8/1991, *Qani Halimi-Nedzibi v. Austria*, decision adopted on 18 November 1993, para. 13.5; *M'Barek v. Tunisia*, para. 11.7; and *Blanco Abad v. Spain*, para. 8.2.

been made known to the family, despite the fact that more than two years have passed since the events took place.<sup>13</sup> Assuming that such an investigation was indeed carried out, the complainant questions its impartiality, given that those who would have headed it are themselves perpetrators of, or, at the very least, accomplices to the acts in question. In the end, the complainant doubts whether any investigation was ever conducted at all, since none of the material witnesses has ever testified in any proceeding. The complainant therefore concludes that, given its failure to conduct a genuine, prompt and impartial investigation into the allegations of torture suffered by Mounir Hammouche, the State party has acted in violation of its obligations under article 12 of the Convention.

3.6 With regard to article 13 of the Convention, the complainant argues that the State party should have guaranteed the family of Mounir Hammouche the right to lodge a complaint and to have its case heard promptly and impartially by the appropriate national authorities. As matters stand, the authorities have removed any hope that the victim's family had of obtaining justice. The prosecutor of Ras El Oued has not taken any action in response to the complaint lodged by the victim's brother, and the prosecutor of Constantine, also seized of the case, has not shown any diligence in the matter either. In addition, Mounir Hammouche's family has been denied a copy of the report of the autopsy that was purportedly conducted – obviously a key piece of evidence in elucidating and proving the facts. Furthermore, they have not had access to the results of the investigation that the State claims to have carried out, however partial or incomplete that investigation might be. By failing to inform the family of the results of the investigation, the State party has blocked any criminal action that the family could, in theory, have brought under the Algerian Code of Criminal Procedure. In so doing, the State party has acted in violation of article 13 of the Convention.<sup>14</sup>

3.7 The complainant also invokes article 14 of the Convention, noting that, by depriving Mounir Hammouche's family of the opportunity to bring legal action under criminal law, the State party has deprived it of a legal means of obtaining compensation for serious crimes such as torture. In addition, the inaction of the prosecution service has nullified the family's chances of obtaining redress through a civil action for damages, which are brought separately from criminal proceedings, given the stipulation in the Algerian Code of Criminal Procedure that "a judgement in a civil action shall be deferred until the final determination of a criminal action".<sup>15</sup> A public prosecutor who refuses to conduct an investigation therefore precludes effective access to civil proceedings. The complainant emphasizes, furthermore, that the State party's obligation to provide redress includes, but is not limited to, compensation for damages suffered, since it must also include the adoption of measures aimed at non-repetition of the offences, in particular by imposing penalties on the guilty parties that are commensurate with the seriousness of their acts. This implies, first and foremost, conducting an investigation and prosecuting those responsible.<sup>16</sup> In the case of Mounir Hammouche, the crime perpetrated against him remains unpunished, since

<sup>13</sup> Today, more than seven years.

<sup>14</sup> The complainant refers to communications No. 171/2000, *Dimitrov v. Serbia and Montenegro*, decision adopted on 3 May 2005, para. 7.2 and No. 172/2000, *Dimitrijevic v. Serbia and Montenegro*, decision adopted on 16 November 2005, para. 7.3.

<sup>15</sup> Order No. 66-155 of 8 June 1966 on the Code of Criminal Procedure, art. 4.

<sup>16</sup> The complainant refers in particular to communication No. 212/2002, *Urra Guridi v. Spain*, decision adopted on 17 May 2005, para. 6.8. This decision is, moreover, in line with the jurisprudence of the Human Rights Committee (communications No. 563/1993, *Andreu v. Colombia*, Views adopted on 27 October 1995, para. 8.2 and No. 778/1997, *Coronel et al. v. Colombia*, Views adopted on 24 October 2002, para. 6.2); and that of the European Court of Human Rights (*Assenov and others v. Bulgaria*, No. 90/1997/874/1086, 28 October 1998, paras. 102 and 117 and *Aksoy v. Turkey*, No. 100/1995/606/694, 18 December 1996, para. 90).

his torturers have not been convicted, prosecuted, subject to investigation or even questioned, which amounts to a violation of the right of Mounir Hammouche's family to redress under article 14 of the Convention.

