



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

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COMMITTEE AGAINST TORTURE  
Thirty-ninth session  
(5 - 23 November 2007)

**DECISION**

**Communication No. 264/2005**

Submitted by: A. B. A. O. (represented by counsel)  
Alleged victim: The complainant  
State party: France  
Date of the complaint: 24 January 2005 (initial submission)  
Date of present decision: 8 November 2007

Subject matter: Risk of complainant's deportation to Tunisia

Substantive issue: Risk of torture after deportation

Procedural issue: Status of victim

Articles of the Convention: 3, 22

[ANNEX]

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\* 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**

**Thirty-ninth session**

**Concerning**

**Communication No. 264/2005**

*Submitted by:* A. B. A. O. (represented by counsel)

*Alleged victim:* The complainant

*State party:* France

*Date of the complaint:* 24 January 2005 (initial submission)

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

*Meeting on 8 November 2007,*

*Having concluded* its consideration of complaint No. 264/2005, submitted on behalf of A. B. A. O. 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, A. B. A. O., a Tunisian national born on 4 April 1957, was detained in a holding centre in Paris prior to removal when the complaint was submitted. He claims that his forced repatriation to Tunisia would amount to a violation by France of article 3 of the Convention. The complainant is represented by two NGOs, the Centre d'information et de documentation sur la torture (CIDT-Tunisie) and the Collectif de la Communauté Tunisienne en Europe.<sup>1</sup>

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 25 January 2005, asking the Government to submit information and its comments on admissibility and on the merits of

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<sup>1</sup> The initial complaint was submitted by the Centre d'information et de documentation sur la torture (CIDT-Tunisie). The complainant subsequently informed the Committee that he was also represented by the Collectif de la Communauté Tunisienne en Europe.

the allegations. At the same time, pursuant to rule 108, paragraph 9, of its rules of procedure, the Committee 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 19 January 2007.

1.3. In its comments dated 25 March 2005, the State party informed the Committee that, by a decision of 4 February 2005, the French Office for the Protection of Refugees and Stateless Persons (OFPRA) had granted the complainant subsidiary protection. On 15 April 2005, pursuant to rule 109, paragraph 3, of its rules of procedure, the Committee decided to consider the issue of admissibility separately from the merits of the complaint.

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

2.1 On 26 June 2003 an order for escort to the border was issued against the complainant by the prefect of police with a view to his removal to Tunisia. By a decision of 28 June 2003 the Paris Administrative Court revoked the order since it named Tunisia as the destination.

2.2. On 17 January 2005 the complainant was arrested following a routine check and placed in administrative custody with a view to removal to Tunisia. The complainant claims to have been in negotiation with OFPRA at the time of his arrest.

2.3. On 19 January 2005 the prefect of police issued another order for escort to the border. An appeal against this order was rejected by the Paris Administrative Court on 22 January 2005.

### **The complaint**

3.1 The complainant claims that sending him back to Tunisia would constitute a violation of article 3 of the Convention. He points out that he is widely known as an opponent of the Government of Tunisia, which has been pursuing him for many years. Indeed, his wife had been threatened with violence to compel her to divorce him.

3.2 The complainant refers to decision of the Paris Administrative Tribunal 28 June 2003, which notes that he was subjected to pressure and threats by the Tunisian authorities. This decision found that the prefect of police had contravened article 27 of the Order of 2 November 1945, which provides that “no alien may be sent to a country if they prove that their life or freedom would be in danger there or that they would be at risk of treatment contrary to article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms”. On these grounds, the Court revoked the decision of the police prefect, which named Tunisia as the destination.

3.3. The complainant also points out that, during its consideration, at a public meeting, of Tunisia’s second periodic report to the Committee against Torture, the Committee described Tunisia as a country with a “culture of torture”.

### **State party’s observations on admissibility**

4.1 In its observations of 25 March 2005, the State party challenges the admissibility of the complaint. In respect of the facts of the case, the State party maintains that the complainant has entered France illegally and under various identities on several occasions since 1986. On 19 March 1996, following his third illegal entry, he applied to OFPRA for refugee status but

this was denied on 3 December 1999. On 19 February 2001, the Refugees Appeal Board upheld that decision.

4.2. According to the State party, the complainant was taken in for questioning on 24 April 1996 during an operation to break up a counterfeit document ring; the inquiry revealed that he was involved in forged document-trafficking and that he had close links with the radical Islamist movement. On 28 January 1997, the complainant was sentenced to two years in prison, one of them suspended, and a three-year ban on entry to France. He was in prison from 26 April 1996 to 8 February 1997.

