

## COMMITTEE AGAINST TORTURE

### Dhaou Belgacem Thabti v. Tunisia

Communication No. 187/2001

14 November 2003

CAT/C/31/D/187/2001\*

### VIEWS

*Submitted by: Mr. Dhaou Belgacem THABTI (represented by the non governmental organization *Vie et Liberté* Action)*

*On behalf of: Complainant*

*State party: Tunisia*

*Date of submission: 1 June 2000*

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

Meeting on 14 November 2003,

Having concluded its consideration of complaint No. 187/2001, submitted to the Committee against Torture by Mr. Dhaou Belgacem Thabti 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**

1. The complainant is Mr. Dhaou Belgacem Thabti, a Tunisian citizen, born on 4 July 1955 in Tataouine, Tunisia, and resident in Switzerland since 25 May 1998, where he has refugee status.

He claims to have been the victim of violations by Tunisia of the provisions of article 1, article 2, paragraph 1, article 4, article 5, article 12, article 13, article 14, article 15 and article 16 of the Convention. He is represented by the non governmental organization V開 it? Action.

1.2 Tunisia ratified the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment and made the declaration under article 22 of the Convention on 23 September 1988.

### Facts as submitted by the complainant

2.1 The complainant states that he was an active member of the Islamist organization ENNAHDA (formerly MTI). Following a wave of arrests in Tunisia, which commenced in 1990 and was targeted in particular against members of this organization, he went into hiding from 27 February 1991. On 6 April 1991, at 1 a.m., he was arrested and severely beaten by the police, who kicked, slapped and punched him and struck him with truncheons.

2.2 Incarcerated in the basement cells in the Interior Ministry (DST) building in Tunis and deprived of sleep, the complainant was taken, the following morning, to the office of the Director of State Security, Ezzedine Jneyeh. According to the complainant, this official personally ordered his interrogation under torture.

2.3 The complainant provides a detailed description, accompanied by sketches, of the different types of torture to which he was subjected until 4 June 1991 in the premises of the Interior Ministry (DST).

2.4 The complainant describes what is customarily known as the "roast chicken" position, in which the victim is stripped naked, his hands tied and his legs folded between his arms, with an iron bar placed behind his knees, from which he is then suspended between two tables. In this position he was subjected to beatings, in particular on the soles of his feet, until he passed out. The complainant adds that the policemen inflicting this torture would then bring him round by throwing cold water over his body and by applying ether to sensitive areas, such as his buttocks and testicles.

2.5 The complainant also claims to have been tortured in the "upside-down" position, whereby the victim is stripped, hands tied behind his back and suspended from the ceiling by a rope tied to one or both of his feet, with his head hanging downwards. In this position he was kicked and struck with sticks and whips until he passed out. He adds that his torturers tied a piece of string to his penis which they then repeatedly tugged, as if to tear his penis off.

2.6 The complainant claims to have been subjected to immersion torture, in which the victim is suspended upside-down from a hoist and immersed in a tank of water mixed with soap powder, bleach and sometimes even urine and salt; the victim is unable to breathe and is therefore forced to keep swallowing this mixture until his stomach is full. He states that he was then kicked in the stomach until he vomited.

2.7 The complainant also maintains that he was tortured in the "scorpion" position, in which the victim is stripped, his hands and feet tied behind his back, and then lifted by his torturers, face downwards, with a chain hoist, while pressure is applied to his spine. He states that, in this position, he was beaten and whipped on his legs, arms, stomach and genitals.

2.8 The complainant also claims to have been subjected to "table torture", in which he was stripped, made to lie flat on his back or stomach on a long table, with his arms and legs tied down, and was then beaten.

2.9 In support of his claims of torture and the effects of torture, the complainant submits a certificate from a Swiss physiotherapist, a report by a neurological specialist in Fribourg and a certificate of psychiatric treatment from the medical service of a Swiss insurance company. He also cites an observation mission report by the International Federation for Human Rights, stating that, during proceedings initiated on 9 July 1992 against Islamist militants, including the complainant, all the defendants that were interviewed complained that they had been subjected to serious physical abuse whilst in police custody.

2.10 The complainant provides a list of persons who subjected him to torture during this period, namely, Ezzedine Jneieh, Director of DST; Abderrahmen El Guesmi; El Hamrouni; Ben Amor, Inspector of Police; and Mahmoud El Jaouadi, Slah Eddine Tarzi and Mohamed Ennacer-Hleiss, all of Bouchoucha Intelligence Service. He adds that his torturers were assisted by two doctors and that he witnessed torture being inflicted on his fellow detainees.

2.11 On 4 June 1991, the complainant appeared before the military examining magistrate, Major Ayed Ben Kayed. The complainant states that, during the hearing, he denied the charges against him of having attempted a coup d'État, and that he was refused the assistance of counsel.

2.12 The complainant claims that he was then placed in solitary confinement in the premises of the Ministry of the Interior (DST), from 4 June to 28 July 1991, and refused all visits, mail, medicine and necessary medical attention, except for one visit, on 18 July 1991, by Dr. Moncef Marzouki, President of the Tunisian Human Rights League. The complainant adds that he was not fed properly, that he was denied the right to practise his religion and that he was once again subjected to torture.

2.13 From 28 July 1991, when his period of police custody ended, the complainant was repeatedly transferred between different prison establishments in the country - in Tunis, Borj Erroumi (Bizerte), Mahdia, Sousse, Elhaoireb and Rejim Maatoug - which transfers, he maintains, were designed to prevent him having any contact with his family.

2.14 The complainant describes the bad conditions in these detention facilities, such as overcrowding, with 60-80 persons in the small cells in which he was held, and the poor hygiene, which caused sickness: he maintains that, as a result, he developed asthma and suffered skin allergies and that his feet are now disfigured. He states that on several occasions he was placed in solitary confinement, partly because of the hunger strikes he mounted in the 9 April prison in Tunis

over 12 days in July 1992, and in Mahdia over 8 days in October 1995 and 10 days in March 1996, as a protest against the conditions in which he was being held and the ill-treatment to which he was subjected, and partly by arbitrary decision of the prison warders. He also stresses that he was stripped naked and beaten in public.

