



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

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COMMITTEE AGAINST TORTURE
Forty-first session
(3-21 November 2008)

DECISION

Communication No. 285/2006

Submitted by: A.A. et al. (represented by counsel)

Alleged victims: The complainants

State party: Switzerland

Date of complaint: 9 January 2006

Date of present decision: 10 November 2008

Subject matter: Risk of complainants' deportation to Algeria

Substantive issues: Risk of torture following removal

Procedural issue: None

Article of the Convention: 3

[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-first session

concerning

Communication No. 285/2006

Submitted by: A.A. et al. (represented by counsel)

Alleged victims: The complainants

State party: Switzerland

Date of complaint: 9 January 2006

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

Meeting on 10 November 2008,

Having concluded its consideration of complaint No. 285/2006, submitted to the Committee against Torture by A.A. et al. 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. The complainant, A.A., an Algerian national of Palestinian origin born in 1971, is currently awaiting deportation from Switzerland. His complaint is also submitted on behalf of his wife and their five children, born between 2001 and 2007. He claims that their forced return to Algeria would constitute a breach by Switzerland of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is represented by counsel.

The facts as presented by the complainants

2.1 In 1997, the complainant was working as a bodyguard for K.A., a very influential retired Algerian army general. One day, on arriving at the General's home, he found the General and several other persons gathered around a corpse. The General threatened him if he did not remain

silent. In 2000, he decided to marry, and his family encouraged him to quit his job. The General wanted to prevent the marriage from taking place, out of fear that the complainant might decide to break his silence. He demanded that the complainant either remain in his job and not get married, or leave the country.

2.2 The complainant left Algeria with his wife in November 2000. They stayed illegally in the Libyan Arab Jamahiriya until June 2001 and then returned to Algeria. Notwithstanding the precautions they took, the General learned of their return and again threatened the complainant. In March 2002, unknown persons opened fire on his house and, the same evening, he was arrested. He was held incommunicado for one week, during which he was interrogated and ill-treated. He believes that the General was behind his arrest and subsequent detention.

2.3 On 2 September 2002, the complainant left Algeria with his family and went to Switzerland. One month earlier, he had applied for a passport, which he received on 18 August 2002. The following day, he also obtained a visa for Switzerland. Following his departure, he was summoned by the Algerian police on three occasions: on 26 September 2002, on 6 October 2002 and on 28 May 2003.

2.4 According to the complainant, the Swiss Embassy in Algiers verified the authenticity of the documents he submitted and sent a report on the matter to the Federal Office for Migration. This report confirmed the identity of the complainant and the fact that he had worked for General K.A., thus corroborating his account.

2.5 On 19 September 2002, the complainant filed an application for asylum. On 31 January 2005, his application was rejected. His appeal of 3 March 2005 was also rejected, on 20 October 2005.

2.6 The complainant has submitted to the Committee a medical report dated 14 February 2006 stating that he is suffering from depression due to post-traumatic stress. Since the rejection of his asylum application, his mental health has deteriorated and he is displaying suicidal tendencies.

The complaint

3.1 The complainant asserts that he was summoned by the police on three occasions and that, according to the third summons, dated 28 May 2003, he was required to appear before a judge on 3 June 2003. This implies that he is to be put on trial, probably at the instigation of General K.A. The summons gives no indication, however, of the charges.

3.2 The complainant fears that, if he is sent back to Algeria, he will face a grave risk of torture and ill-treatment in the meaning of articles 1 and 16 of the Convention. Given the influence of General K.A. in public life in Algeria, public officials were undoubtedly responsible for, or at least consented to or acquiesced in, the events described. The risks faced by the complainant must also be seen in the light of the situation of human rights in Algeria. In this regard, the complainant concludes that his removal to Algeria would be contrary to article 3 of the Convention. He also fears for his life, and it is for this reason that his mental health has deteriorated.

