



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

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**Committee against Torture**

**Communication No. 594/2014**

**Decision adopted by the Committee at its fifty-sixth session  
(9 November-9 December 2015)**

*Submitted by:* B.M.S (not represented by counsel)  
*Alleged victim:* The complainant  
*State party:* Sweden  
*Date of communication:* 9 February 2014 (initial submission)  
*Date of decision:* 25 November 2015  
*Subject matter:* Forcible return of a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture  
*Procedural issue:* Level of substantiation of claims  
*Substantive issue:* Risk of torture of the complainant upon forcible return to Algeria  
*Article of the Convention:* 3



## 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-sixth session)**

concerning

#### **Communication No. 594/2014\***

*Submitted by:* B.M.S. (not represented by counsel)

*Alleged victim:* The complainant

*State party:* Sweden

*Date of communication:* 9 February 2014 (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 25 November 2015,*

*Having concluded* its consideration of communication No. 594/2014, submitted to the Committee against Torture by Mr. B.M.S on his own behalf 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 and the State party,

*Adopts* the following:

#### **Decision under article 22 (7) of the Convention**

1.1 The complainant is Mr. B.M.S, an Algerian national born in 1978. He sought asylum in Sweden, his application was rejected and he is awaiting forced removal to Algeria. In a complaint dated 9 February 2014, he claims that if removed to Algeria, he would be at risk of being subjected to torture and killed, either by the Algerian authorities or terrorists, in violation of article 3 of the Convention. The complainant requested the granting of interim measures to halt his deportation to Algeria while his complaint is under consideration by the Committee. At the time of submission, the complainant was in detention awaiting deportation, for which no date had been set.<sup>1</sup> Sweden recognized the competence of the Committee, pursuant to article 22 of the Convention, on 8 January 1986. The complainant is not represented by counsel.

1.2 On 3 April 2014, pursuant to rule 114, paragraph 1, of its rules of procedure, the Committee granted provisional interim measures and requested the State party to refrain from expelling the complainant to Algeria, while his complaint was under consideration by

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\* The following members of the Committee participated in the consideration of the present communication: Essadia Belmir, Alessio Bruni, Satyabhoosun Gupt Domah, Abdoulaye Gaye, Sapana Pradhan-Malla, Jens Modvig, George Tugushi and Kening Zhang.

<sup>1</sup> From the information available, it is not clear whether the complainant is currently in detention.

the Committee. That request could be reviewed in the light of information and observations submitted by the State party and the comments of the complainant. On 8 April 2014, the complainant informed the Committee that on 4 April 2014, the State party had decided to suspend his deportation to Algeria until further notice. However, from 9 April 2014, the State party put the complainant under police surveillance twice a week. On 28 April 2014, the complainant expressed his fear that the police surveillance could interfere with his right to communicate with the Committee without obstacles.

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

2.1 On 9 February 2014, the complainant submitted a request to issue interim measures to stop his forced removal to Algeria in the context of his case No. 437/2010, which the Committee had declared inadmissible owing to non-exhaustion of domestic remedies.<sup>2</sup>

2.2 The complainant claims that on 5 December 2012, following the Committee's decision, the Migration Board decided to reverse its decision of 19 November 2010 and suspended the execution of his deportation order. The complainant therefore reapplied for asylum in Sweden on 27 December 2012.

2.3 On 22 September 2013, his new asylum application was rejected by the Migration Board on almost the same basis as the previous expulsion decision and he was ordered to return to Algeria. The complainant claims that his meeting at the Migration Board did not comply with the usual asylum hearings, as it focused on his work permit, and that the proceedings of the meeting were not reflected in the decision. The complainant appealed the negative decision to the Migration Court. On 29 December 2013, his appeal was dismissed by the Migration Court without a hearing. The complainant appealed this decision to the Migration Court of Appeal, which on 3 February 2014 refused leave to appeal. The complainant maintains that the decision of 29 December 2013 to expel him, as confirmed by the Migration Court of Appeal, is final and cannot be subject to further appeals.

2.4 On 10 February 2014, the secretariat of the Office of the United Nations High Commissioner for Human Rights replied to the complainant's new submission, informing him that if he wished to submit a new complaint, he should substantiate his complaint by describing the recent developments of his situation, including the domestic process he had followed to obtain asylum status in Sweden and specifying the deportation date and the measures taken by the State party authorities to arrange for his deportation.

2.5 On 11 February 2014, the complainant reiterated the facts he had submitted in his first complaint, stated that he had reapplied for asylum and described the domestic remedies he had exhausted. In that connection, he noted that the State party authorities had reiterated the arguments mentioned during his first asylum proceedings, as referred to in case No. 437/2010. The complainant stated that he might be deported at any time if the authorities "catch him".

2.6 The complainant added that between 2004 and 2005, he was approached in Algeria by members of a terrorist group who requested him to help them in gathering information about his employer's money transport routes and threatened to kill him if he would not comply.

