



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

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Committee against Torture

Forty-sixth session

9 May–3 June 2010

Decision

Communication No. 419/2010

<i>Submitted by:</i>	Yousri Ktiti (represented by Action by Christians for the Abolition of Torture ACAT-France)
<i>Alleged victim:</i>	Djamel Ktiti (brother of the claimant)
<i>State party:</i>	Morocco
<i>Date of complaint:</i>	14 April 2010 (initial submission)
<i>Date of decision:</i>	26 May 2011
<i>Subject matter:</i>	Extradition of the complainant's brother to Algeria
<i>Procedural issues:</i>	None
<i>Substantive issues:</i>	Expulsion of a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture
<i>Articles of the Convention:</i>	3 and 15

[Annex]

* Made public by decision of the Committee against Torture.

Annex

Decision of the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (forty-sixth session)

concerning

Communication No. 419/2010

Submitted by: Yousri Ktiti (represented by Action by Christians for the Abolition of Torture ACAT-France)

Alleged victim: Djamel Ktiti (brother of the claimant)

State party: Morocco

Date of complaint: 14 April 2010 (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 26 May 2011,

Having concluded its consideration of complaint No. 419/2010, submitted to the Committee against Torture by Yousri Ktiti on behalf of his brother Djamel Ktiti 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, his counsel and the State party,

Adopts the following:

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

1.1 The complainant is Yousri Ktiti, a French national born on 17 December 1982. He is submitting the complaint on behalf of his brother, Djamel Ktiti, a French national born on 29 June 1974 and currently being detained at the civilian prison of Salé in Rabat, Morocco, awaiting extradition to Algeria. The complainant alleges that his brother's return to Algeria by Morocco would be a violation of the State party's obligations under article 3 of the Convention. He is represented by Action by Christians for the Abolition of Torture (ACAT-France).

1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee brought the complaint to the State party's attention on 19 April 2010. At the same time, pursuant to rule 108, paragraph 1, of its rules of procedure, the Committee urged the State party not to proceed with the expulsion to Algeria of the complainant's brother while his complaint was under consideration.

The facts as submitted by the complainant

2.1 The complainant's brother, Djamel Ktiti, was arrested on 14 August 2009 in the port of Tangiers, Morocco, by the Moroccan police, following a request by the International Criminal Police Organization (Interpol) pursuant to an international arrest warrant issued by the Algerian judiciary on 19 April 2009.¹ The arrest warrant was issued after a certain M.K., arrested on 7 August 2008 in Algeria for possession of cannabis resin, had mentioned the name Djamel Ktiti during interrogation. According to M.K.'s brother, who had visited him in prison, M.K. had been tortured and ill-treated while in police custody in order to extract a confession and learn the names of possible accomplices involved in marijuana trafficking between Algeria and France, where M.K. has his permanent home. It was then that he gave, among others, the name of Djamel Ktiti who lives in the same neighbourhood as him in the city of Saint Etienne, France.

2.2 According to statements by M.K.'s family, he was beaten at the Algerian border, then held captive naked in a cell for two days, where he was tortured. His torturers beat him round the head and on the rest of his body. He was also electrocuted. He was tied to a chair, suffocated and forced to swallow water in an attempt to drown him. He was then sodomized with a bottle. When his family visited him in prison, they say he had a black eye, his brow and lips were split and he was covered in bruises (on his arms, legs and back). The purpose of the torture was to force him to confess to the acts of which he was accused and to reveal the names of his accomplices. During a telephone conversation with ACAT in April 2010, M.K.'s family confirmed that he had been savagely tortured following his arrest, but did not wish to put it in writing for fear of reprisals against him by the Algerian authorities, since he had not yet been tried.

2.3 Following his arrest, Djamel Ktiti was held in police custody until 15 August 2009, then brought before the Crown Prosecutor of the court of first instance in Tangiers, who informed him that he had been arrested under an international arrest warrant issued by Algeria. The Prosecutor then ordered pretrial detention at Tangiers prison pending his transfer to the Salé prison where Djamel Ktiti remains in custody. On 7 October 2009, the Supreme Court of Morocco handed down decision No. 913/1, authorizing Djamel Ktiti's extradition to Algeria. On 14 January 2010, his lawyers appealed against the decision before the same court, on grounds of irregularities in the arrest warrant, in particular numerous errors as to Djamel Ktiti's civil status. On 7 April 2010, the Supreme Court dismissed the appeal against the extradition order.