State party's observations

4.1 In its observations of 7 July 2006, the State party maintains that the complainant has not produced evidence that he faces a foreseeable, real and personal risk of being tortured in the event of his removal to Algeria. He has not provided the Committee with any new evidence calling into question the decisions of the Swiss Asylum Appeals Commission (CRA) dated 20 October and 23 December 2005 and 16 January 2006.

4.2 The complainant claims that, in February-March 2002, he was arrested by hooded civilians, who held him for one week in a location unknown to him, where he was interrogated and ill-treated. However, his account of the circumstances of his arrest and his alleged detention lacks credibility. For example, he is unable to describe the interrogations to which he was subjected, and his explanations of the grounds for his arrest remain vague. Moreover, except for his alleged arrest, he has never had any problems with the Algerian authorities.

4.3 The State party does not dispute the existence of the sequelae from which the complainant is suffering, but considers it highly unlikely that they were caused by acts of torture. Indeed, the medical certificate indicates various possible reasons for the complainant's condition, the doctor who examined him saw him only once and, apart from the medical certificate, there is no evidence of the alleged ill-treatment. In addition, during the proceedings before the domestic authorities, the complainant made no reference to the medical certificate.

4.4 The complainant affirmed that he had not been politically active in Algeria. By his own account, his membership of the Fatah movement in the years 1987-1997 in the Syrian Arab Republic and Lebanon - prior to his stay in Algeria, therefore - constituted his only political activity. The State party concludes therefrom that the complainant does not face any risk of being subjected to treatment inconsistent with article 3 on grounds of political activities.

4.5 The complaint before the Committee consists mainly of statements and evidence already put before CRA. This authority noted that neither the police summonses, nor the letter of corroboration from a former work colleague of the complainant's, referred to prosecutorial measures in the meaning of the law on asylum and that these documents were not sufficiently significant to justify a review. For example, the police summonses are virtually silent on the legal grounds and reasons for which the complainant is being sought. Likewise, the undated written testimony of his former work colleague contains no important new information. In addition, it is surprising, to say the least, that the complainant should have submitted this evidence only after the completion of the normal domestic procedures, that is, after the CRA decision of 20 October 2005.

4.6 After considering the case, CRA highlighted numerous inconsistencies that have not been explained by the complainant, either before the national authorities or before the Committee. Several events, as described by the complainant, are illogical or contrary to general experience. It should have been very much in K.A.'s interests for the complainant to remain in Algeria, under his control. Indeed, it is unlikely that the complainant would have waited several months to leave Algeria after quitting his job if he had felt seriously threatened by K.A. Similarly, if K.A. had been as influential as the complainant describes, it is doubtful that the latter would have

encountered no particular problems for more than six months following his return to Algeria in June 2001. Lastly, one month prior to his departure from Algeria, the complainant was issued an Algerian passport, which he presented at the border control on exiting the country. He fails to explain, however, why the security authorities would have allowed him across the border when he was supposedly the object of persecution exposing him to a risk of torture, as demonstrated, according to the complainant, by the police summonses. Nor does he elucidate how his alleged detention remains relevant today, putting him at risk of torture.

4.7 The Swiss authorities characterized the complainant's allegations regarding the existence of a criminal inquiry pending against him as lacking credibility. Even if his claim that he is being sought by the police and risks arrest in the event of his return were credible, article 3 of the Convention offers no protection to a complainant who alleges merely that he fears being arrested on returning to his country.

4.8 In the light of the implausibilities and inconsistencies identified, which are not indicative of a person who actually experienced the problems and treatment alleged, the Swiss authorities ordered the removal of the complainant and his family members to their country of origin, having first meticulously examined the lawfulness, enforceability and practicability of such a measure. On the basis of this examination, there is nothing to indicate the existence of substantial grounds for fearing that the complainant would face a specific and personal risk of being tortured on his return to Algeria.

