



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

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COMMITTEE AGAINST TORTURE
Thirty-eighth session
(30 April-18 May 2007)

DECISION

Communication No. 300/2006

Submitted by: Adel Tebourski (represented by counsel)

Alleged victim: The complainant

State party: France

Date of the complaint: 23 July 2006 (initial submission)

Date of present decision: 1 May 2007

Subject matter: Complainant's deportation to Tunisia with alleged risk of torture

Substantive issue: Deportation with risk of torture

Procedural issue: Failure by State party to take up application for interim protection measures

Articles of the Convention: 3 and 22

Article of internal rules of procedure: 108

[ANNEX]

* Made public by decision of the Committee against Torture.

Annex

**DECISION OF THE COM MITTEE AGAINST TORTURE UNDER
ARTICLE 22 OF THE CONVENTION AGAINST TORTURE AND
OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR
PUNISHMENT**

Thirty-eighth session

concerning

Communication No. 300/2006

Submitted by: Adel Tebourski (represented by counsel)

Alleged victim: The complainant

State party: France

Date of the complaint: 23 July 2006 (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 1 May 2007,

Having concluded its consideration of complaint No. 300/2006, submitted on behalf of Mr. Adel Tebourski 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, paragraph 7, of the Convention against Torture

1.1 The complainant, Adel Tebourski, a Tunisian national, was residing in France when the present complaint was submitted and was the subject of a deportation order to his country of origin. He claims that his forced repatriation to Tunisia constitutes a violation of article 3 of the Convention against Torture. The complainant is represented by counsel, Lucile Hugon, from Action by Christians for the Abolition of Torture (ACAT).

1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee brought the complaint to the State party's attention in a note verbale dated 27 July 2006. At the same time the Committee, pursuant to rule 108, paragraph 9, of its rules of procedure, requested the State party not to deport the complainant to Tunisia while his complaint was being considered. The Committee reiterated this request in a note verbale dated 28 July 2006.

1.3 The Committee was informed by counsel that the complainant had been deported to Tunisia on 7 August 2006.

The facts as presented by the complainant

2.1 In 1985, the complainant left Tunisia for Belgium, where he pursued his studies. On 26 November 2001, he was arrested in northern France, following the assassination of Ahmed Shah Massoud on 9 September 2001 in Afghanistan. Massoud, the leader of the Northern Alliance forces in Afghanistan, was assassinated by Abdessatar Dahmane and Bouraoui El Ouaer (who also died in the attack). The trial of the complainant and his alleged accomplices began in March 2005 before the Paris Criminal Court. The complainant stood accused of having organized the departure of volunteers for Pakistan and Afghanistan. His role was confined to procuring false papers such as visas and passports. He denies any knowledge of the plans of his friend Abdessatar Dahmane, from whom he had heard nothing in the months leading up to Massoud's assassination.

2.2 On 17 May 2005, the Paris Criminal Court sentenced the complainant to six years' imprisonment for "criminal conspiracy in connection with a terrorist enterprise" and to deprivation of his civil, civic and family rights for a period of five years. He received a remission of sentence for good conduct. He held dual French-Tunisian nationality, which he had acquired in 2000 after marrying a French national in 1995. Pursuant to a decree of 19 July 2006, he was stripped of his French nationality, and he was served the same day with a ministerial deportation order, motivated by "the imperative requirements of State security and public safety". On 22 July 2006, he was released from Nantes prison and taken straight to the Mesnil-Amelot administrative detention centre.

2.3 On 25 July 2006, the complainant filed an application for asylum in France. This application was reviewed under the urgent procedure that allows the French Office for the Protection of Refugees and Stateless Persons (OFPRA) to take a decision within 96 hours. On 28 July 2006, OFPRA rejected the asylum application. On the same day, the complainant lodged an appeal against this decision with the Refugee Appeals Board. This appeal does not have suspensive effect.

2.4 In an appeal filed on 24 July 2006, the complainant asked the interim relief judge at the Paris Administrative Court to take interim measures pending a review of the legality of the ministerial deportation order. In a ruling dated 25 July 2006, this request was rejected. In an appeal lodged on 26 July 2006, the complainant requested annulment of the ministerial deportation order. In a ruling dated 4 August 2006, the interim relief judge rejected the request for a stay of execution of the decision. In an appeal lodged on 1 August 2006, the complainant requested annulment of the decision establishing Tunisia as the destination country. In a ruling dated 5 August 2006, the interim relief judge rejected the request for a stay of execution of the decision, and the complainant was finally deported to Tunisia on 7 August 2006.