4.3. The complainant was again brought in for questioning on 24 June 2003, pursuant to a rogatory commission from the Paris District Court, for criminal conspiracy in connection with a terrorist undertaking. On 17 January 2005, the complainant was again questioned following a check and another order for escort to the border was issued on 19 January 2005. He was put in administrative custody and submitted his complaint to the Committee against Torture on 24 January 2005.

4.4. As regards the complainant's current status in France, the State party notes that he submitted a request for review of his asylum application to OFPRA on 25 January 2005.

4.5. The State party notes that, in its decision of 4 February 2005, OFPRA found that the complainant was not covered by the 1951 Convention relating to the Status of Refugees. OFPRA considered that his activism was driven, not by political motivations but rather by a desire to create the conditions required for subsidiary protection measures and to block his removal.

4.6. OFPRA nevertheless took account of the de facto situation created by the complainant and his activism, whatever the underlying motives, and in the same decision granted him subsidiary protection for one year, renewable, under article 2.II.2 of Act No. 52-893 of 25 July 1952, on the right to asylum, as amended by the Act of 11 December 2003.

4.7. On 11 February 2005, a decision was handed down denying the complainant a residence permit on the grounds that his presence in France constituted a threat to public order. The 19 January order for escort to the border was revoked the same day in light of the changed circumstances, and a fresh order for escort to the border was issued by the prefect of police. At the same time the prefect of police also issued a compulsory residence order since removal to Tunisia was no longer possible in view of the OFPRA decision to grant subsidiary protection.

4.8. That same day the complainant lodged an appeal against the order for escort to the border with the Paris Administrative Court. In its judgement of 4 March 2005, the Administrative Court dismissed the complainant's request for the decision naming the country of destination to be annulled on grounds of the risk entailed in returning to his country of origin. The State party points out that the Court found that the complainant could not be returned to Tunisia by virtue of the subsidiary protection he enjoyed and of the compulsory residence order issued on 11 February 2005.

4.9. The State party emphasizes that, even though the complainant is subject to a removal decision based on the serious public order implications of his behaviour, that decision is now

devoid of all legal effect. The State party argues that the subsidiary protection and the compulsory residence order shield the complainant from implementation of any order for his removal to Tunisia.

4.10 The State party explains that, were OFPRA to withdraw subsidiary protection, the complainant would be able to challenge that decision through the Refugees Appeal Board. Any administrative decision to revoke the compulsory residence order may be challenged through the administrative courts.

4.11 The State party cites two decisions of the European Court of Human Rights (Nos. 42216/98 of 14 November 2000 and 65730/01 of 18 January 2005), in which the Court found that the issuance of a compulsory residence order meant that the applicant was no longer in immediate danger of removal. The Court pronounced the applications inadmissible. The State party cites another two similar cases adjudged in the European Court (Nos. 30930/96 of 7 September 1998 and 53470/99 of 10 April 2003) and argues that, *mutatis mutandis*, the same principles can be applied to the present complaint.

4.12 In the State party's view, therefore, the complainant enjoys strong long-term protection from any risk of treatment that might contravene article 3 of the Convention as a result of the implementation of an expulsion order, and that he consequently cannot claim to be a victim within the meaning of article 22 of the Convention.

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

5.1 On 10 May 2006, counsel conceded that their client no longer ran any risk of being deported to Tunisia now that he had been granted subsidiary protection. Protection had been granted on 4 February 2005 for one year and would be renewed provided it was not lifted by OFPRA.

5.2. On 7 August 2006, the complainant informed the Committee that he wished to maintain his complaint and on 6 October 2006 submitted comments on the State party's version of the facts. He points out that nowhere does the 28 January 1997 judgement state that he had "close links with the radical Islamist movement", that those allegations are unfounded and that the allegations of "criminal conspiracy in connection with a terrorist undertaking" were not upheld by the Court.

5.3. The complainant argues that the decision of 11 February 2005 to deny him a residence permit was taken on the grounds that his presence in France constituted a threat to public order, yet OFPRA had noted, in its decision of 4 February 2005, that "his links with the radical Islamist movement had been driven, not by political motivations but rather by a desire to create the conditions required for subsidiary protection measures". These points attest to an implicit recognition by the State party that the threat to public order is not a real one and that the State party should therefore not have refused to regularize his administrative status.