2.15 On 9 July 1992 the complainant's case was heard by the Bouchoucha military court in Tunis. He maintains that he was only able to have one meeting with his counsel, on 20 July 1992, and that it was conducted under the surveillance of the prison warders. On 28 August 1992, he was sentenced to a term of six years' imprisonment.

2.16 On completion of his sentence on 27 May 1997, as indicated in the prison discharge papers he submits, the complainant was placed under administrative supervision for a period of five years, which effectively meant that he was placed under house arrest in Remada, 600 kilometres from Tunis, where his wife and children were living. Four months later, on 1 October 1997, he fled Tunisia for Libya then made his way to Switzerland, where he obtained political refugee status on 15 January 1999. In support of his statements, the complainant submits a copy of the report issued on 10 March 1996 by the Tunisian Committee for Human Rights and Freedoms, describing his condition after his release, and a certificate from the Swiss Federal Office for Refugees, on the granting of his political refugee status. The complainant adds that, after he had fled from the country, he was sentenced in absentia to 12 years' non-suspended imprisonment.

2.17 Finally, the complainant states that members of his family, in particular his wife and their five children, have been the victims of harassment (night-time raids, systematic searches of their home, intimidation, threats of rape, confiscation of property and money, detention and interrogation, constant surveillance), and of ill-treatment (the complainant's son Ezzedinne has been detained and severely beaten) by the police throughout the period of his detention and after he fled the country, continuing until 1998.

2.18 As to whether all domestic remedies have been exhausted, the complainant states that he complained of acts of torture committed against him to the Bouchoucha military court, in the presence of the national press and international human rights observers. He maintains that the president of the court tried to ignore him but, when he insisted, replied that nothing had been established. In addition, the judge refused outright the complainant's request for a medical check.

2.19 The complainant adds that, after the hearing and his return to prison, he was threatened with torture if he repeated his claims of torture to the court.

2.20 The complainant maintains in addition that, from 27 May 1997, the date of his release, his house arrest prevented him from lodging a complaint. He explains that the Remada police and gendarmerie took part a continuing process of harassment and intimidation against him during the daily visits he made for the purposes of administrative supervision. According to the complainant, the mere fact of submitting a complaint would have caused increased pressure to be applied against him, even to the point of his being returned to prison. Being under house arrest, he was also unable to apply to the authorities at his legal place of residence, in Tunis.

2.21 The complainant maintains that, while Tunisian law might make provision for the possibility of complaints against acts of torture, in practice, any victim submitting a complaint will become the target of intolerable police harassment, which acts as a disincentive to the use of this remedy. According to the complainant, any remedies are therefore ineffective and non-existent.

### Substance of the complaint

3.1 The complainant maintains that the Tunisian Government has breached the following articles of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment:

Article 1. The practices described above, such as the "roast chicken" position, the "upside down" position, the "scorpion" position, immersion torture, "table torture" and solitary confinement, to which the complainant was subjected, constitute acts of torture.

Article 2, paragraph 1. Not only has the State party failed to take effective measures to prevent torture, it has even mobilized its administrative machinery and, in particular, its police force as an instrument of torture against the complainant.

Article 4. The State party has not ensured that all the acts of torture to which the complainant has been subjected are offences under its criminal law.

Article 5. The State party has instituted no legal proceedings against those responsible for torturing the complainant.

Article 12. The State party has not carried out an investigation of the acts of torture committed against the complainant.

Article 13. The State party has not undertaken any examination of the allegations of torture made by the complainant at the beginning of his trial; instead, these have been dismissed.

Article 14. The State party has ignored the complainant's right to make a complaint and has thereby deprived him of his right to redress and rehabilitation.

Article 15. The complainant was sentenced on 28 August 1992 to a prison sentence on the basis of a confession obtained as a result of torture.

Article 16. The repressive measures and practices described above, such as violation of the right to medical care and medicine and the right to send and receive mail, restriction of the right to property and the right to visits by family members and lawyers, house arrest and harassment of the family, applied by the State party against the complainant constitute cruel, inhuman and degrading treatment or punishment.

### State party's observations on admissibility

4.1 On 4 December 2001, the State party challenged the admissibility of the complaint on the grounds that the complainant has neither employed nor exhausted available domestic remedies.

4.2 The State party maintains that the complainant may still have recourse to the available domestic remedies, since, under Tunisian law, the limitation period for acts alleged to be, and characterized as, serious offences is 10 years.

4.3 The State party explains that, under the criminal justice system, the complainant may submit a complaint, from within Tunisia or abroad, to a representative of the Public Prosecutor's Office with jurisdiction in the area in question. He may also authorize a Tunisian lawyer of his own choice to submit the complaint or request a foreign lawyer to do so with the assistance of a Tunisian colleague.

4.4 Under the same rules of criminal procedure, the Public Prosecutor will receive the complaint and institute a judicial enquiry. In accordance with article 53 of the Code of Criminal Procedure, the examining magistrate to whom the case is referred will hear the author of the complaint. In the light of this hearing, he may decide to hear witnesses, question suspects, undertake on-site investigations and seize physical evidence. He may order expert studies and carry out any actions which he deems necessary for the uncovering of evidence, both in favour of and against the complainant, with a view to discovering the truth and verifying facts on which the trial court will be able to base its decision.

4.5 The State party explains that the complainant may, in addition, lodge with the examining magistrate during the pre-trial proceedings an application for criminal indemnification for any harm suffered, over and above the criminal charges brought against those responsible for the offences against him.

4.6 If the examining magistrate deems that the public right of action is not exercisable, that the acts do not constitute a violation or that there is no prima facie case against the accused, he shall rule that there are no grounds for prosecution. If, on the other hand, the magistrate deems that the acts constitute an offence punishable by imprisonment, he shall send the accused before a competent court - which in the present instance, where a serious offence has been committed, would be the indictment chamber. All rulings by the examining magistrate are immediately communicated to all the parties to the proceedings, including the complainant who brought the criminal indemnification proceedings. Having been thus notified within a period of 48 hours, the complainant may, within four days, lodge an appeal against any ruling prejudicial to his interests. This appeal, submitted in writing or orally, is received by the clerk of the court. If there is prima facie evidence of the commission of an offence, the indictment chamber sends the accused before the competent court (criminal court or criminal division of a court of first instance), having given rulings on all the counts established during the proceedings. If it chooses, it may also order further information to be provided by one of its assessors or by the examining magistrate; it may also institute new proceedings, or conduct or order an inquiry into matters which have not yet been the subject of an examination. The decisions of the indictment chamber are subject to immediate enforcement.