2.5 On 17 October 2006, the Refugee Appeals Board turned down the complainant's appeal, having due regard to the nature and gravity of the acts committed which, in the Board's view, justify his exclusion from the status of refugee pursuant to article 1 (F) of the 1951 Geneva Convention. However, the Board noted that the complainant "could have had reason to fear that

he would be retried for the same offences for which he had already been convicted and punished, should he return to his country” and “the fact that, after his deportation to Tunisia, he remained at liberty but had been placed under close police surveillance without being arrested must be regarded as evidence of a desire on the part of the Tunisian authorities to disguise their true intentions towards him, particularly in view of the attention which this case has attracted in the international media”.

The complaint

3.1 The complainant alleges a violation of article 3 of the Convention. He cites the Tunisian Criminal Code, the Military Code of Pleadings and Penalties, and the anti-terrorist law of 10 December 2003, which prescribe penalties for activities carried out outside Tunisia. He argues that he will be convicted and imprisoned again for the acts for which he has already served a sentence in France.

3.2 The complainant argues that terrorism cases involving Tunisian nationals provoke a particularly strong reaction in Tunisia. Several individuals convicted under article 123 of the Code of Military Pleadings and Penalties or the anti-terrorist law of 10 December 2003 have been severely tortured after being deported by a third country to Tunisia. The complainant cites several examples of Tunisians who were allegedly subjected to torture or ill-treatment after arriving in Tunisia. He recalls that many persons accused of engaging in activities relating to terrorism are often tortured by the Tunisian authorities in order to extract confessions from them. He further recalls that conditions of detention in Tunisia are inhuman and degrading, without giving further details.

3.3 The complainant contends that the Tunisian authorities cannot be ignorant of his conviction in France, since it was the subject of numerous press articles. His family in Tunisia contacted two lawyers to try to ascertain whether proceedings had already been instituted in Tunisia against the complainant. The two lawyers were unable to obtain this information from the clerks of the courts concerned.

State party's observations on admissibility and the merits

4.1 On 18 October 2006, the State party submitted its observations on the admissibility and merits of the complaint. It argued that it is inadmissible, because the complainant did not appeal against the decisions taken by the interim relief judge (see paragraph 2.4 above). Likewise, the appeals on the substance of the case are still pending before the Paris Administrative Court and, consequently, the complainant has not exhausted all domestic remedies.

4.2 On the merits, the State party considers the complaints brought by the complainant to be manifestly unfounded. At no point did he provide material and irrefutable evidence of the threats that he would allegedly face upon return to Tunisia. In the first place, during the procedure prior to the decision to establish Tunisia as the country of destination, he evinced no specific arguments that would have led the French authorities to conclude that his personal security would not be assured in his country of origin. Secondly, he failed to provide solid evidence to OFPRA when it reviewed his request for asylum. In its decision of 28 July 2006, that body found that there was no evidence to suggest that the complainant would face personal persecution if he returned to a country to which he had in any case returned several times since 1985.

4.3 The State party invoked the decision handed down by the interim relief judge at the Paris Administrative Court on 29 July 2006, in which the judge found that, even if the acts for which the complainant had been convicted in France could, under a Tunisian law of 10 December 2003, be grounds for bringing proceedings against him, that circumstance alone could not be construed as constituting inhuman and degrading treatment, since the complainant did not risk being sentenced to death and there was no evidence that the conditions in which he might be detained amounted to inhuman or degrading treatment. The State party submits that the different French administrative and judicial authorities to which the complainant applied conducted a thorough and balanced review of his situation under conditions free from any form of arbitrariness, in accordance with the requirements of the Committee.¹

4.4 The State party emphasizes that, insofar as the complainant was unable to show that the fears cited in the event of his return to Tunisia were well founded, there was no justification for deferring the removal from France of a person who had proved himself highly dangerous to public order. It recalls that the Paris Criminal Court, in its judgement of 17 May 2005, stressed that the complainant was highly dangerous because of his subversive activities. It was because of this manifest danger and the demonstrable absence of risks in the event of his return to Tunisia that the State party considered it necessary promptly to remove the complainant from the country, balancing the imperatives of State security with the guarantees afforded by the Convention.

4.5 The State party stresses that it intends to respond favourably to requests from the Committee against Torture for stays of execution, even though, under rule 108 of the rules of procedure, such requests are not legally binding on States parties. However, it does consider that where, as in the present case, requests appear to it to be manifestly unfounded, it has a responsibility, having ensured beyond reasonable doubt that the interested parties do not face an individual and proven risk of ill-treatment, to remove foreigners whose presence poses a grave threat to public order and national security.