Complainants' comments

5.1 On 8 September 2006, the complainant informed the Committee that, following his request for the reconsideration of his asylum application, the Swiss authorities had suspended the removal procedure. In support of his new application, the complainant's lawyer had submitted a medical report indicating that the complainant was displaying suicidal tendencies, owing to the profound depression and the post-traumatic disorder from which he was suffering. The complainant attributed these problems to his experiences during his detention in Algiers.

5.2 Regarding the police summonses, the complainant does not know why the grounds were not stated. Nor is he aware of the grounds themselves. As to the observation made concerning his failure to leave Algeria sooner, he maintains that he did not have a passport and that it took time to obtain one. He had to complete all the procedures required for leaving the country in secrecy, so that K.A. would not learn of his intentions and prevent his departure. He stresses the authenticity of the letter from his former colleague indicating that the complainant is still being sought by the police. He also emphasizes that the Swiss authorities should not draw conclusions about his state of health without first having him examined by a doctor.

5.3 Subsequently, the complainant transmitted to the Committee a copy of a medical certificate dated 19 July 2007 stating that his depression and suicidal tendencies had worsened significantly and that he was emotionally unstable. It further stated that he was taking medication and that confinement to a mental hospital should be considered. In addition, he was engaging in violent behaviour, raising fears for his children's physical safety. His state of health was attributable to the trauma he had suffered and the precariousness of his situation in Switzerland.

Issues and proceedings before the Committee

Consideration of admissibility

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

6.2 The Committee notes that there is no obstacle to admissibility, which is not challenged by the State party. Accordingly, the Committee considers the complaint admissible and proceeds to its consideration of the merits.

Consideration of the merits

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

7.2 In assessing the risk of torture, the Committee takes into account all relevant considerations, in accordance with article 3, paragraph 2, of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. The aim of such assessment, however, is to determine whether the individuals concerned would personally risk torture in the country to which they would return. It follows that the existence in a country of a consistent pattern of gross, flagrant or mass violations of human rights does not as such constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture on his or her return to that country. Additional grounds must be adduced to show that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person may not be subjected to torture in his or her specific situation.

7.3 The Committee recalls its general comment on article 3, which states that the Committee must assess whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture if removed to the country concerned. The risk need not be highly probable, but it must be personal and present.

7.4 As to the burden of proof, the Committee again recalls its general comment on article 3 and its case law, which state that the burden is generally on the complainant to present an arguable case and that the risk of torture must be assessed on grounds that go beyond mere theory or suspicion.

7.5 In the present case, the complainant asserts that, in 2000-2001, he was threatened by his former employer, a retired Algerian army general, and that, in 2002, he was arrested, held incommunicado for one week and ill-treated. He claims that, subsequently, he was summoned by the police on three occasions. The State party points out that his account of the circumstances of

his arrest and his alleged detention lacks credibility, that he has been unable to describe the interrogations to which he was subjected and that his explanations of the grounds for his arrest have remained vague. The State party also refers to the lack of evidence of a link between his current state of health and the ill-treatment he claims to have suffered. As to the police summonses, no information is available concerning the reasons for which the complainant is supposedly being sought. The Committee notes that the account submitted by the complainant does not shed any light either on the conditions of his previous detention or on the reasons for which he is being sought by the police now, several years after his departure from Algeria. The Committee takes note of the psychiatric reports submitted by the complainant stating that he is suffering from profound depression and a severe post-traumatic disorder. The main question, however, is whether he currently runs a risk of torture. It does not automatically follow that, several years after the alleged events occurred, he would still be at risk of being subjected to torture if removed to Algeria in the near future.¹

7.6 Taking into account all information made available to it, the Committee considers that the complainant has failed to provide sufficient evidence to demonstrate that he would face a foreseeable, real and personal risk of being subjected to torture if deported to his country of origin.

8. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the deportation of the complainants to Algeria would not constitute a breach of article 3 of the Convention.

[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.]

¹ See communication No. 309/2006, *R.K. et al. v. Sweden*, Views adopted on 16 May 2008, para. 8.5.