



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

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**Committee against Torture**

**Communication No. 437/2010**

**Decision adopted by the Committee at its forty-ninth session, 29  
October to 23 November 2012**

<i>Submitted by:</i>	B.M.S. (not represented by counsel)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Sweden
<i>Date of complaint:</i>	10 August 2010 (initial submission)
<i>Date of decision:</i>	12 November 2012
<i>Subject matter:</i>	Deportation of the complainant to Algeria
<i>Substantive issue:</i>	Risk of torture upon return to the country of origin
<i>Procedural issue:</i>	Non-substantiation of claims
<i>Article of the Convention:</i>	3

## 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-ninth session)**

concerning

#### **Communication No. 437/2010**

*Submitted by:* B.M.S. (not represented by counsel)

*Alleged victim:* The complainant

*State party:* Sweden

*Date of complaint:* 10 August 2010 (initial submission)

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

*Meeting* on 12 November 2012,

*Having concluded* its consideration of complaint No. 437/2010, submitted to the Committee against Torture by B.M.S. on his own behalf 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 of the communication is B.M.S., an Algerian national born on 3 September 1978. He claims he would become a victim of a violation of article 3 of the Convention if he is returned from Sweden to Algeria. The complainant is not represented by counsel.

1.2 Under rule 114 (former rule 108) of its rules of procedure (CAT/C/3/Rev.5), the Rapporteur on new complaints and interim measures, acting on behalf of the Committee, requested the State party, on 19 November 2010, to refrain from expelling the complainant to Algeria while his communication is under consideration by the Committee.

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

2.1 Between 2004 and 2005, the complainant was approached by members of a terrorist group who threatened to kill him and requested that he help them gather information about his employer's money transport routes. The complainant knew that the terrorist group was planning an attack. However, he refused to help them and contacted the police asking for protection. The police refused to help him and told him that if anything happened to the money transport, he would be accused of having provided information to the terrorists. About a month later, a vehicle that was transporting money to the city of Bodvo was

attacked and two terrorists and a police officer were killed. Even though the complainant was not in the vicinity of the armed robbery, the terrorists claimed that the complainant had sold their plan to the police and they started looking for him.

2.2 The complainant contacted the army to inform it about his situation, however the police officer to whom he was telling his story started beating him and accusing him of being a terrorist. He was detained for one night before he managed to escape.

2.3 After this incident, the complainant was wanted by both sides: the authorities and the terrorists. The complainant received eight summonses to present himself to the police, four concerning him and the others concerning his father and brother. On 7 April 2005, 28 April 2005, 15 May 2005 and 26 June 2005, the complainant's father went to the police station to report that, respectively, five, six and three members of a terrorist group came to his house during the night looking for the complainant. On 12 January 2008, the complainant was sentenced in absentia for belonging to a terrorist group and participation in an armed robbery which led to the death of a law enforcement official. He was sentenced to 10 years' imprisonment with forced labour.

2.4 On 1 December 2005, the complainant arrived in Sweden, and on the same day he requested asylum. On 18 September 2007, the Migration Board rejected his request for asylum, while recognizing that terrorist violence is on the decline but still persists, in particular in the east of Algiers. The same could be said of the brutality by law enforcement officials. It noted that the complainant's narration of the facts was not coherent, that one police officer could not represent the whole State and that the complainant did not approach other law enforcement officials with his claims. The Migration Board also noted that the summonses the complainant presented do not contain any mention that he was suspected of a crime but are simple convocations to a police station. On 25 June 2008, his appeal was rejected by the immigration tribunal, which held that the authenticity of the judgement sentencing the complainant was questionable, and on 21 October 2008, the appeal court in Stockholm refused to grant leave to appeal. On 26 November 2009, he was informed that he needed to leave Sweden. On 24 February 2010, the complainant was detained in immigration detention. On 18 October 2010, the complainant refused to board a plane without travel documents and the authorities tried unsuccessfully to force him to board the plane.

### **The complaint**

3. The complainant claims that his expulsion to Algeria would violate article 3 of the Convention. He claims that he would be exposed to a real and personal risk of being imprisoned, where he would certainly be tortured, as he had been sentenced for killing a police officer. Moreover, he claims to be at risk of extrajudicial killing by the terrorists who are on the lookout for him. The terrorists, who would want to seek revenge, as the complainant allegedly revealed their plan of the armed robbery which led to the death of two of their colleagues, would be able to find him in prison or could be held at the same prison. He also claims that the human rights violations in Algeria are systematic.