2.7 The complainant knew that the terrorist group was planning a robbery of a money transport. However, he refused to help them and contacted the police asking for protection.

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<sup>2</sup> See communication No. 437/2010, *B.M.S. v. Sweden*, decision adopted on 12 November 2012, para. 7.

The police refused to help him and told him that if anything happened to the money transport, he would be accused of having provided information to the terrorists. About a month later, a vehicle that was transporting money to the city of Bodvo was attacked and two terrorists and a police officer were killed. Even though the complainant was not in the vicinity of the armed robbery, as he claims that he was in Annaba that day, the terrorists claimed that he had sold their plan to the police and they started looking for him as they wanted his head. The complainant contacted the law enforcement authorities of Algeria to inform them about his situation. The police officer to whom he was telling his story started beating him and accusing him of being a terrorist. He was held in custody for one night before he managed to escape. After that incident, the complainant was wanted by both the State authorities and the terrorists. Thereafter, he was sentenced in absentia in 2008 for belonging to a terrorist group and participating in an armed robbery, which led to the death of a law enforcement official. He adds that, as he refused to cooperate with the terrorists and informed the Algerian authorities about their plans, he fears that he would be killed should he be returned to Algeria, where the security situation is poor and human rights violations are widespread.

2.8 The complainant claims that he arrived in Sweden on 1 December 2005 and that he requested asylum on the same day.<sup>3</sup> He now fears imminent deportation. He also claims that the State party authorities requested its embassy in Algiers to investigate him, as a result of which he would be exposed to even more pressure if he was returned to Algeria. The complainant adds that, while the Algerian military secret service were looking for him at his workplace, they “kidnapped” his father without an arrest warrant and detained him for three days. The complainant alleges that his brother and sister were also arrested, for two days and two hours respectively, and the complainant’s whereabouts in Sweden enquired about. The complainant’s father and brother were beaten in the face and on the body.

2.9 The complainant also alleges that he fears that his family will be threatened by the secret service if they do not reply to the enquiries about the whereabouts of the complainant. In that connection, he argues that his family members would be at serious risk of retaliation if they did not provide information that they have about him. The complainant has therefore broken off contact with his family so as not to expose them to further problems.

2.10 On 25 February 2014, the complainant requested the Committee to reopen his case as, according to the Committee’s decision of 12 November 2012, that decision could be reviewed under rule 116, paragraph 2, of the Committee’s rules of procedure “upon receipt of a request by or on behalf of the complainant, containing information to the effect that the reasons for inadmissibility no longer apply”.

### **The complaint**

3.1 As in his previous complaint before the Committee, the complainant claims that his expulsion to Algeria would amount to a violation of article 3 of the Convention. He argues that, if he was returned to Algeria, he would be exposed to the risk of being imprisoned, where he would be subjected to torture by the Algerian authorities, as he had been sentenced to 10 years’ imprisonment with hard labour for killing a police officer, a crime which he did not commit.

3.2 The author also claims to be at risk of being killed extrajudicially by the terrorists who are searching for him to seek revenge, as the complainant allegedly revealed their plan

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<sup>3</sup> The complainant does not explain how he arrived in Sweden. According to the State party, the complainant applied for asylum only on 16 January 2006, and not on the day of his arrival in Sweden.

of the armed robbery which led to the death of two of their colleagues. He adds that the terrorists would be able to find him in prison or could be held at the same prison. The complainant further claims that the Algerian authorities would not be able to protect him from the terrorists. He also claims that human rights violations in Algeria are systematic.

3.3 Furthermore, he claims to live like a fugitive, in hiding in Sweden, permanently frightened of being detained and sent back to Algeria. He argues that this anxiety amounts to psychological torture. The complainant further claims that the asylum procedures before the Migration Board and the Migration Court suffered from procedural flaws and that the Migration Board has scheduled his deportation "at any time", adding that the police came to his place of residence on a number of occasions.<sup>4</sup> He also claims that this situation prevents him from receiving documents of relevance for his complaint, as he cannot reveal his address.<sup>5</sup>

3.4 Finally, the complainant has stated that his father, brother and sister were detained by the Algerian military (his father for three days, his brother for two days and his sister for two hours). His family members were then questioned about their contacts with him, his telephone number and occupation in Sweden and his contacts with the Swedish authorities. The complainant also states that the Algerian Secret Service has threatened his family members if they do not provide information regarding the complainant.