5.4. As to the admissibility of the complaint, the complainant argues that the protection granted by France is illusory and that, contrary to the State party's contentions, he runs a real risk of being sent back to Tunisia. Revocation of the compulsory residence order is a mere formality and could be carried out at any time, while an appeal to the Administrative Court against such a decision has no suspensive effect. In addition, even though he has the right to

appeal to the Refugees Appeal Board against any OFPRA decision to lift subsidiary protection, such an appeal likewise has no suspensive effect.

5.5 On 9 January 2007, the complainant commented that he is obliged to report to the Saint-Denis Prefecture at regular intervals. This shows that the French authorities are preparing to deport him as soon as the current period of subsidiary protection ends on 4 February 2007.

#### **Additional State party observations**

6.1 On 23 March 2007, the State party informed the Committee that the subsidiary protection measures applied in the complainant's case had been enacted by Parliament in December 2003 and entered into force on 1 January 2004. They are in line with the provisions of article L.721-1 of the Code of entry and residence of aliens and the right to asylum, provisions which may be viewed as anticipated implementation of European Council directive 2004/83/EC of 29 April 2004, on the status of refugees and subsidiary forms of protection.

6.2. The State party recalls that this protection is granted by OFPRA, which, subject to oversight by the Refugees Appeal Board, may withdraw protection by formal decision where there is reason to believe that the threats warranting such protection no longer exist. Subsidiary protection gives rise, subject only to the requirements of public order, to automatic issuance of a one-year temporary residence permit, which is renewable as long as the OFPRA protection is in place.

6.3. Thus application of the subsidiary protection regime is not equivalent to an interim measure under rule 108 of the Committee's rules of procedure. On the contrary, the State party says, it is a measure taken after consideration of the merits of an asylum application.

6.4 The State party emphasizes that in the present case it has no information that might lead it to believe that the factors taken into account in granting the complainant subsidiary protection no longer apply. It therefore repeats that the complainant cannot claim the status of victim insofar as he is in no danger of removal from French territory.

#### **Additional comments by the complainant**

7.1 On 2 May 2007, the complainant reiterates that the revocation of subsidiary protection is a mere formality. He claims that giving him subsidiary protection did not resolve the question of his residence in France, since the French authorities refused to give him a residence permit on the grounds that his presence allegedly constituted a threat to public order. As a result he is not entitled to work or to receive social benefits. This legal limbo in itself constitutes inhuman treatment.

7.2 In support of his claim the complainant submits two letters from NGOs, one dated 1 July 1999 and the other 25 January 2005, a letter dated 8 January 2007 from the social worker at Hôpitaux de Paris, a letter dated 23 February 2007 certifying that he receives no family allowance, and other documents relating to his social situation. He also submits a copy of his police record.

### Issues and proceedings before the Committee

8.1 Before considering any complaint submitted in a communication, the Committee against Torture must decide whether or not the communication is admissible under article 22 of the Convention.

8.2 The Committee notes the State party's argument that the complainant has been granted subsidiary protection and that the State party has received no information that might lead it to believe that the threats taken into account in granting the complainant subsidiary protection no longer exist. The Committee also notes that, in his comments, the complainant only addresses the possibility of being returned to Tunisia and his current status in France and does not dispute the fact that he has been granted subsidiary protection and that no judicial proceedings have been brought against him.

8.3 Given that the OFPRA decision grants the complainant subsidiary protection, that a compulsory residence order was issued by the prefect of police on 11 February 2005, and that as a result the order for escort to the border issued on the same date is not enforceable, the Committee finds that the complainant does not run any direct risk of expulsion.

8.4 In the circumstances, the Committee considers that the author is in no immediate danger of expulsion and therefore declares the communication inadmissible under article 22, paragraph 2, of the Convention as incompatible with the provisions of article 3 of the Convention.<sup>2</sup>

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<sup>2</sup> See CAT/C/22/D/62/1996, *E.H. v. Hungary*, decision of 11 June 1999, para. 6.2.

9. Accordingly, the Committee decides:

(a) That the communication is inadmissible;

(b) That this decision may be reviewed under rule 109 of the Committee's rules of procedure upon receipt of a request by or on behalf of the author containing information to the effect that the reasons for inadmissibility no longer apply;

(c) That this decision shall be communicated to the State party, the author and his representative.

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

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