Complainant's comments on the State party's observations

5.1 On 18 December 2006, the complainant recalled that the purpose of the appeal to the interim relief judge for the imposition of interim measures was to prevent his deportation to Tunisia. In such a case, a remedy that remains pending after the deportation is, by definition, pointless.² The same argument applies to remedies pending before the Paris Administrative Court. The very fact that the deportation was carried out demonstrates the ineffectiveness of these remedies, which cannot thenceforth be exhausted by the complainant.

¹ See communication No. 219/2003, *G.K. v. Switzerland*, Views adopted on 7 May 2003, para. 6.12.

² See communication No. 195/2002, *Brada v. France*, Views adopted on 17 May 2005, para. 7.8.

5.2 Regarding the State party's contention that the complainant did not provide evidence of the threats that he would face if he returned to his country of origin, the complainant recalls that the Refugee Appeals Board recognized, in its decision of 17 October 2006, that he feared persecution. He further recalls that he provided the French courts with sufficient evidence to raise serious doubts as to the legality of the deportation decision.

5.3 Regarding the so-called "demonstrable absence of risks in the event of his return to Tunisia", the complainant stresses that he frequently has to call his counsel from a public telephone box. Although he was not arrested upon or after his arrival in Tunisia, he is under constant surveillance (wiretapping and being followed). His personal belongings are still being withheld. He still has no Tunisian identity papers, in spite of his many attempts to procure some. He has learned from a friend of his brother who works for the police that an internal message was sent out to all Tunisian police stations and offices when he arrived in Tunisia, giving instructions that he should not be arrested under any pretext in the weeks that followed, probably because of the media attention surrounding the case.

Additional observations of the State party

6.1 On 1 February 2007, the State party submitted that the Refugee Appeals Board's decision of 17 October 2006 merely confirmed the decision taken by OFPRA on 28 July 2006, denying the complainant refugee status. The Board noted that "while he did not directly commit terrorist acts, Mr. Adel Tebourski knowingly participated in their organization". The State party furthermore informs the Committee that, pursuant to a ruling of 15 December 2006, the Paris Administrative Court dismissed on the merits the complainant's appeal for annulment of the decision by the Minister of the Interior establishing Tunisia as the destination country. In that ruling, the court noted that "the evidence in the case does not show that Mr. Tebourski, who has been living in Europe since the mid-1980s, is currently the subject of criminal proceedings brought by the Tunisian authorities".

6.2 In response to the complainant's allegation that the French authorities refused to deport him to a country other than Tunisia, the State party recalls that the complainant at no time designated a country that could take him and to which he could be legally admitted. In these circumstances, he could only be sent to his country of origin, given that his presence on French soil constituted a grave threat to public order and the safety and security of the State.

6.3 The State party informs the Committee that, while no provision of the Convention requires it to do so, it has nonetheless contacted the Tunisian authorities, through the diplomatic channel, in order to obtain information on the complainant's circumstances since his return to Tunisia. The Committee will be informed of the outcome of this initiative at the earliest opportunity.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 The Committee ascertained that the communication satisfies the conditions of admissibility set out in article 22, paragraphs 1, 2 and 5 (a), of the Convention, namely, that it concerns a State

party which has made the declaration under article 22, and that, insofar as it alleges a breach of article 3 of the Convention against a named and identifiable individual, it is not anonymous, does not constitute an abuse of the right of submission to the Committee and is not incompatible with any provisions of the Convention.

7.2 The Committee also ascertained that the same matter, i.e. France's failure to comply with article 3 of the Convention by deporting to Tunisia a person who alleges that he risks being tortured, has not been and is not being examined under another investigation or settlement procedure.

7.3 Regarding domestic remedies, the Committee noted with interest the observations of the State party, which considers the complaint to be inadmissible, because the complainant failed to exhaust all domestic remedies (cf. paragraph 4.1 above). However, the Committee notes in this regard that, on 26 July 2006, the complainant lodged a non-suspensive appeal with the Paris Administrative Court for an annulment of the ministerial enforcement order. It also notes that, on 1 August 2006, the complainant appealed to the same court for annulment of the decision by the Minister of the Interior to establish Tunisia as the destination country. The complainant also asked the interim relief judge to impose interim protection measures, which the judge refused to do. On 15 December 2006, the Paris Administrative Court dismissed the two appeals for annulment. The complainant could doubtless have appealed this decision before the Paris Administrative Court. However, given that the expulsion order was executed on 7 August 2006, the Committee is entitled to find that a remedy which remains pending after the act which it was designed to avert has already taken place has, by definition, become pointless, since the irreparable harm can no longer be avoided, even if a subsequent judgement were to find in favour of the complainant.