#### **State party's observations on admissibility and the merits**

4.1 On 3 October 2014, the State party submitted that the complainant's case had been assessed under the Aliens Act of 2005.<sup>6</sup> The State party submits that the complainant has not shown that he is in need of protection in Sweden and can therefore be expelled to Algeria. In this connection, it refers to the decision of the Migration Board of 22 September 2013 and the Migration Court judgement of 19 December 2013.<sup>7</sup>

4.2 According to the complainant's own information, he arrived in Sweden on 1 December 2005 and applied for asylum on 16 January 2006. The Swedish Migration Board rejected his application and decided on 18 September 2007 to expel him to Algeria. The decision was appealed to the Migration Court, which on 25 June 2008 rejected the appeal. On 24 October 2008, the Migration Court of Appeal refused leave to appeal and the decision to expel the complainant became final and non-appealable. The complainant then submitted a complaint before the Committee under article 3, which was declared inadmissible on 12 November 2012 for non-exhaustion of domestic remedies, as the domestic decision to expel the complainant had become statute-barred on 24 October 2012.<sup>8</sup>

4.3 The complainant submitted a new request for asylum to the Migration Board on 27 December 2012. The Migration Board rejected his application and decided on 22 September 2013 to expel him to Algeria. The decision was appealed to the Migration Court,

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<sup>4</sup> The complainant does not provide further details of this allegation.

<sup>5</sup> The complainant does not explain the circumstances of his allegation; however, he can be contacted by e-mail.

<sup>6</sup> The Aliens Act entered into force on 31 March 2006. The Act and the amendments thereto are available in English on the Internet from [www.government.se/government-policy/migration/aliens-act/](http://www.government.se/government-policy/migration/aliens-act/).

<sup>7</sup> The State party also submits non-official English translations of the Migration Board decision of 18 September 2007 and the Migration Court judgement of 25 June 2008 that were submitted by the State party in connection with the previous case brought by the same complainant before the Committee (communication No. 437/2010).

<sup>8</sup> See communication No. 437/2010, para. 6.2.

which on 19 December 2013 rejected the appeal. On 3 February 2014, the Migration Court of Appeal refused leave to appeal and the decision to expel the complainant became final and non-appealable. The State party emphasizes that the decision to expel the complainant will become statute-barred on 3 February 2018. It implies that the decision to expel the complainant will no longer be enforceable after that date and that the complainant will then no longer be under threat of expulsion.

4.4 The State party submits that the complainant essentially claims that a forced return to Algeria would put him at risk of being subjected to torture by the Algerian authorities while serving a 10-year term of imprisonment with hard labour for a crime he did not commit. He also claims that he would risk upon return being killed by terrorists because of his refusal to cooperate with them and that the Algerian authorities cannot offer him protection against them. He has thus alleged that expelling him to Algeria would constitute a violation of article 3 of the Convention.

4.5 In regard to admissibility, the State party is not aware of the present matter having been or being subject to any other investigation or settlement, according to article 22 (5) (a) of the Convention. In addition, the State party does not contest that all available domestic remedies have been exhausted. The State party, however, maintains that the complainant's assertions that he is at risk of being treated in a manner that would amount to a breach of article 3 of the Convention if returned to Algeria fails to rise to the minimum level of substantiation required for purposes of admissibility. It accordingly submits that the complaint is manifestly unfounded and thus inadmissible pursuant to article 22 (2) of the Convention.<sup>9</sup>

4.6 As regards the merits, the issue before the Committee is whether the forced return of the complainant to Algeria would violate the obligation of Sweden under article 3 of the Convention not to expel or return a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

4.7 The State party recalls that when determining whether the forced return of a person to another State would constitute a violation of article 3, the Committee must take into account all relevant considerations, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights in that country. It points to the jurisprudence of the Committee that the aim of such a determination is to establish whether the individual concerned would be personally at risk of being subjected to torture in the country to which he or she would be returned. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient grounds for determining that a particular person would be in danger of being subjected to torture upon his or her return to that country. For a violation of article 3 to be established, additional grounds must exist, showing that the individual concerned would be personally at risk.<sup>10</sup> According to the State party, when determining whether the forced return of the complainant to Algeria would constitute a breach of article 3 of the Convention, the following considerations are relevant: (i) the general human rights situation in Algeria and, in particular, (ii) the personal risk for the complainant of being subjected to torture upon his return.

4.8 The State party recalls the Committee's jurisprudence stating that the burden of proof in cases such as the present one rests with the complainant, who must present an

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<sup>9</sup> See, for example, communication No. 216/2002, *H.I.A. v. Sweden*, decision adopted on 2 May 2003, para. 6.2.