4.7 A complainant seeking criminal indemnification may appeal on a point of law against a decision

of the indictment chamber once it has been notified. This remedy is admissible when the indictment chamber rules that there are no grounds for prosecution; when it has ruled that the application for criminal indemnification is inadmissible, or that the prosecution is time-barred; when it has deemed the court to which the case has been referred to lack jurisdiction; or when it has omitted to make a ruling on one of the counts.

4.8 The State party stresses that, in conformity with article 7 of the Code of Criminal Procedure, the complainant may bring criminal indemnification proceedings before the court to which the case has been referred (criminal court or criminal division of the court of first instance) and, as appropriate, may lodge an appeal, either with the Court of Appeal if the offence in question is an ordinary offence, or with the criminal division of the Court of Appeal if it is a serious offence. The complainant may also appeal to the Court of Cassation.

4.9 The State party maintains that the domestic remedies are effective.

4.10 According to the State party, the Tunisian courts have systematically and consistently acted to remedy deficiencies in the law, and stiff sentences have been handed down on those responsible for abuses and violations of the law. The State party says that, between 1 January 1988 and 31 March 1995, judgements were handed down in 302 cases involving members of the police or the national guard under a variety of counts, 227 of which fell into the category of abuse of authority. The penalties imposed varied from fines to terms of imprisonment of several years.<sup>1</sup>

4.11 The State party maintains that, given the complainant's "political and partisan" motives and his "offensive and defamatory" remarks, his complaint may be considered an abuse of the right to submit complaints.

4.12 The State party explains that the ideology and the political platform of the "movement" of which the complainant was an active member are based exclusively on religious principles, promoting an extremist view of religion which negates democratic rights and the rights of women. This is an illegal "movement", fomenting religious and racial hatred and employing violence. According to the State party, this "movement" perpetrated terrorist attacks which caused material damage and loss of life over the period 1990-1991. For that reason, and also because it is in breach of the Constitution and the law on political parties, this "movement" has not been recognized by the authorities.

4.13 The State party explains that the complainant is making serious accusations, not genuinely substantiated by any evidence, against the judicial authorities by claiming that judges accept confessions as evidence and hand down judgements on the basis of such evidence.

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

5.1 In a letter dated 6 May 2002, the complainant challenges the State party's argument that he was supposedly unwilling to turn to the Tunisian justice system and make use of domestic remedies.

5.2 In this context, the complainant recalls his statements concerning the torture to which he had been subjected and his request for a medical check made to the judge of the military court, all of which were ignored and not acted upon, and his reports of violations of articles 13 and 14 of the Convention against Torture, as well as his contention that placing him under administrative supervision impeded due process. According to the complainant, the practice described above is routinely applied by judges, particularly against political prisoners. In support of his arguments, he cites extracts from reports by the Tunisian Committee for Human Rights and Freedoms, the International Federation for Human Rights and the Tunisian Human Rights League. He also refers to the annual reports of such international organizations as Amnesty International and Human Rights Watch, which have denounced the practices described by the complainant.

5.3 The complainant also challenges the explanations by the State party regarding the possibility of promptly instituting legal proceedings, the existence of an effective remedy and the possibility of bringing criminal indemnification proceedings.

5.4 The complainant argues that the State party has confined itself to repeating the procedure described in the Code of Criminal Procedure, which is far from being applied in reality, particularly where political prisoners are concerned. In support of his argument, he cites reports by Amnesty International, Human Rights Watch, the World Organization against Torture, the National Consultative Commission on Human Rights in France and the National Council for Fundamental Freedoms in Tunisia. He also refers to the Committee against Torture's final observations on Tunisia, dated 19 November 1998. The complainant stresses that the Committee against Torture recommended, among other things, that the State party should, first, ensure the right of victims of torture to lodge a complaint without the fear of being subjected to any kind of reprisal, harassment, harsh treatment or prosecution, even if the outcome of the investigation does not prove their allegations, and to seek and obtain redress if these allegations are proven correct; second, ensure that medical examinations are automatically provided following allegations of abuse and an autopsy is performed following any death in custody; and third, ensure that the findings of all investigations concerning cases of torture are made public and that this information includes details of any offences committed, the names of the offenders, the dates, places and circumstances of the incidents and the punishment received by those who were found guilty. The Committee also noted that many of the regulations existing in Tunisia for the protection of arrested persons were not adhered to in practice. It also expressed its concern over the wide gap that existed between law and practice with regard to the protection of human rights, and was particularly disturbed by the reported widespread practice of torture and other cruel and degrading treatment perpetrated by security forces and the police, which, in certain cases, resulted in death in custody. In addition, the complainant mentions the decision by the Committee against Torture relating to communication No. 60/1996, *Faisal Baraket v. Tunisia*. The complainant believes that the State party's statement regarding the possibility of ensuring an effective remedy constitutes political propaganda without any legal relevance. He explains that the cases cited by the State party (para. 4.10) relate to Tunisian citizens who were not arrested for political reasons, whereas the authorities reserve special treatment for cases involving political prisoners.

5.5 The complainant also challenges the State party's argument that a Tunisian lawyer can be

instructed from abroad to lodge a complaint.

5.6 The complainant maintains that this procedure is a dead letter and has never been respected in political cases. According to him, lawyers who dare to defend such causes are subject to harassment and other forms of serious encroachment on the free and independent exercise of their profession, including prison sentences.

5.7 The complainant maintains that his situation as a political refugee in Switzerland precludes him from successfully concluding any proceedings that he might initiate, given the restrictions placed on contacts between refugees and the authorities in their own countries. He explains that severance of all relations with the country of origin is one of the conditions on which refugee status is granted, and that it plays an important role when consideration is being given to withdrawing asylum. According to the complainant, such asylum would effectively end if the refugee should once again, of his own volition, seek the protection of his country of origin, for example by maintaining close contacts with the authorities or paying regular visits to the country.