3.8 The complainant repeats that, in accordance with the definition set out in article 1 of the Convention, the violent acts inflicted on Mounir Hammouche amount to torture. However, should the Committee fail to endorse such a characterization, the fact remains that the physical abuse endured by the victim constitutes, in any case, cruel, inhuman or degrading treatment and that the State party therefore also has an obligation to prevent such acts and to punish the perpetrators when those acts are committed by or at the instigation of or with the acquiescence of a public official, pursuant to article 16 of the Convention.

#### **State party's failure to cooperate**

4. On 27 January 2011, 27 February 2012 and 21 May 2012, the State party was invited to submit its comments on the admissibility and merits of the communication. The Committee notes that no information has been received in this connection. It regrets the State party's refusal to communicate any information on the admissibility and/or merits of the complainant's claims. The Committee recalls that the State party is obliged, pursuant to the Convention, to submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that the State may have taken. In the absence of a response from the State party, due weight must be given to the complainant's allegations, which have been properly substantiated.

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

##### *Consideration of admissibility*

5.1 As required under article 22, paragraph 5 (a), of the Convention, the Committee has ascertained that the same matter has not been, and is not being, examined under another procedure of international investigation or settlement. The Committee notes that the case of Mounir Hammouche was brought to the attention of the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on torture in 2007. However, the Committee notes that extra-conventional procedures or mechanisms established by the Commission on Human Rights or the Human Rights Council, whose mandates are to examine and report publicly on human rights situations in specific countries or territories or on cases of widespread human rights violations worldwide, do not constitute procedures of international investigation or settlement within the meaning of article 22, paragraph 5 (a), of the Convention.<sup>17</sup> Accordingly, the Committee considers that the examination of Mounir Hammouche's case by the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on torture does not render the communication inadmissible under this provision.

5.2 Regarding the exhaustion of domestic remedies, the Committee recalls with concern that, despite the three reminders sent to it, the State party has not provided any observations on the admissibility or merits of the communication. The Committee therefore finds that it is not precluded from considering the communication under article 22, paragraph 5 (b), of the Convention.

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<sup>17</sup> See the jurisprudence of the Human Rights Committee concerning its interpretation of article 5, paragraph 2 (a), of the Optional Protocol to the International Covenant on Civil and Political Rights, for example, communications No. 1781/2008, *Berzig v. Algeria*, Views adopted on 31 October 2011, para. 7.2 and No. 540/1993, *Laureano Atachahua v. Peru*, Views adopted on 25 March 1996, para. 7.1.



5.3 The Committee finds no other reason to consider the communication inadmissible and thus proceeds to its consideration of the merits of the claims submitted by the complainant under articles 1, 2 (para. 1), 11, 12, 13, 14 and 16 of the Convention.

*Consideration of the merits*

6.1 The Committee has considered the complaint in the light of all the information made available to it by the parties, in accordance with article 22, paragraph 4, of the Convention. As the State party has not provided any observation on the merits, due weight must be given to the complainant's allegations.

6.2 The Committee notes that, according to the complainant, on 23 December 2006, three days after his initial arrest, Mounir Hammouche was arrested by DRS agents and driven to the Territorial Centre for Research and Investigation in Constantine – an army barracks where, according to the testimony of his fellow prisoners, he was tortured. On 29 December 2006, agents of the State party visited Mounir Hammouche's home in order to announce to his family that he had died in police custody. Several hours later, the victim's body was returned to his family, who were able to detect an injury to his head and bruises on his hands and feet. According to the complainant, these injuries suggest that grievous bodily harm, which must be considered to have caused severe pain and suffering, was intentionally inflicted upon Mounir Hammouche during his detention by officials of the State party with a view to obtaining a confession, or to punishing or intimidating him because of his purported adherence to Islamist ideology. In the absence of any substantive refutation by the State party, the Committee concludes that due weight must be given to the author's allegations and that the facts, as submitted by the complainant, constitute acts of torture, within the meaning of article 1 of the Convention.