<sup>10</sup> See, for example, communication No. 150/1999, *S.L. v. Sweden*, Views adopted on 11 May 2001, para. 6.3, and communication No. 213/2002, *E.J.V.M. v. Sweden*, decision adopted on 14 November 2003, para. 8.3.

arguable case establishing that he or she runs a foreseeable, real and personal risk of being subjected to torture.<sup>11</sup> In addition, the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. Although the risk does not have to meet the test of being highly probable, it must be personal and present.<sup>12</sup> As regards the general human rights situation in Algeria, the State party finds it sufficient to refer to the information that can be found in recent reports such as those by the United States of America Department of State,<sup>13</sup> Human Rights Watch,<sup>14</sup> the Jamestown Foundation<sup>15</sup> and Freedom House.<sup>16</sup> The State party claims that while existing reports show that Algeria has a long history of fighting terrorism and has been considered a forerunner in the struggle against Islamic terrorism, it notes that there are still considerable human rights issues in Algeria, for example, widespread corruption, reports of assaults carried out by police authorities and substandard detention conditions. Furthermore, terrorist groups have committed numerous attacks against government officials, members of the security forces and the civil population. However, the State party considers that the current situation in Algeria does not in itself suffice to establish that an expulsion of the complainant would entail a violation of article 3 of the Convention. Hence, it contends that the expulsion of the complainant to Algeria would only amount to a breach of the Convention if he could show that he would be personally at risk of being subjected to treatment contrary to article 3.

4.9 According to the State party, the Aliens Act reflects the principles of article 3 of the Convention, applying the same test when considering an application for asylum as the Committee does when examining a subsequent complaint under the Convention. The State party adds that the expulsion of an alien may never be enforced to a country where there is fair reason to assume that the person would be in danger of receiving the death penalty or being subjected to corporal punishment, torture or other inhuman or degrading treatment of punishment, or to a country in which he or she would be in such danger. In the present case, the Migration Board and the Migration Court conducted thorough examinations of the complainant's case. The extensive interviews with the complainant undertaken by the Migration Board were conducted in the presence of his legal counsel and an interpreter, whom the complainant confirmed that he understood well. The complainant has argued his case in writing, he was represented by legal counsel and the decision of the Migration Board was appealed against, but was not overturned by the Migration Court. The Migration Board and the migration courts therefore had sufficient information, facts and documentation in the case, to ensure that they had a solid basis for making a well-informed, transparent and reasonable risk assessment of the complainant's need for protection in Sweden.

<sup>11</sup> See, for example, communications No. 178/2001, *H.O. v. Sweden*, Views adopted on 13 November 2001, para. 13, and No. 203/2002, *A.R. v. the Netherlands*, decision adopted on 14 November 2003, para. 7.3.

<sup>12</sup> See, for example, the Committee's general comment No. 1 (1997) on the implementation of article 3 of the Convention, paras. 5-7.

<sup>13</sup> See, for example, State Department country reports on human rights practices, 2013, available from [www.state.gov/j/drl/rls/hrrpt/humanrightsreport/#wrapper](http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/#wrapper) and State Department country reports on terrorism, 2013, available from [www.refworld.org/docid/53622a088.html](http://www.refworld.org/docid/53622a088.html).

<sup>14</sup> See, for example, Human Rights Watch, "World report 2014: Algeria", available from [www.hrw.org/world-report/2014/country-chapters/algeria](http://www.hrw.org/world-report/2014/country-chapters/algeria).

<sup>15</sup> See, for example, Stefano Maria Torelli, "Jihadism and counterterrorism policy in Algeria: new responses to new challenges", *Terrorism Monitor*, vol. 11, No. 19, available from [www.jamestown.org/single/?tx\\_ttnews%5Bpointer%5D=5&tx\\_ttnews%5Btt\\_news%5D=41501&tx\\_ttnews%5BbackPid%5D=228&cHash=908e47da515e519bc00d207c3c0f8870#.U5hPmpS1bPY](http://www.jamestown.org/single/?tx_ttnews%5Bpointer%5D=5&tx_ttnews%5Btt_news%5D=41501&tx_ttnews%5BbackPid%5D=228&cHash=908e47da515e519bc00d207c3c0f8870#.U5hPmpS1bPY).

<sup>16</sup> Freedom House, "Freedom in the world 2013: Algeria", available from [www.freedomhouse.org/report/freedom-world/2013/algeria](http://www.freedomhouse.org/report/freedom-world/2013/algeria).

4.10 The State party further argues that the Committee is not an appellate, quasi-judicial or administrative body and that considerable weight should be given to findings of facts that are made by organs of the State party concerned.<sup>17</sup> By referring to the Committee's jurisprudence, it submits that it is for the courts of the States parties to the Convention, and not for the Committee, to evaluate the facts and evidence in a particular case, unless it can be ascertained that the manner in which such facts and evidence were evaluated was clearly arbitrary or amounted to a denial of justice.<sup>18</sup> The State party contends that such allegations of arbitrariness or denial of justice do not apply to the outcome of the domestic proceedings in the present case. Accordingly, the State party considers that great weight must be attached to the opinions of the national migration authorities, as expressed in their decisions ordering the expulsion of the complainant to Algeria. The State party concludes that the return of the complainant to Algeria would not amount to a violation of article 3 of the Convention.