2.4 According to information obtained by the French Consulate in Algeria from the Algerian Ministry of Justice, despite Djamel Ktiti's arrest and the authorization granted by Morocco for his extradition to Algeria, the Court in Constantine had allegedly tried him in absentia on 28 January 2010 and sentenced him to life imprisonment. Despite a request by the French Consulate in Algiers, the Algerian authorities refuse to send a copy of the judgement, on the grounds that a judgement rendered in absentia can only be given to the convicted party himself.

2.5 Djamel Ktiti's family has contacted the Moroccan and French authorities on numerous occasions. They have written to the French Ministry of Justice, the Ministry of Foreign Affairs, the President of the Republic, and the Consulate and Embassy of France in Rabat. The family have also written to the King of Morocco and the Minister of Justice.

¹ The arrest warrant was issued by the investigating judge from the second chamber of the specialized jurisdiction at the Court of Constantine, Algeria, on the charge of "forming an organized gang for the unlawful export of narcotics", an act punishable under articles 17 and 19 of the Code for the Prevention and Punishment of the Use and Unlawful Trafficking of Narcotics and Psychotropic Substances (25 December 2004), and liable to life imprisonment.

Only the French Ministry of Justice has replied to the family, inviting them to write to the French consular authorities, who in turn have informed the family that intervening with the Moroccan or Algerian authorities would be seen as interfering in their domestic affairs, and as a slight against the independence of their courts. The International Federation for Human Rights (FIDH) has given the family an affidavit and ACAT has sent a letter to the Chief Justice of the Supreme Court of Morocco, warning him of the risks of torture upon return to Algeria.

The complaint

3.1 The complainant alleges that Djamel Ktiti has been depicted by M.K. and the others arrested in the case as the leader of a drug trafficking ring dismantled by the Algerian police. He contends that as a result his brother is in danger of suffering the same, if not worse, torture than that inflicted on M.K., in violation of article 3 of the Convention.

3.2 The complainant refers to the Committee's most recent concluding observations following consideration of the periodic report of Algeria² in which the Committee "remains concerned at the many serious allegations which it has received of cases of torture and abuse inflicted on detainees by law enforcement officers". He adds that the torture and abuse inflicted on M.K. following his arrest demonstrate the legitimacy of this concern, and repeats that F.K., brother of M.K., saw for himself the traces of torture and abuse endured by his brother when he visited him in prison.

3.3 The complainant also contends that, since the Supreme Court dismissed the appeal against the 7 April 2010 extradition order, all domestic remedies have been exhausted in Morocco.

State party's observations on admissibility and on the merits

4.1 On 8 September 2010, the State party submitted its observations on the admissibility and merits of the complaint. After presenting the facts of the case, the State party emphasized that the detention of Djamel Ktiti on 14 August 2009 by the Moroccan judicial authorities resulted from an international arrest warrant issued on 19 April 2009 by the Algerian judicial authorities on charges of forming an organized gang for the unlawful export of narcotics, which was transmitted by Interpol to the various police stations in the country, including that of Rabat. On 7 September 2008, after searching a car driven by M.K., Algerian customs and border police found 110 kilograms of drugs, carefully hidden in the trunk of a car that had been embarking for Marseille. During interrogation, M.K. stated that the operation had been planned in Saint Etienne by Djamel Ktiti and B.Z., who had left Algeria the day before his arrest. M.K. added that other operations had been carried out previously.