5.8 Lastly, the complainant believes that the State party's comments regarding his membership of the ENNAHDA movement and the aspersions cast upon it demonstrate the continued discrimination against the opposition, which is still considered illegal. According to the complainant, with its references in this context to terrorism, the State party is demonstrating its bias and any further talk of ensuring effective domestic remedies is therefore pure fiction. He also stresses that the prohibition of torture and inhuman or degrading treatment is a provision which admits of no exception, including for terrorists.<sup>2</sup>

5.9 Finally, in the light of his previous explanations, the complainant rejects the observation by the State party to the effect that the present complaint constitutes an abuse of the right to submit complaints.

#### Additional observations from the State party on admissibility

6.1 On 8 November 2002 the State party again challenged the admissibility of the complaint. It maintains, first, that the complainant's claims about recourse to the Tunisian justice system and the use of domestic remedies are baseless and unsupported by any evidence. It adds that proceedings in relation to the allegations made in the complaint are not time-barred, since the time-limit for bringing proceedings in such cases is 10 years. It argues that the complainant offers no evidence in support of his claims that the Tunisian authorities' customary practice makes it difficult to initiate prompt legal action or apply for criminal indemnification. It adds that the complainant's refugee status does not deprive him of his right to lay complaints before the Tunisian courts. Third, it maintains that, contrary to the complainant's allegations, it is open to him to instruct a lawyer of his choice to lodge a complaint from abroad. Lastly, the State party reaffirms that the complaint is not based on any specific incident and cites no evidence, and constitutes an abuse of the right to submit complaints.

#### Committee's decision on admissibility

7.1 At its twenty-ninth session, the Committee considered the admissibility of the complaint, and in a decision of 20 November 2002 declared it admissible.

7.2 With regard to the issue of the exhaustion of domestic remedies, the Committee noted that the State party challenged the admissibility of the complaint on the grounds that the available and effective domestic remedies had not been exhausted. In the present case, the Committee noted that the State party had provided a detailed description both of the remedies available, under law, to any complainant and of cases where such remedies had been applied against those responsible for abuses and for violations of the law. The Committee considered, nevertheless, that the State party had not sufficiently demonstrated the relevance of its arguments to the specific circumstances of the case of this complainant, who claims to have suffered violations of his rights. It made clear that it did not doubt the information provided by the State party about members of the security forces being prosecuted and convicted for a variety of abuses. But the Committee pointed out that it could not lose sight of the fact that the case at issue dates from 1991 and that, given a statute of limitations of 10 years, the question arose of whether, failing interruption or suspension of the statute of limitations - a matter on which the State party had provided no information - action before the Tunisian courts would be disallowed. The Committee noted, moreover, that the complainant's allegations related to facts that had already been reported publicly to the judicial authorities in the presence of international observers. The Committee pointed out that to date it remained unaware of any investigations voluntarily undertaken by the State party. The Committee therefore considered it very unlikely in the present case that the complainant would obtain satisfaction by exhausting domestic remedies, and decided to proceed in accordance with article 22, paragraph 5 (b), of the Convention.

7.3 The Committee noted, in addition, the argument by the State party to the effect that the complainant's claim was tantamount to abuse of the right to lodge a complaint. The Committee considered that any report of torture was a serious matter and that only through consideration of the merits could it be determined whether or not the allegations were defamatory. Furthermore, the Committee believed that the complainant's political and partisan commitment adduced by the State party did not impede consideration of this complaint, in accordance with the provisions of article 22, paragraph 2, of the Convention.

#### State party's observations on the merits

8.1 In its observations of 3 April 2003 and 25 September 2003, the State party challenges the complainant's allegations and reiterates its position regarding admissibility.

8.2 In relation to the allegations concerning the State party's "complicity" and inertia vis-à-vis "practices of torture", the State party indicates that it has set up preventive<sup>3</sup> and dissuasive<sup>4</sup> machinery to combat torture so as to prevent any act which might violate the dignity and physical integrity of any individual.

8.3 Concerning the allegations relating to the "practice of torture" and the "impunity of the perpetrators of torture", the State party considers that the complainant has not presented any

evidence to support his claims. It emphasizes that, contrary to the complainant's allegations, Tunisia has taken all necessary legal and practical steps, in judicial and administrative bodies, to prevent the practice of torture and prosecute any offenders, in accordance with articles 4, 5 and 13 of the Convention. Equally, according to the State party, the complainant has offered no grounds for his inertia and failure to act to take advantage of the effective legal opportunities available to him to bring his case before the judicial and administrative authorities (see paragraph 6.1). Concerning the Committee's decision on admissibility, the State party emphasizes that the complainant cites not only "incidents" dating back to 1991, but also "incidents" dating from 1995 and 1996, that is, a time when the Convention against Torture was fully incorporated into Tunisian domestic law and when he reports "ill-treatment" that he claims to have suffered while being held in "Mahdia prison". Hence the statute of limitations has not expired, and the complainant should urgently act to interrupt the limitation period, either by contacting the judicial authorities directly, or by performing an act which has the effect of interrupting the limitation. The State party also mentions the scope for the complainant to lodge an appeal for compensation for any serious injury caused by a public official in the performance of his duties,<sup>5</sup> noting that the limitation period stands at 15 years.<sup>6</sup> The State party points out that the Tunisian courts have always acted systematically to remedy deficiencies in the law on acts of torture (see paragraph 4.10).