7.4 In light of the foregoing, the Committee considers that it has grounds to conclude that, from the moment that the complainant was deported to Tunisia under the conditions in which that took place, it was very unlikely that the remaining remedies cited by the State party would have given him satisfaction. The Committee also notes that if the exercise of domestic remedies is to be effective and not illusory, an individual must be allowed a reasonable length of time before execution of the final decision to exhaust such remedies. The Committee notes that in the present case the complainant was stripped of his nationality by the State party on 19 July 2006, the consequence of which was to make him an immigrant in an irregular situation who was liable to expulsion. Despite the steps he took (cf. paragraphs 2.3 and 2.4 above), the complainant was expelled just three weeks after this decision. All remedies which remain open to the complainant following his expulsion are by definition pointless. The Committee therefore declares the complaint to be admissible.

Consideration of the merits

8.1 The Committee must determine whether, in deporting the complainant to Tunisia, the State party violated its obligation under article 3 of the Convention not to expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. The Committee stresses that it must take a

decision on the question in the light of the information which the authorities of the State party had or should have had in their possession at the time of the expulsion. Subsequent events are useful only for assessing the information which the State party actually had or could have deduced at the time of expulsion.³

8.2 To justify its refusal to comply with the Committee's decision requesting it not to deport the complainant to Tunisia while his case was being considered by the Committee, the State party puts forward four arguments:

- The danger which the complainant posed to the domestic public order;
- The absence of a risk that the individual concerned would be tortured if returned to Tunisia;
- The fact that the individual concerned, while opposing his deportation to Tunisia, did not suggest another host country;
- The non-legally binding character for States parties of protection measures decided by the Committee pursuant to rule 108 of the rules of procedure.

In this regard, the Committee affirms that the purpose of the Convention in article 3 is to prevent a person from being exposed to the risk of torture through refoulement, expulsion or extradition "to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture", regardless of the character of the person, in particular the danger he poses to society.

8.3 In other words, article 3 of the Convention offers absolute protection to anyone in the territory of a State party which has made the declaration under article 22. Once this person alludes to a risk of torture under the conditions laid down in article 3, the State party can no longer cite domestic concerns as grounds for failing in its obligation under the Convention to guarantee protection to anyone in its jurisdiction who fears that he is in serious danger of being tortured if he is returned to another country.

8.4 In the present case, the matter having been brought to the Committee's attention after the alleged or real exhaustion of domestic remedies, even if the Committee takes into consideration all the comments which the State party has submitted on this communication, the declaration made by the State party under article 22 confers on the Committee alone the power to assess whether the danger invoked is serious or not. The Committee takes into account the State party's assessment of the facts and evidence, but it is the Committee that must ultimately decide whether there is a risk of torture.

³ See communication No. 233/2003, *Agiza v. Sweden*, Views adopted on 20 May 2005, para. 13.2.

8.5 By establishing Tunisia as the destination for the complainant, in spite of the latter's explicit request not to be returned to his country of origin, the State party failed to take account of the universally accepted practice in such cases, whereby an alternative solution is sought with the agreement of the individual concerned and the assistance of the Office of the United Nations High Commissioner for Refugees and a third country willing to receive the individual who fears for his safety.

8.6 The Committee also notes that the Convention (art. 18) vests it with competence to establish its own rules of procedure, which become inseparable from the Convention to the extent they do not contradict it. In this case, rule 108 of the rules of procedure is specifically intended to give meaning and scope to articles 3 and 22 of the Convention, which otherwise would offer asylum-seekers claiming a serious risk of torture purely relative, not to say theoretical, protection.

8.7 The Committee therefore considers that, by expelling the complainant to Tunisia under the conditions in which it did and for the reasons adduced, thereby presenting the Committee with a *fait accompli*, the State party not only failed to demonstrate the good faith required of any party to a treaty, but also failed to meet its obligations under articles 3 and 22 of the Convention.

9. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the deportation of the complainant to Tunisia was a violation of articles 3 and 22 of the Convention.

10. In conformity with article 112, paragraph 5, of its rules of procedure, the Committee wishes to be informed, within 90 days, of the steps taken by the State party to respond to these Views, to make reparation for the breach of article 3 of the Convention, and to determine, in consultation with the country (also a State party to the Convention) to which he was deported, the complainant's current whereabouts and the state of his well-being.

[Adopted in English, Spanish, French and Russian, 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.]