4.2 The State party notes that, pursuant to the mutual legal assistance agreement that it signed with Algeria on 15 March 1963, and in response to the official request by the Algerian authorities for Djamel Ktiti's extradition, he was brought before the criminal division of the Supreme Court of Morocco on 20 September 2009. At the hearing, he was counselled by an attorney who submitted a written report further supported by an oral pleading. During the entire examination process of his case before the Supreme Court, Djamel Ktiti benefited from all the guarantees laid out in the Code of Criminal Procedure. On 7 October 2009, the criminal division of the Supreme Court handed down decision No. 913/1 authorizing the extradition of Djamel Ktiti to Algeria, after ensuring that the request met, in substance and form, all the conditions set by the aforementioned mutual legal

² CAT/C/DZA/CO/3, 26 May 2008, para. 10.

assistance agreement and the Moroccan Code of Criminal Procedure. In exercising his right to a defence, Djamel Ktiti requested a review of the extradition order via his attorney on 8 February 2010. This appeal was dismissed by the criminal division of the Supreme Court on 7 April 2010 (judgement No. 1/366), after ensuring that the decision was justified and did not violate any relevant legislation.

Complainant's comments on the State party's observations

5.1 On 14 November 2010, the complainant noted that the State party had not addressed in its observations the complaint's two key points, namely the application for suspension of extradition (temporary measures required by the Committee under rule 108, paragraph 1, of its rules of procedure) and the risk of torture should the State party extradite his brother to Algeria.

5.2 The complainant stresses that on numerous occasions since submitting his communication to the Committee he has, through his counsel, written multiple letters to the Moroccan authorities, including the King of Morocco, the Prime Minister, the Minister of Justice, the Minister for Foreign Affairs, the private secretary of the Minister of Justice, and the Office of Criminal Affairs and Pardons, asking for the confirmation of their intention to suspend his brother's extradition. He has not received any replies to his queries.

5.3 The complainant also states that his brother remains in detention at the Salé prison in Rabat, and notes that the Moroccan authorities appear to have decided to suspend his extradition de facto. He adds that in a letter sent to ACAT-France on 23 August 2010, the Counsellor for International Legal and Judicial Affairs within the executive office of the French Ministry of Foreign Affairs claims that the Ministry was told by the Moroccan authorities that they intended to wait for the Committee's decision on the merits of the case before extraditing Djamel Ktiti.

5.4 The complainant reiterates that Djamel Ktiti is at serious risk of being tortured if he is extradited to Algeria and reasserts that the State party has not addressed that issue.

Additional observations by the complainant

6.1 On 14 November 2010, the complainant requested that the Committee give his communication priority, stressing that the Moroccan authorities appear to have tacitly agreed to suspend the extradition of Djamel Ktiti until the Committee takes a decision on the merits of the case. Djamel Ktiti has been detained since 14 August 2009, or more than 15 months. His continued detention without charge is intrinsically linked to the ongoing process before the Committee.

6.2 The complainant further stresses that all the requests for provisional release submitted by his lawyers have been dismissed or simply never examined. Officials in the Office of Criminal Affairs and Pardons at the Ministry of Justice who have been contacted by his lawyers and ACAT-France have said that they could not examine a request for provisional release given that extradition has already been authorized by the criminal division of the Supreme Court of Morocco in its decision of 7 April 2010.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any complaint contained in a communication, the Committee must decide whether or not it is admissible under article 22 of the Convention.

7.2 The Committee has ascertained, as it is required to do under article 22, paragraph 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.

7.3 The Committee also notes that all domestic remedies have been exhausted, in accordance with article 22, paragraph 5 (b), and that the State party has not contested the admissibility of the communication.

7.4 Although the complainant has not invoked article 15 of the Convention, the Committee believes that the communication also raises questions covered by that provision.

7.5 The Committee therefore finds the communication admissible, in that it raises questions with regard to articles 3 and 15 of the Convention, and proceeds to its consideration of the merits.

Consideration of the merits

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

8.2 The issue before the Committee is whether Djamel Ktiti's extradition to Algeria would constitute a violation of the State party's obligation, under article 3 of the Convention, not to expel or return a person to a State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

8.3 Regarding the complainant's article 3 allegations, the Committee must take account of all considerations, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights in the country of return. However, the aim of such an analysis is to determine whether Djamel Ktiti runs a *personal* risk of being subjected to torture in Algeria. Consequently the existence in the country of a pattern of gross, flagrant or mass violations of human rights does not as such constitute sufficient grounds for determining that he would be in danger of being subjected to torture on extradition to that country; additional grounds must exist to indicate that the individual concerned would be personally at risk.