6.3 In the light of the above finding of a violation of article 1, the Committee will not consider separately the claims based on the violation of article 16 of the Convention, invoked in the alternative by the complainant.

6.4 The complainant also invokes article 2, paragraph 1, of the Convention, according to which the State party should have taken all "effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction". She adds that Algerian law contains no provision that prohibits the use of confessions or statements extracted under torture as evidence; that Algerian legislation provides for a period of police custody of up to 12 days, while not allowing any possibility for the prisoner to contact a family member, lawyer or independent doctor; and that this long period of incommunicado detention heightens the risk of torture and ill-treatment. The Committee recalls its concluding observations, adopted in May 2008 following its consideration of the State party's third periodic report, in which it expressed its concern at the length of the period of police custody allowable by law, which, in practice, can be extended several times; at the fact that the law does not guarantee the right to consult a lawyer during the period of police custody; and at the fact that the rights of persons held in custody to have access to a doctor and to communicate with their family are not always respected in practice.<sup>18</sup> These observations echo the Committee's general comment No. 2 (2008), in which it draws attention to the content of States parties' obligation under article 2, paragraph 1, to take effective measures to prevent torture, particularly through the application of certain fundamental guarantees applicable to all persons deprived of their liberty.<sup>19</sup> In the present

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<sup>18</sup> CAT/C/DZA/CO/3, para. 5.

<sup>19</sup> Such measures include, inter alia, maintaining an official register of detainees, the right of detainees to be informed of their rights, the right promptly to receive independent legal and medical assistance, and to contact relatives, the need to establish impartial mechanisms for inspecting places of detention,

case, Mounir Hammouche was placed in incommunicado detention and was not given the possibility of contacting his family, a defence lawyer or a doctor. The apparent lack of any mechanism to provide oversight of the Territorial Centre for Research and Investigation exposed him to an increased risk of being subjected to acts of torture and, furthermore, deprived him of any possible remedy. The Committee consequently finds a violation of article 2, paragraph 1, read in conjunction with article 1, of the Convention.

6.5 With regard to article 11, the Committee recalls its recommendation to the State party in its concluding observations, in which it urged the State party to provide for the establishment of a national register of prisoners and to guarantee the right of prisoners to have access to a doctor and to communicate with their family.<sup>20</sup> In the light of this recommendation and the lack of information provided by the State party on the subject, the Committee can only note that, in the present case, the State party has failed to fulfil its obligations under article 11 of the Convention.

6.6 With regard to articles 12 and 13 of the Convention, the Committee has taken note of the allegations of the complainant who, despite what she has been told by the State party, doubts whether the State party carried out any investigation at all, given that none of the witnesses to the events has ever testified in any legal proceeding. The complainant has also asserted that, by failing to inform the family of the results of the investigation that was reportedly conducted, the State party has precluded the possibility of any criminal action being brought by the family. The Committee recalls that, on 23 December 2006, Mounir Hammouche was arrested by DRS agents; that his family received no further news of him until 29 December 2006, when agents identifying themselves as members of the “security services” visited Mounir Hammouche’s home to announce to his family that he had died, claiming that he “had probably committed suicide”; that on that same day, Mounir Hammouche’s body was returned to his family, who detected numerous injuries to his body, in particular a head injury and bruises on his hands and feet; and that the family was denied access to the report of the autopsy that, according to the security services and judicial authorities of the State party, had been carried out. The family took the case first to the public prosecutor of Ras El Oued and then to the chief prosecutor of Constantine, who upheld the theory that the victim had committed suicide, while simultaneously refusing to give the family the report of the autopsy that had supposedly been carried out. The Committee observes that, despite the existence of visible signs of torture on the victim’s body and of statements to the effect that Mounir Hammouche, like his fellow prisoners, had been brutally tortured by DRS agents in the Territorial Centre for Research and Investigation in Constantine, no investigation has been carried out by the State party to shed light on the events leading to the death in custody of Mounir Hammouche, seven years after the events in question. The State party has not submitted any information that would contradict these facts. The Committee considers that so long a delay in initiating an investigation into allegations of torture is patently unjustified and clearly breaches the State party’s obligations under article 12 of the Convention, which requires it to proceed to a prompt and impartial investigation wherever there is reasonable ground to believe that an act of torture has been committed.<sup>21</sup> The Committee also recalls that, during its dialogue with the State party in 2008, it had expressed its concern regarding the case of Mounir Hammouche and had reminded the State party of its obligation to launch a prompt and