4.11 The State party considers, like the migration authorities, that there are several reasons to question the veracity of the complainant's claim that he would risk being subjected to torture in violation of article 3 of the Convention upon his return to Algeria. The State party agrees with the assessment made by the Migration Board and the Migration Court that the complainant's account contains contradictory information and that the authenticity of the documents submitted can be called into question. The State party considers that the complainant has failed to provide a credible account of his claims.

4.12 In that connection, the State party agrees with the assessment made by the Migration Board and the Migration Court that the complainant has not plausibly established his identity by means of the documents submitted. In support of his grounds for asylum, he submitted, inter alia, copies of summonses from the Algerian police authorities and a copy of a judgement, in order to substantiate his claim that he had been sentenced to 10 years' imprisonment with hard labour. In its observations on the applicant's previous case before the Committee, the State party shared the assessments by the Migration Board and the Migration Court that the documents submitted did not substantiate the complainant's claims. As in its previous observations, the State party also reiterates that the documents submitted are of very limited probative value since they are copies of very simple documents, which are easy to produce. In the first place, the State party notes that the summonses require the complainant to report to the police for "a matter concerning [him]", but they do not refer to any suspicion of involvement in criminal activities. Further, as assessed by the Migration Board and the Migration Court, the State party considers that the authenticity of the alleged judgement is open to serious question. In that regard, the State party recalls that the authenticity of the alleged judgement has been investigated by a lawyer engaged by the Embassy of Sweden in Algiers, whose report, dated 25 July 2011, was appended to the previous observations of the State party before the Committee. The State party refers to some of the statements made in the report, including that "close examination of the judgement demonstrates very clearly that it is a gross forgery, as judgements in criminal matters are not drawn up in this manner at all, as many expressions are missing and those that are used are quite inconsistent with the usual phraseology in a criminal matter..., and in general, forced labour is never specified, only imprisonment." The lawyer also added that, for the sake of greater certainty, two visits were made to the court of Boumerdès and the Criminal Court. After thorough investigations, the lawyer was able to establish that there was no judgement against a person with the complainant's name

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<sup>17</sup> See, for example, communication No. 277/2005, *N.Z.S. v. Sweden*, decision adopted on 22 November 2006, para. 8.6.

<sup>18</sup> See, for example, communication No. 219/2002, *G.K. v. Switzerland*, decision adopted on 7 May 2003, para. 6.12.

dated 12 January 2008 and that judgement number 80 did not exist. The lawyer concluded that the last two facts confirmed that the judgement was false. In view of that finding, the State party considers that the authenticity of the “summonses” and “statements” can also be called into question. Taking into account that the complainant has not subsequently submitted any new documents in support of his claims for asylum, the State party concludes that the written evidence submitted by the complainant does not plausibly establish his need for protection.

4.13 The State party also assessed the complainant’s oral submissions. In that regard, the State party reiterates that there are several reasons to question the complainant’s credibility: his accounts were lacking in detail, many of his claims were pure speculation and his affirmations regarding the terrorists were not plausible. The State party further notes that the complainant did not submit his passport and that during the asylum proceedings it appeared that he had a legal visa for France and had waited 1.5 months before applying for asylum in Sweden. In the light of those findings, the national migration authorities found that the complainant’s claims were not plausible. The State party also considers that the complainant has submitted falsified documents to the national migration authorities and the Committee, which puts the credibility of his claims for asylum in question. The State party thus concurs with the opinion of the Migration Board and the migration courts that the complainant has not substantiated his claims that he risks imprisonment and torture upon return to his country of origin. Moreover, the Algerian legal system is not generally considered to exhibit such severe flaws as to justify international protection.

4.14 The complainant has stated that he is under a real threat of being killed by the terrorist organization, which carried out a robbery against his workplace and blames him for the death of two members of their organization during the robbery. He has further stated that the Algerian authorities would not protect him since he is a criminal suspect and has been sentenced for associating with the terrorist organization. The Swedish migration authorities have found that there is no reason to believe that the Algerian authorities would not offer the complainant protection from the alleged threats from the terrorist organization. As noted by the Migration Board, it is primarily their responsibility to offer the complainant protection against the alleged threats and against any similar threats that may arise in the future. The State party shares the view of the Migration Board and the Migration Court that, despite the deficiencies in the Algerian judicial system, the competent authorities generally speaking do not lack the will or the ability to protect the country’s inhabitants.<sup>19</sup> The State party therefore agrees with the conclusion of the domestic authorities that the complainant has not plausibly demonstrated that he would risk being subjected to treatment, either by the Algerian authorities or by terrorists, that would constitute grounds for protection. The State party argues that the claim that the complainant’s family members have been detained and questioned by the Algerian authorities does not alter that assessment. Furthermore, the complainant has not plausibly demonstrated his claim made only before the national migration authorities that he risks being prosecuted on grounds of his religious views or his membership of a particular social group upon return to his country of origin.<sup>20</sup>

4.15 In conclusion, the State party submits that the evidence and circumstances invoked by the complainant do not suffice to show that the alleged risk of torture is foreseeable, real and personal. Accordingly, under the present circumstances, enforcement of the expulsion order would not constitute a violation of article 3 of the Convention. The State party considers that, owing to the lack of substantiation, the communication should be declared inadmissible under article 22 (2) of the Convention.