### **State party's observations on admissibility and merits**

4.1 On 18 May 2011, the State party informed the Committee that the enforcement of the expulsion order against the complainant had been stayed on 19 November 2010.

4.2 On 31 August 2011, the State party submitted its observations on admissibility and merits. The State party questions the complainant's translations of the Swedish court decisions, stating that the translations are of inadequate quality and do not give an accurate picture of the examination made by the Migration Board and the migration courts. It notes that the decision to expel the complainant entered into force on 24 October 2010.

4.3 On the issue of admissibility, the State party notes that it is not aware that the matter has been or is being subject to another procedure of international investigation or settlement. The State party acknowledges that, strictly speaking, all available domestic remedies have been exhausted. However, as according to chapter 12, section 22, paragraph 1, of the 2005 Aliens Act the decision to expel the complainant will become statute-barred on 24 October 2012, the complainant will have the possibility of submitting a new application for asylum and a residence permit, which would entail a full examination of the grounds invoked and be subject to appeal. Therefore, after 24 October 2012, in the light of the alternative remedy still available, it may be said that not all domestic remedies would have been exhausted. In addition to that, the State party submits, in accordance with article 22, paragraph 2, of the Convention, the complainant's claims that he is at risk of being treated in a manner that would amount to a breach of the Convention is not sufficiently substantiated. The State party concludes, therefore, that the communication is manifestly ill-founded.

4.4 On the merits, the State party notes that despite legitimate concerns that may be expressed with regard to the human rights situation in Algeria,<sup>1</sup> the circumstances do not suffice to establish that the expulsion of the complainant would entail a violation of article 3 of the Convention. The complainant needs to show that he would be personally at risk of being subjected to treatment contrary to article 1 of the Convention. On the complainant's personal risk of being subjected to torture in Algeria, the State party submits that: (a) the Migration Board made its decision after having held two interviews with him; and (b) the Migration Court held an oral hearing before delivering its decision. It also notes that the domestic legislation contains the same principles as the Convention and that therefore its migration authorities apply the same test as the Committee to establish whether the complainant would be at a foreseeable, real and personal risk of torture if he was expelled to Algeria. It therefore underlines that great weight must be given to the assessment on the ground made by the State party's migration authorities.

4.5 In support of the complainant's claim that the Algerian authorities consider him to be a terrorist and that he has been sentenced to 10 years' imprisonment with forced labour, the complainant submitted summonses and a judgment of 12 January 2008; in support of his claim that he risks being killed by terrorists, the complainant submitted statements made to the police by his father after the terrorists searched for the complainant at his father's house. The Migration Board and Migration Court both questioned the authenticity of the supporting documentation. They noted that the summonses and statements to the police are copies of simple documents and the certified copy of the judgement had different coloured pixels in all stamps, and came to the conclusion that they are neither original nor of probative weight. In addition, the State party requested an assessment of the certified copy of the judgement by its embassy in Algeria, which commissioned an experienced lawyer to assess the authenticity. The assessment showed that the judgement was forged, as many expressions were missing, the usual phraseology in criminal matters was absent, the name of the accused did not appear in the list of the members of the court and no reference was made to the application of the Attorney General, the article of the Penal Code was incomplete, the expression in absentia did not appear, and forced labour is never specified in a sentence. The State party therefore maintains that there has been no judgement as such pronounced against the complainant at all.

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<sup>1</sup> See for example Amnesty International's annual report on Algeria for 2011; Human Rights Watch, *World Report 2011*; United States Department of State, "Country reports on human rights practices – Algeria" (8 April 2011), the United Kingdom of Great Britain and Northern Ireland, Home Office, *Algeria: Country of Origin Information Report* (14 March 2011); and the report on human rights in Algeria for 2010, published by the Swedish Ministry of Foreign Affairs in July 2011.

4.6 With regard to the complainant's credibility and the veracity of his claims, the State party notes that before the Migration Board, the complainant initially claimed that his passport and driving license were in Algeria. However, during the proceedings, it emerged that the complainant had a valid visa to France. It is worth noting that the complainant never submitted his passport. Nor did he submit the passport he allegedly bought to travel to Sweden, claiming that he was afraid to use his passport with the French visa. To explain this omission, the complainant claimed that the police had asked his brother to submit the complainant's passport. The Migration Board concluded that the complainant has not explained his departure from Algeria and that the possibility of having travelled on a valid visa could not be ruled out. The State party further observes that the complainant had stated that the police did not take his passport when they first searched his home, which is odd considering the crime for which he had been convicted. It further holds that the explanation that he became a suspect when he wanted to provide a tip-off to the police about terrorist activity is not plausible and that the explanation of the way the terrorists made contact with him was not borne out by the facts.