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and the availability of legal remedies and of the right to contest the legality of their detention and treatment (general comment No. 2 (2008), para. 13).

<sup>20</sup> CAT/C/DZA/CO/3, para. 5.

<sup>21</sup> See, inter alia, communications No. 341/2008, *Sahli v. Algeria*, decision adopted on 3 June 2011, para. 9.6 and No. 269/2005, *Ali Ben Salem v. Tunisia*, decision adopted on 7 November 2007, para. 16.7.

impartial investigation immediately and systematically in all cases where there are reasonable grounds to believe that an act of torture has been committed, including cases in which a prisoner has died. By failing to meet this obligation, the State party has also failed to fulfil its responsibility under article 13 of the Convention to guarantee the right of the complainant and her family to lodge a complaint, which presupposes that the authorities provide a satisfactory response to such a complaint by launching a prompt and impartial investigation.

6.7 Regarding the complainant's allegations under article 14 of the Convention, the complainant has asserted that, by depriving Mounir Hammouche's family of the opportunity to bring legal action under criminal law, the State party has deprived it of the possibility of obtaining compensation through a civil proceeding, since, under Algerian law, civil court judgements are deferred until the final determination of the criminal action. The Committee refers to its general comment No. 3 (2012)<sup>22</sup> and recalls that article 14 of the Convention recognizes not only the right to fair and adequate compensation but also requires States parties to ensure that the victim of an act of torture obtains redress. The Committee considers redress to cover all the harm suffered by the victim and to encompass, among other measures, restitution, compensation and guarantees of non-repetition of the violations.<sup>23</sup> In the absence of a prompt and impartial investigation, despite the existence of circumstances strongly suggesting that Mounir Hammouche died in custody as a result of torture, the Committee finds that the State party has also failed to fulfil its obligations under article 14 of the Convention.

7. The Committee against Torture, acting under article 22, paragraph 7, of the Convention, is of the view that the facts before it disclose a violation of articles 1, 2 (para. 1), 11, 12, 13 and 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

8. Pursuant to rule 118, paragraph 5, of its rules of procedure, the Committee urges the State party to inform it, within 90 days from the date of the transmittal of this decision, of the steps it has taken in conformity with the above Views, including to conduct an impartial investigation into the events in question for the purpose of prosecuting those allegedly responsible for the victim's treatment; to hand over to the complainant the victim's autopsy report and records of the preliminary investigation, as requested by her and as promised to the Committee by the representative of the Government of the State party in May 2008; and to ensure that the complainant obtains full and effective redress.

[Adopted in English, French, Russian and Spanish, the French text being the original version. Subsequently to be issued also in Arabic and Chinese as part of the Committee's annual report to the General Assembly.]

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<sup>22</sup> *Official Records of the General Assembly, Sixty-eighth Session, Supplement No. 44 (A/68/44)*, annex X, paras. 2 and 6.

<sup>23</sup> See *Sahli v. Algeria*, para. 9.7.