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<sup>19</sup> See Department of State country reports on terrorism, 2013.

<sup>20</sup> That claim has not been made in the context of the complaint before the Committee.

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

5.1 On 12 January 2015, the complainant reiterated his claim that the State party would breach its obligations under article 3 of the Convention as he feared a real and personal risk of being subjected to torture or degrading treatment if he was forcibly removed to Algeria.

5.2 The complainant submits that he felt protected when he arrived in Sweden on 1 December 2005 and explains that he requested asylum on 16 January 2006, as he did not know how to seek asylum beforehand. As regards the human rights reports referred to by the State party, the complainant underscores the incidence of torture, cruel, inhuman and degrading treatment or punishment inside the prisons in Algeria and claims that many non-governmental organizations cannot get inside the prisons to see what really happens. In addition, the complainant objects to the fact that, as part of his 2012 asylum request, he was interviewed only once and that contrary to the State party's affirmation, he did not submit any arguments in writing.<sup>21</sup>

5.3 The complainant further claims that the asylum proceedings he went through were arbitrary and amounted to a denial of justice. In that regard, he points to the State party's observations on his previous complaint to the Committee (case No. 437/2010), in which it indicated that on 24 October 2012 the decision to expel the complainant would no longer be enforceable, that the complainant would have the possibility of submitting a new application for asylum after that date and that the new application would entail a full examination. As part of the asylum proceedings initiated by the Migration Board on 27 December 2012, the complainant had three meetings with public counsel, during which he explained why he needed protection from being deported from Sweden.

5.4 The complainant further claims that during the first interview with the Migration Board on 31 May 2013, 90 per cent of the questions posed were not about the complainant's case and were raised in such a way that he could not recount his story. The complainant argues that his public counsel considered the proceedings unfair since the investigator verified the complainant's answers against the file of his previous asylum application. Furthermore, instead of carrying out a full examination of the complainant's case, the Migration Board rejected his new application without another interview and took a decision to expel him to Algeria and to detain him in custody in that regard. The complainant also submits that some parts of the expulsion decision were a simple copy of the decisions adopted in the context of his first asylum request.

5.5 The complainant also claims that he was detained in custody arbitrarily, since his case was not final, as it could still be appealed before two instances: the Migration Court and the Migration Court of Appeal. He refers to a possible misunderstanding, as the Migration Board, in its decision of 22 September 2013 stated that "the United Nations Committee against Torture held on 12 November 2012 that it would not constitute a violation of article 3 of the UN Convention against Torture to expel you [the complainant] to Algeria", while the Committee declared the complaint inadmissible for non-exhaustion of domestic remedies.<sup>22</sup> The complainant further claims that he could not understand the English translations submitted by the State party of the decisions of the Migration Board of 22 September 2013 and of the Migration Court of 19 December 2013.

5.6 As regards the State party's allegation that the complainant has not plausibly established his identity, the complainant asserts that the Migration Board, in its decision of 22 September 2013, attested that he had submitted a copy of his driving licence and a copy

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<sup>21</sup> See paragraph 4.9 above.

<sup>22</sup> In fact, the Committee informed the Swedish authorities on 12 November 2012 that it no longer maintained its request for interim measures.

of his passport. The complainant maintains that his identity has been plausibly established. He further claims a flagrant violation of his rights as an asylum seeker by sending a document from the asylum file for verification to Algeria, thereby putting him under huge psychological pressure because of the situation of his family and the history of violations in Algeria. He submits that the flagrant violation of his rights as an asylum seeker will result in additional threats to his life if he returns to Algeria.

5.7 The complainant also questions the veracity of the report by an independent lawyer submitted by the State party questioning the existence of the complainant's criminal sentence in Algeria. In that respect, the complainant questions the date of the verification report of 25 July 2010, as the existence of his criminal sentence should have been verified in 2008, when he provided a copy of his sentence, and also questions the absence of any official stamp of the lawyer and of the Embassy of Sweden. He argues that judgements are confidential and therefore not available to other persons without a power of attorney from the condemned person, and that judgements are not produced in a uniform format. The complainant therefore considers that the report referred to is not authentic and legal.