8.4 The Committee refers to its general comment No. 1 on article 3, which states that, in light of the obligation to determine whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture were he to be expelled, returned or extradited, the Committee must assess the risk of torture on the basis of elements beyond mere theory or suspicion. However, it is not necessary to demonstrate that the risk is highly probable, although it must be personal and real. In previous decisions, the Committee has ruled that the risk of torture must be foreseeable, real and personal.

8.5 The Committee recalls that when it considered the third periodic report of Algeria, submitted in accordance with article 19 of the Convention, it was concerned at the many serious allegations which it had received of cases of torture and ill-treatment inflicted on detainees by law-enforcement officers.³

8.6 In the case in question, the Committee has taken note of the complainant's allegations that M.K. underwent severe torture while in police custody in Algeria, leading him to name Djamel Ktiti as the leader of the drug-trafficking ring in question; it further notes that, on the basis of this confession obtained under torture, the Court of Constantine sentenced Djamel Ktiti in absentia to life imprisonment, but that the sentence was never

³ CAT/C/DZA/CO/3, 26 May 2008, para. 10.

made public; and that Algeria then requested the State party to extradite the complainant to Algeria under an international arrest warrant. The Committee also observes that, according to the indictment of 7 October 2009 issued by the Assize Court of Constantine against M.K., Djamel Ktiti and four other co-accused, M.K. claimed to have made the statements under torture. The State party has not contested any of these allegations, nor has it provided any information concerning them in the comments it submitted to the Committee.

8.7 The Committee confirms that it is within the purview of the courts of the States parties to the Convention to assess the facts and evidence in a case. The appeal courts of States parties are responsible for reviewing the conduct of a trial, unless it can be established that the evidence was assessed in a patently arbitrary manner or one that amounted to a miscarriage of justice. The Committee notes in this case that, despite the complainant's allegations highlighting the potential risks, the Supreme Court of Morocco did nothing to assess those risks but was content to base its decision to extradite on statements which, according to the complainant, were obtained under torture. In view of this evidence, which, furthermore, has not been refuted by the State party, the Committee concludes that the complainant's extradition to Algeria would violate article 3 of the Convention.

8.8 Regarding article 15, the Committee considers that it is central to the case and closely linked to the questions raised under article 3 of the Convention. The Committee recalls that the general nature of its provisions derives from the absolute nature of the prohibition of torture and therefore implies an obligation for each State party to ascertain whether or not statements included in an extradition procedure under its jurisdiction were made under torture.⁴ In this case, the Committee notes that the statements made by M.K., on which the extradition request was based, were allegedly obtained under torture; that the results of such physical abuse were verified by M.K.'s brother; and that the indictment issued on 7 October 2009 by the Assize Court of Constantine against M.K. states that M.K. claimed to have confessed under torture. The Committee notes that the State party has neither refuted any of these allegations nor included any information on this question in its observations to the Committee. The Committee considers that the State party was under an obligation to verify the content of the author's allegations that the statements made by M.K. had been obtained under torture, and that by not verifying them, and by using them as evidence in the extradition proceedings, the State party violated its obligations under article 15 of the Convention. The Committee thus concludes that the evidence submitted to it discloses a violation of article 15 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 State party would be in violation of article 3 of the Convention if the complainant was extradited to Algeria. It further concludes that the facts brought to its attention constitute a breach of article 15 of the Convention.

10. Pursuant to rule 112, paragraph 5, of its rules of procedure, the Committee requests that the State party inform it, within 90 days of the date of transmission of the present decision, of the measures taken in response to this decision. It adds that because Djamel Ktiti has been in detention for 21 months despite no charges having been laid against him, the State party is obliged to release him or to try him should charges be brought against him. Referring to its most recent concluding observations, the Committee once again urges the State party to review its legislation in order to incorporate a provision prohibiting any

⁴ See communication No. 193/2001, *P.E. v. France*, decision adopted on 21 November 2002, paragraph 6.3 (CAT/C/29/D/193/2001).

statement obtained under torture from being invoked as evidence in any proceedings, in conformity with article 15 of the Convention.⁵

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

⁵ CAT/C/CR/31/2, thirty-first session, 5 February 2004, para. 6 (h).