8.4 As for the allegations of failure to respect guarantees relating to judicial procedure, the State party regards them as unfounded. According to the State party, the authorities did not prevent the complainant from lodging a complaint before the courts - on the contrary, he opted not to make use of domestic remedies. As for the "obligation" of judges to ignore statements made as a result of torture, the State party cites article 15 of the Convention against Torture, and considers that it is incumbent on the accused to provide the judge with at least basic evidence that his statement has been made in an unlawful manner. In this way he would confirm the truth of his allegations by presenting a medical report or a certificate proving that he had lodged a complaint with the public prosecutor's office, or even by displaying obvious traces of torture or ill-treatment to the court. However, the State party points out that although, in the case relating to Mr. Thabti, the court had ordered a medical check for all the prisoners who so wished, the complainant voluntarily opted not to make such a request, preferring to reiterate his allegations of "ill-treatment" to the court, for the purpose of focusing on himself the attention of the observers attending the hearing. The complainant justifies his refusal to undergo the medical examination ordered by the court on the grounds that the doctors would behave in a "compliant" manner. The State party replies that the doctors are appointed by the examining magistrate or the court from among the doctors working in the prison administration and doctors who have no connection with it and who enjoy a reputation and integrity above all suspicion. Lastly, according to the State party, the complainant did not deem it necessary to lodge a complaint either during his detention or during his trial, and his refusal to undergo a medical examination illustrates the baselessness of his allegations and the fact that his actions form part of a strategy adopted by the "ENNAHDA" illegal extremist movement in order to discredit Tunisian institutions by alleging acts of torture and ill-treatment but not making use of available remedies.

8.5 Concerning the allegations relating to the trial, according to the State party, although the complainant acknowledges that two previous cases against him in 1983 and 1986 were dismissed

for lack of evidence, he continues nevertheless to accuse the legal authorities systematically of bias. In addition, contrary to the complainant's allegations that during his trial and during questioning the examining magistrate attached to the Tunis military court denied him the assistance of counsel, the State party points out that Mr. Thabti himself refused such assistance. According to the State party, the examining magistrate, in accordance with the applicable legislation, reminded the complainant of his right not to reply except in the presence of his counsel, but the accused opted to do without such assistance, while refusing to answer the examining magistrate's questions. Given the complainant's silence, the magistrate warned him, in accordance with article 74 of the Code of Criminal Procedure, that he would embark on examination proceedings, and noted this warning in the record. Concerning the complainant's claim that he was found guilty on the sole basis of his confession, the State party points out that, under the last paragraph of article 69 and article 152 of the Code of Criminal Procedure, a confession on the part of the accused cannot relieve the judge of the obligation to seek other evidence, while confessions, like all items of evidence, are a matter for the independent appreciation of the judge. On that basis, it is a constant of Tunisian case law that an accused cannot be found guilty on the sole basis of a confession.<sup>7</sup> In the case in question, the basis for the court's decision, in addition to the confessions made by the complainant throughout the judicial proceedings, was statements by witnesses, testimony by his accomplices and items of evidence.

8.6 Concerning the allegations relating to prison conditions, and in particular the transfers between one prison and another, which the complainant considers an abuse, the State party points out that, in keeping with the applicable regulations, transfers are decided upon in the light of the different stages of the proceedings, the number of cases and the courts which have competence for specific areas. The prisons are grouped in three categories: for persons held awaiting trial; for persons serving custodial sentences; and semi-open prisons for persons found guilty of ordinary offences, which are authorized to organize agricultural labour. According to the State party, as the status of the complainant had changed from that of remand prisoner to that of a prisoner serving a custodial sentence, and bearing in mind the requirements as to investigations in his case or in other similar cases, he was transferred from one prison to another, in accordance with the applicable regulations. Moreover, the conditions in which the complainant was held, wherever he was held, were in keeping with the prison regulations governing conditions for holding prisoners in order to ensure prisoners' physical and moral safety. The State party also considers baseless the complainant's allegations improperly equating the conditions in which he was held with degrading treatment. It points out that prisoners' rights are scrupulously protected in Tunisia, without any discrimination, whatever the status of the prisoner, in a context of respect for human dignity, in accordance with international standards and Tunisian legislation. Medical, psychological and social supervision is provided, and family visits are allowed.

8.7 Contrary to the allegations that the medical consequences suffered by the complainant are due to torture, the State party rejects any causal link. Moreover, according to the State party, the complainant was treated for everyday medical problems and received appropriate care. Lastly, following an examination by the prison doctor, the complainant was taken to see an ophthalmologist, who prescribed a pair of glasses on 21 January 1997.

8.8 Concerning the allegations that he was denied visits, according to the State party the complainant regularly received visits from his wife Aicha Thabti and his brother Mohamed Thabti, in accordance with the prison regulations, as demonstrated by the visitors' records in the prisons in which he was held.

8.9 Concerning the allegations relating to administrative supervision and the social position of Mr. Thabti's family, according to the State party, the administrative supervision to which the complainant was subject after having served his prison term, and which he equates with ill-treatment, is in fact an additional punishment for which provision is made in article 5 of the Criminal Code. The State party therefore considers that the punishment cannot be regarded as ill-treatment under the Convention against Torture. Lastly, contrary to the complainant's allegations, the State party maintains that the complainant's family is not suffering from any form of harassment or restrictions, and that his wife and his children are in possession of their passports.

Observations by the complainant:

9.1 In his observations dated 20 May 2003, the complainant sought to respond to each of the points contained in the above observations by the State party.

9.2 Concerning the preventive arrangements for combating torture, the complainant considers that the State party has confined itself to listing an arsenal of laws and measures of an administrative and political nature which, he says, are not put into effect in any way. To support this assertion he cites reports prepared by the non-governmental organization "National Council for Fundamental Freedoms in Tunisia" (CNLT).<sup>8</sup>

9.3 In relation to the establishment of a legislative reference system to combat torture, the complainant considers that article 101 bis of the Code of Criminal Procedure was adopted belatedly in 1999, in particular in response to the concern expressed by the Committee against Torture at the fact that the wording of article 101 of the Criminal Code could be used to justify serious abuses involving violence during questioning. He also claims that this new article is not applied, and attaches a list of the victims of repression in Tunisia between 1991 and 1998 prepared by the non-governmental organization "V開it? Action". He also points out that the cases cited by the State party to demonstrate its willingness to act to combat torture relate only to accusations of abuse of authority and violence and assault, as well as offences under the ordinary law, and not to cases of torture leading to death or cases involving physical and moral harm suffered by the victims of torture.