5.8 Contrary to the State party's submission, the complainant claims the existence of severe flaws in the Algerian legal system. He adds that the absence of a consistent pattern of flagrant violations of human rights does not mean that a person might not be subjected to torture in specific circumstances. In addition, the complainant alleges that the State party is concealing the fact that he will not be protected by the Algerian authorities, as he is threatened by terrorists, who consider him to be a traitor and responsible for the death of two of their colleagues, and by the Algerian authorities because he was sentenced for being a member of a terrorist organization and responsible for the death of a police officer on duty. The author reiterates that if he returns to Algeria, he will be tortured and killed in prison by State authorities or terrorists.

5.9 Furthermore, the complainant claims that the State party adopted its second decision on the complainant's case primarily based on the facts of his first asylum case, without taking into account the new circumstances. He considers that the asylum proceedings of 2006 and 2012, which together lasted almost 10 years, did not provide him with the protection he needs. The complainant also considers that the State party has not presented sufficient evidence to justify the inadmissibility of his complaint, while it has disregarded the situation of his family and the risks of torture and inhuman treatment he would face if he was deported to Algeria. The complainant therefore requests the Committee to consider the complaint admissible and to conclude that his forced return to Algeria would constitute a flagrant violation of the Convention.

#### **State party's additional observations**

6.1 On 4 May 2015, the State party submitted additional observations in respect of some information submitted by the complainant, under the reservation that the absence of comments on other parts of the complainant's submission should not be interpreted as their acceptance.

6.2 As regards the complainant's contention that he was not given the opportunity to invoke his reasons for seeking asylum before the domestic authorities and courts in the second asylum proceedings, the State party notes that during the interview that was held before the Swedish Migration Agency (formerly the Migration Board), the complainant confirmed that he did not have any new grounds for his asylum request.

6.3 In response to the complainant's argument relating to the number of interviews conducted with the complainant by the Swedish Migration Agency, the State party states that an interview was held with the complainant at the reception unit of the Migration Agency on 21 January 2013 to clarify his identity and his health and family situation.

Furthermore, an in-depth asylum interview was held on 31 May 2013, at which the complainant accounted for his reasons to seek asylum in the presence of his public counsel and an interpreter. That interview lasted for two hours. In addition, on 16 July 2013, the complainant submitted supplementary written observations regarding his grounds for asylum. In those observations, he confirmed what had been recorded in the minutes of the interview held on 31 May 2013. The State party therefore considers that the complainant has had the opportunity to present all his grounds for asylum to the migration authorities, both orally and in writing, and that there is no reason to conclude that the national rulings were inadequate or that the outcome of the domestic proceedings was arbitrary or amounted to a denial of justice.

6.4 In addition, the State party draws the Committee's attention to the fact that the expulsion decision regarding the complainant will become statute-barred on 3 February 2018. It therefore requests the Committee to consider the admissibility and/or merits of the present communication well in time before that date.

6.5 In summary, the State party considers that the complainant's claims are not credible and that the circumstances he invokes are not sufficient to demonstrate that he faces a foreseeable, real and personal risk of torture in case of his forced removal to Algeria.

6.6 The State party also maintains its position regarding the admissibility and the merits of the present complaint.

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

#### *Consideration of admissibility*

7.1 Before considering any claims contained in a complaint, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22 (5) (a) of the Convention, that the same matter has not been, and is not being, examined under another procedure of international investigation or settlement.

7.2 The Committee recalls that, in accordance with article 22 (5) (b) of the Convention, it shall not consider any complaint from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Committee notes that in the present case the State party does not challenge the assumption that the complainant has exhausted all available domestic remedies.

7.3 The Committee notes the State party's argument that the complaint should be held inadmissible as manifestly ill-founded. The Committee, however, considers that the complaint has been sufficiently substantiated for purposes of admissibility, because the complainant's allegations of a risk of torture or ill-treatment in case of his forced removal to Algeria raise issues under article 3 of the Convention. As the Committee finds no further obstacles to admissibility, it declares the communication admissible.

#### *Consideration of the merits*

8.1 The Committee has considered the present complaint in the light of all the information made available to it by the parties concerned, in accordance with article 22 (4) of the Convention.

8.2 The issue before the Committee is whether the forced removal of the complainant to Algeria would constitute a violation of the State party's obligation under article 3 of the Convention not to expel or to return ("refouler") a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

8.3 The Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally in danger of being subjected to torture upon his return to Algeria. In assessing that risk, the Committee must take into account all relevant considerations, pursuant to article 3 (2) of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. The Committee recalls that the aim of such determination is to establish whether the individual concerned would be personally at foreseeable and real risk of being subjected to torture in the country to which he or she would return. It follows that the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient reason for determining that a particular person would be in danger of being subjected to torture on return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Conversely, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.<sup>23</sup>

8.4 The Committee recalls its general comment No. 1 (1997) on the implementation of article 3 of the Convention, in which it states that “the risk of torture must be assessed on grounds that go beyond mere theory or suspicion”. Although the risk does not have to meet the test of being highly probable, the burden of proof normally falls upon the complainant, who must present an arguable case establishing that he or she runs a “foreseeable, real and personal” risk.<sup>24</sup> The Committee gives considerable weight to findings of fact that are made by organs of the State party concerned, while at the same time it is not bound by such findings and instead has the power, provided by article 22 (4) of the Convention, of free assessment of the facts based upon the full set of circumstances in every case.