9.4 Concerning the practice of torture and impunity, the complainant maintains that torturers do enjoy impunity, and that in particular no serious investigation has been carried out into those suspected of committing crimes of torture. Contrary to the claims made by the State party, he states that he endeavoured to lodge a complaint with the military court on several occasions, but that the president of the court always ignored his statements relating to torture on the grounds that he had no medical report in his possession. According to the reports prepared by CNLT, the court heard from the various accused and their counsel a long account of the atrocities committed by the officials

of the State security division. According to the complainant, from among the total number of 170 prisoners scheduled to be tried before the Bouchoucha military court, the prison authorities selected only 25 to be given medical checks by military doctors. He claims that he was not informed of this check when he was being held in remand, but learned of it only in court. According to the complainant, the president ignored the fact that the other accused had not had medical checks, and it is false to claim that he himself freely opted not to demand one. When apprised of this fact, the president simply ignored the objections of the prisoners and their counsel, including the complainant, in flagrant breach of the provisions of the law relating to the prisoners' right to a medical report and their constitutional right to be heard, as the CNLT report confirms. According to the complainant, this is proved by the State party's acknowledgement that during the hearing he raised allegations of ill-treatment. In addition, according to the complainant, whereas a State governed by the rule of law should automatically follow up any report of a criminal act which may be regarded as a serious offence, the Tunisian authorities have always contented themselves with dismissing the claims as "false, contradictory and defamatory", without taking the trouble to launch investigations to determine the facts in accordance with the requirements of Tunisian criminal procedure. The complainant considers that his allegations are at the very least plausible in terms of the detail of the torture he suffered (names, places and treatment inflicted), but the State party contents itself with a blanket denial. The complainant did not mention torturers because of their membership of the security forces, but because of specific and repeated attacks on his physical and moral integrity and his private and family life. The initiation of an investigation designed to check whether a person belonging to the security forces has committed acts of torture or other acts does not constitute a violation of the presumption of innocence but a legal step which is vital in order to investigate a case and, if appropriate, place it before the judicial authorities for decision. In relation to appeals before the courts, the complainant considers that the State party has confined itself to repeating the description of legal options open to victims set out in its previous submissions without responding to the last two sentences of paragraph 7.2 of the decision on admissibility. He reiterates that the theoretical legal options described by the State party are inoperative, while listing in support of this conclusion cases in which the rights of the victims were ignored. He points out that the case law cited by the State party relates to cases tried under ordinary law and not to prisoners of opinion.

9.5 Concerning the complainant's inertia and lack of action, he considers that the State party is inconsistent in holding that acts of torture are regarded as serious offences in Tunisian law and accordingly prosecuted automatically, while awaiting a complaint by the victim before taking action. He also re-emphasizes his serious efforts described above to demand a medical examination and an investigation into the torture he had suffered. With particular reference to a report prepared by CNLT,<sup>9</sup> he mentions the circumstances surrounding the medical examinations of 25 prisoners, carried out with the aim of giving an appearance of respect for procedural guarantees, and the lack of integrity of the appointed doctors.<sup>10</sup> He points out that video recordings were made of the hearings in the Bouchoucha military court, which could then be replayed to check each complainant's statements.

9.6 Concerning the allegations relating to the trial, the complainant points out, first, that the dismissal of proceedings against him in 1983 and 1986 took place in a political context of détente (in 1983 and 1984, the phased release of the leaders of the Mouvement de la Tendance Islamique,

which became ENNAHDA in 1989) and the legitimization of a new regime (a presidential amnesty was proclaimed after the 1987 coup d'État), and illustrated the fact that the courts were dependent on the executive branch (as shown in reports prepared by non-governmental organizations).<sup>11</sup> Second, in relation to his refusal of the assistance of counsel, the complainant provides the following corrections and produces a report prepared by CNLT.<sup>12</sup> Appearing before examining magistrate Ayed Ben Gueyid, attached to the Tunis military court, the complainant reiterated his request to be assisted by a court-appointed lawyer or one instructed by his family. The complainant designated Mr. Najib ben Youssef, who had been contacted by his family. This lawyer advised him to consult Mr. Moustafa El-Gharbi, who was able to assist the complainant only from the fourth week of the trial onwards, and was able to pay him only one or two visits in the 9 April prison, under close surveillance by prison guards. In response to the complainant's request for the assistance of a lawyer, the military examining magistrate replied "No lawyer", prompting the complainant to say "No lawyer, no statement". Following this declaration, the complainant reports that he was violently beaten by military policemen, in a room next to the office of the military examining magistrate, during a break which was imposed and ordered by the magistrate. The complainant was then placed in solitary confinement in the 9 April prison in Tunis for two months. Following this punishment, the examining magistrate's file was missing from the first hearing attended by the complainant, a matter which the complainant explained to the president of the court by describing what had happened before the military examining magistrate.

9.7 Concerning the allegations relating to his confession, the complainant maintains that his confession was extracted under torture, and, citing the reports of CNLT, states that such methods are used in political trials and sometimes in trials involving offences under ordinary law. Concerning the testimony of the prosecution witness Mohamed Ben Ali Ben Romdhane, his fellow prisoner, the complainant states that he does not know this person, and that he was not among the 297 persons who were tried in Bouchoucha court, and calls on the State party to produce the transcript of the testimony provided by this person, together with the court file, to make it possible to check whether the court took its decision on the basis of a confession obtained as a result of torture. According to the complainant, the reference to this witness is pure invention on the part of the torturers. Secondly, the complainant points out that, even if a prosecution witness had appeared, the accused should have had an opportunity to challenge his testimony or to confront him, which did not happen.

9.8 Concerning the conditions in which he was held, and concerning visits, the complainant considers that the State party has once again confined itself to brief and general observations in response to his plentiful, specific and substantiated evidence. He explains that he was transferred for purposes of punishment, and not for any matter related to cases pending before the courts, and in that connection provides the following chronology:

6 April 1991 Arrested and held in the basement of the Interior Ministry; 13 May 1991, transferred to Mornag prison incommunicado.

4 June 1991 Handed over to the political police to sign the transcript of the interrogation, without being informed of its content; handed over to the military examining magistrate,

then at 11 p.m. transferred to the 9 April prison in Tunis, where he was held until the end of November 1991 (including two months in solitary confinement).

1 December 1991 Transferred to Borj Erroumi prison in Bizerte (70 kilometres from his family home).

4 July 1992 Transferred to the 9 April prison in Tunis, where he was held until 15 September 1992; this period corresponded to that of the court hearings.

28 August 1992 Sentenced to six years' non-suspended imprisonment and five years' administrative supervision.

15 September 1992 Transferred to Borj Erroumi prison in Bizerte, where he was held until 4 July 1993.

4 July 1993 Transferred to Mahdia prison (200 kilometres from his home), where he was held until 19 September 1993.

19 September 1993 Transferred to Sousse prison (160 kilometres from his home), where he was held until 4 April 1994.

4 April 1994 Transferred to Mahdia prison, where he was held until the end of December 1994.

End of December 1994 Transferred to 9 April prison in Tunis; interrogated and tortured at the Interior Ministry for four consecutive days.

End of December 1995 Transferred to Mahdia prison; hunger strike from the middle to the end of February 1996 to support a demand for better prison conditions.

End of February 1996 Transferred to El Houerib prison in Kairouan (250 kilometres from his home) following his hunger strike.

20 March 1996 Transfer to Sousse prison; three weeks' hunger strike in January 1997 to support a demand for better prison conditions.

7 February 1997 Transferred to Rejim Maatoug prison (600 kilometres from his home, in the middle of the desert).

27 February 1997 Transfer to Sousse prison.

27 May 1997 Released, placed under administrative supervision for five years and house arrest at Nekrif-Remada (630 kilometres from his family home).

1 October 1997 Fled Tunisia.

9.9 The complainant explains that each time he was transferred, his family was obliged to spend two or three months ascertaining his new place of detention, since the prison administration provided such information only very sparingly. According to the complainant, the purpose of these transfers was to deprive him of the psychological and moral support of his family, and thus to punish him. He points out that the prison entry and exit logs can confirm his claims. He explains that denial of visits constituted a form of revenge against him each time he sought to exercise a right and took action to that end, for example in the form of a hunger strike. In addition, the complainant's family found it difficult to exercise the right to visit him because of the many transfers, the remoteness of the places of detention and the conditions imposed on the visitors - the complainant's wife was ill-treated to make her remove her scarf, and guards were permanently present between two sheets of wire mesh about one metre apart separating her from the complainant.

9.10 Concerning the allegations relating to the provision of care, the complainant repeats that he was denied the right to consult a doctor to diagnose the consequences of the torture he had suffered, and draws the Committee's attention to the medical certificate contained in his file. Concerning the treatment cited by the State party, the complainant points out that the medical check was carried out three weeks after his hunger strike, that glasses were prescribed for him when he was in danger of going blind, and that they were supplied only after a delay of about two months.

9.11 In relation to administrative supervision, the complainant considers that any punishment, including those provided for in the Tunisian Criminal Code, may be characterized as inhuman and degrading if the goal pursued is neither the "rehabilitation of the offender" nor his reconciliation with his social environment. He explains that he was forced to undergo administrative supervision 650 kilometres from his family home, in other words placed under house arrest, which was not stipulated in his sentence. He adds that each time he reported to the police station to sign the supervision log, he was ill-treated, sometimes beaten and humiliated by the police officers. According to the complainant, who produces a CNLT report,<sup>13</sup> administrative supervision serves only to bolster the police's stranglehold over the freedom of movement of former prisoners.

9.12 Concerning the situation of his family, the complainant records the suffering caused by the police surveillance and various forms of intimidation. He mentions that his eldest son was repeatedly slapped in front of his brothers and mother at the door of their home when he returned from school, and questioned at the regional police station about what his family was living on. In addition, the members of the family received their passports only after the complainant arrived in Switzerland on 25 May 1998 and was granted asylum. And the first members of the family received their passports only seven months later, on 9 December 1998.

9.13 In relation to the ENNAHDA movement, the complainant maintains that the organization is well known for its democratic ideals and its opposition to dictatorship and impunity, contrary to the State party's explanations. In addition, he challenges the accusations of terrorism levelled by the State party.

9.14 Lastly, according to the complainant, the State party is endeavouring to place the entire burden of proof on the victim, accusing him of inertia and failure to act, seeking protection behind a panoply of legal measures which theoretically enable victims to lodge complaints and evading its duty to ensure that those responsible for crimes, including that of torture, are automatically prosecuted. According to the complainant, the State party is thus knowingly ignoring the fact that international law and practice in relation to torture place greater emphasis on the role of States and their duties in order to enable proceedings to be completed. The complainant notes that the State party places the burden of proof on the victim alone, even though the supporting evidence, such as legal files, registers of police custody and visits, and so on, is in the sole hands of the State party and unavailable to the complainant. Referring to European case law,<sup>14</sup> the complainant points out that the European Court and Commission call on States parties, in the case of allegations of torture or ill-treatment, to conduct an effective investigation into the allegations of ill-treatment and not to content themselves with citing the theoretical arsenal of options available to the victim to lodge a complaint.

### Consideration of the merits

10.1 The Committee examined the complaint, taking due account of all the information provided to it by the parties, in accordance with article 22, paragraph 4, of the Convention.

10.2 The Committee took note of the State party's observations of 3 April 2003 challenging the admissibility of the complaint. It notes that the points raised by the State party are not such as to prompt reconsideration of the Committee's decision on admissibility, notably owing to the lack of new or additional information from the State party on the matter of the investigations voluntarily carried out by the State party (see paragraph 7.2). The Committee therefore does not consider that it should review its decision on admissibility.

10.3 The Committee therefore proceeds to examine the merits of the complaint, and notes that the complainant alleges violations by the State party of article 1, article 2, paragraph 1, article 4, article 5, article 12, article 13, article 14, article 15 and article 16 of the Convention.