8.5 The Committee notes the complainant’s claim that his expulsion to Algeria would amount to a violation of article 3 of the Convention, as he would be exposed to a risk of being imprisoned and of being subjected to torture by the Algerian authorities since he has been sentenced to 10 years’ imprisonment with hard labour. The Committee also notes the State party’s allegations that the complainant has not plausibly established his grounds for asylum, as the migration authorities questioned the authenticity of the complainant’s statements, including with regard to the timing of the submission of his asylum request, the possession of a passport, the circumstances of his leaving Algeria and the documents provided by the complainant, and including the summonses from the Algerian police and the copy of the judgement which allegedly sentenced him to 10 years’ imprisonment with hard labour. The Committee also notes the State party’s conclusion that the complainant has not plausibly established his need for protection, insofar as he has not submitted any new evidence in support of his second asylum request, and that the written evidence that was provided with his first request and his oral statements lacked credibility.

8.6 The Committee also notes the complainant’s claim that he will be at risk of extrajudicial killing by terrorists in prison, as he allegedly revealed their plan of armed robbery and that this would have led to the death of two of their colleagues. According to the State party, the complainant has been unable to show that he is suspected of involvement with terrorists, including because he was unable to name, during the proceedings before the Migration Board, the terrorist group that allegedly threatened him.

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<sup>23</sup> See, for example, communication No. 467/2011, *Y.B.F., S.A.Q. and Y.Y. v. Switzerland*, decision adopted on 31 May 2013, para. 7.2, communication No. 392/2009, *R.S.M. v. Canada*, decision adopted on 24 May 2013, para. 7.3, and communication No. 213/2002, *E.J.V.M. v. Sweden*, decision adopted on 14 November 2003, para. 8.3.

<sup>24</sup> See, for example, communications No. 414/2010, *N.T.W. v. Switzerland*, decision adopted on 16 May 2012, para. 7.3, and No. 343/2008, *Arthur Kasombola Kalonzo v. Canada*, decision adopted on 18 May 2012, para. 9.3.

The Committee also notes the State party's argument that the complainant has not demonstrated that he is under a real and present threat of torture by terrorists. In that connection, it notes that the alleged threats by terrorists occurred in 2004 and 2005, that the complainant left Algeria in 2005 and that his last statement to the police was given in June 2005. It also notes that the complainant has not adduced any evidence that the Algerian authorities or the alleged terrorists have been looking for him in the recent past.

8.7 Furthermore, the Committee notes that, according to the State party, nothing would prevent the complainant from seeking protection from the Algerian authorities in regard to the alleged threats, especially given that the independent lawyer's report did not establish that he would be suspected or sentenced for involvement with terrorists. In that connection, the Committee notes the complainant's claims that the security situation in Algeria is poor, with widespread human rights violations, including the prevalence of torture in places of deprivation of liberty, while the State party asserts that the current situation in Algeria does not in itself suffice to establish that an expulsion of the complainant would entail a violation of his rights under article 3, and that the authorities generally do not lack the will or the ability to protect the country's inhabitants.

8.8 The Committee recalls paragraph 5 of its general comment No. 1, according to which the burden of presenting an arguable case lies with the author of a communication, and considers that the complainant has not discharged the burden of proof.<sup>25</sup> The Committee concludes that the material on file does not enable it to conclude that the complainant would be at risk of treatment contrary to article 3 of the Convention if he returned to Algeria.

8.9 As regards the complainant's claim that the migration authorities have failed to conduct a proper investigation into his allegation, the Committee notes that the complainant disagrees with the factual conclusions of the State party's authorities. Nonetheless, his claims do not establish that the evaluation of his asylum application by the Swedish authorities was clearly arbitrary or amounted to a denial of justice. In that regard, the Committee notes that the State party's migration authorities have conducted a comprehensive and thorough examination of the evidence in the case and considers that the complainant has not sufficiently substantiated his claims that the State party's authorities have failed to duly assess the risk he would allegedly face if he returned to Algeria.

9. Consequently, the Committee considers that the evidence and circumstances invoked by the complainant have not adduced sufficient grounds for believing that he would run a real, foreseeable, personal and present risk of being subjected to treatment contrary to article 3 of the Convention.

10. The Committee acting under article 22 (7) of the Convention, concludes that the complainant's removal to Algeria by the State party would not constitute a breach of article 3 of the Convention.

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<sup>25</sup> See communication No. 429/2010, *Mallikathevi Sivagnanaratnam. v. Denmark*, decision adopted on 11 November 2013, paras. 10.5 and 10.6.