10.4 Article 12 of the Convention, the Committee notes that article 12 of the Convention places an obligation on the authorities to proceed automatically to a prompt and impartial investigation whenever there is reasonable ground to believe that an act of torture or ill-treatment has been committed, no special importance being attached to the grounds for the suspicion.<sup>15</sup>

10.5 The Committee notes that the complainant complained of acts of torture committed against him to the Bouchoucha military court at his trial from 9 July 1992 onwards, in the presence of the national press and international human rights observers. It also notes that the State party acknowledges that the complainant reiterated his allegations of ill-treatment several times before the court, in order, according to the State party, to focus the attention of the observers attending the hearing. The Committee also takes note of the detailed and substantiated information provided by the complainant regarding his hunger strikes in the 9 April prison over 12 days in July 1992 in Tunis, and in Mahdia over 8 days in October 1995 and 10 days in March 1996, as a protest against

the conditions in which he was being held and the ill-treatment to which he was subjected. The Committee notes that the State party did not comment on this information, and considers that these elements, taken together, should have been enough to trigger an investigation, which was not held, in breach of the obligation to proceed to a prompt and impartial investigation under article 12 of the Convention.

10.6 The Committee observes that article 13 of the Convention does not require either the formal lodging of a complaint of torture under the procedure laid down in national law or an express statement of intent to institute and sustain a criminal action arising from the offence, and that it is enough for the victim simply to bring the facts to the attention of an authority of the State for the latter to be obliged to consider it as a tacit but unequivocal expression of the victim's wish that the facts should be promptly and impartially investigated, as prescribed by this provision of the Convention.<sup>16</sup>

10.7 The Committee notes, as already indicated, that the complainant did complain of ill-treatment to the Bouchoucha military court, and resorted to hunger strikes in protest at the conditions imposed on him. Yet notwithstanding the jurisprudence under article 13 of the Convention, the Committee notes the State party's position maintaining that the complainant should have made formal use of domestic remedies in order to lodge his complaint, for example by presenting to the court a certificate proving that a complaint had been lodged with the office of the public prosecutor, or displaying obvious traces of torture or ill-treatment, or submitting a medical report. On this latter point, to which the Committee wishes to draw its attention, it is clear that the complainant maintains that the president of the Bouchoucha court ignored his complaints of torture on the grounds that he had no medical report in his possession, that the complainant was informed only during his trial of the medical checks carried out on a portion of the accused during remand, and that the president of the court ignored his demands for his right to a medical report to be respected. On the other hand, the State party maintains that the complainant voluntarily opted not to request a medical examination although the court had ordered such examinations for all prisoners who wished to undergo one. The Committee refers to its consideration of the report submitted by Tunisia in 1997, at which time it recommended that the State party should ensure that medical examinations are provided automatically following allegations of abuse, and thus without any need for the alleged victim to make a formal request to that effect.

10.8 In the light of its practice relating to article 13 and the observations set out above, the Committee considers that the breaches enumerated are incompatible with the obligation stipulated in article 13 to proceed to a prompt investigation.

10.9 Finally, the Committee considers that there are insufficient elements to make a finding on the alleged violation of other provisions of the Convention raised by the complainant at the time of adoption of this decision.

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

12. Pursuant to rule 112, paragraph 5 of its rules of procedure, the Committee urges the State party to conduct an investigation into the complainant's allegations of torture and ill-treatment, and to inform it, within 90 days from the date of the transmittal of this decision, of the steps it has taken in response to the views expressed above.

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

\* Made public by decision of the Committee against Torture.

### Notes

1. The examples cited by the State are available for information in the file.
2. The complainant also refers to communication No. 91/1997, *A. v. Netherlands*, concerning which the Committee against Torture upheld the complaint of a Tunisian asylum-seeker who was a member of the opposition because of the serious risk that he would be tortured if he returned to Tunisia.
3. This includes instruction in human rights values in training schools for the security forces, the Higher Institute of the Judiciary and the National School for training and retraining of staff and supervisors in prisons and correctional institutions; a human-rights-related code of conduct aimed at senior law enforcement officials; and the transfer of responsibility for prisons and correctional institutions from the Ministry of the Interior to the Ministry of Justice and Human Rights.
4. A legislative reference system has been set up: contrary to the complainant's allegation that the Tunisian authorities have not criminalized acts of torture, the State party indicates that it has ratified the Convention against Torture without reservations, and that the Convention forms an integral part of Tunisian domestic law and may be invoked before the courts. The provisions of criminal law relating to torture are severe and precise (Criminal Code, art. 101 bis).
5. Under the Administrative Court Act of 1 June 1972, the State may be held responsible even when it is performing a sovereign act if its representatives, agents or officials have caused material or moral injury to a third person. The injured party may demand from the State compensation for the injury suffered, under article 84 of the Code of Obligations and Contracts, without prejudice to the direct liability of its officials vis-à-vis the injured parties.
6. Administrative Court - judgement No. 1013 of 10 May 1993 and judgement No. 21816 of 24 January 1997.
7. Judgement No. 4692 of 30 July 1996, published in the *Revue de Jurisprudence et de Doctrine* (R.J.:L); judgement No. 8616 of 25 February 1974 R .J .L . 1975; and judgement No. 7943 of 3

September 1973 R.J.L 1974.

8. " Le proc鑢 -Tournant : A propos des proc鑢 militaires de Bouchoucha et de Bab Saadoun en 1992 ", October 1992 ; "Pour la r閑abilitation de l'ind閑pendance de la justice", April 2000-December 2001.

9. Available for information in the file.

10. "The role played by some of the doctors was no less serious, in the sense of what they did during the torture by assisting the torturers [to assess] the state of the victim and the degree of torture the victim could bear [匱 information gathered from the torture victims or from analyses carried out in which famous doctors knowingly concealed the truth about the causes of the injuries suffered by the accused during episodes of physical torture" - CNLT report, October 2002.

11. International Commission of Jurists, report on Tunisia, 12 March 2003.

12. Available for information in the file.

13. Available for information in the file.

14. Guide to Jurisprudence on Torture and Ill-Treatment - Article 3 of the European Convention for the Protection of Human Rights, Debra Long (APT); Ribitsch v. Austria; Assenov v. Bulgaria.

15. Communication No. 59/1996 (Encarnaci髗 Blanco Abad v. Spain).

16. Communications No. 6/1990 (Henri Unai Parot v. Spain) and No. 59/1996 (Encarnaci髗 Blanco Abad v. Spain).