4.7 The State party further notes that the complainant claimed that he applied for asylum on 1 December 2005. However, the facts show that he waited for one and a half months after his arrival before making such a request, which casts doubt over his need for protection. It further notes that before the domestic authorities, the complainant claimed that he had been released after one night of detention, while before the Committee he claimed that he was able to escape. The State party also observes that the complainant was not able to name the terrorist group that allegedly threatened him.

4.8 The State party took the view that the complainant has been unable to show that he is suspected of involvement with terrorists, so there is no reason to believe that he would be imprisoned on his return to Algeria. Therefore, even if the Committee accepted that the complainant was under a real threat of torture by terrorists, which the State party denies, nothing would prevent him from turning to the Algerian authorities to seek protection, especially when it has been shown that he was not suspected or sentenced for involvement with terrorists. It further observes that the complainant has not substantiated his account of his involvement with the police after he had been allegedly approached by terrorists. In any case, it amounts to nothing more than the poor conduct of one single police officer. Moreover, the State party recalls the provisions of article 1 of the Convention, submitting that the complainant's claim that he risks being killed by terrorists falls outside the scope of article 3. Additionally, the State party notes that the complainant left Algeria six years ago and that the latest statement to the police dates from June 2005. Given that lapse of time there is little to suggest that the complainant would still be of interest to the terrorists when he returns to Algeria. In conclusion, the State party submits that the evidence and circumstances invoked by the complainant are not sufficient to show that the alleged risk of torture is foreseeable, real and personal.

#### **The complainant's comments on the State party's observations**

5.1 On 22 November 2011, the complainant submitted his comments on the State party's observations. He notes that this is the first time he has been able to explain his case as well as can be. His qualm is that, during the domestic proceedings, he either did not have a professional interpreter, or that the interpreter was changed during the meeting or that interpretation was done via telephone conference, sometimes with bad reception. In addition, he claims that his account suffered the vagaries of translations from Arabic to French to English in the course of a meeting that was held 500 km away from his place of residence.

5.2 With regard to the general human rights situation in Algeria, the complainant notes the reports mentioned by the State party and maintains that the actual situation is worse, in particular in places of detention, where torture and ill-treatment are rampant.

5.3 He reiterates his allegation that he fears that he would be subjected to torture and killed either by the Algerian authorities or the terrorists inside the prison. The motive of the Algerian authorities is that he was sentenced for being a member of a terrorist organization and responsible for the death of a police officer; and the motive of the terrorists is that they consider him to be a traitor and responsible for the death of two terrorists.

5.4 The complainant maintains that the summonses, as well as the statements made by his father to the police, are true. With regard to the judgement, the complainant argues that the State party breached confidentiality when it asked the Swedish Embassy in Algeria to verify the judgement through an Algerian lawyer. He notes that Algerian citizens working at the Embassy are under surveillance by security services and some of them are working for the security services. Therefore, the complainant is now on the list of the security services. He argues that the State party does not have any right to send a document of the file of an asylum seeker to his country of origin and he does not understand why further investigation was not done in 2008 when he provided the document, but rather on 25 July 2010. The complainant questions the veracity of the document and claims that the date of 25 July 2010 must be a mistake, that it is not an official document as the lawyer's or Embassy's stamp are missing and that without his power of attorney, a lawyer does not have access to a confidential judgement.

5.5 With regard to the delay in applying for asylum, the complainant notes that he felt safe once he arrived in Sweden and that he did not have the necessary information about asylum procedures. In conclusion, the complainant notes that the evidence and circumstances invoked by the State party are not sufficient to show that his communication is inadmissible or without merit. He reiterates that he faces a real risk of torture and degrading treatment.

## **Issues and proceedings before the Committee**

### *Consideration of admissibility*

6.1 Before considering a claim contained in a communication, the Committee must decide whether 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 Article 22, paragraph 5 (b), of the Convention precludes the Committee from considering any communication unless it has been ascertained that all available domestic remedies have been exhausted; this rule does not apply if it is established that the application of domestic remedies has been or would be unreasonably prolonged or would be unlikely to bring effective relief. The Committee takes note of the information provided by the State party that the decision regarding the complainant's expulsion became statute-barred on 24 October 2012, therefore it is no longer enforceable and the complainant is no longer under a threat of being expelled to Algeria. Moreover, he now has the possibility of submitting new asylum applications which will be re-examined in full by the Migration Board, with a possibility of an appeal to the Migration Court and further to the Migration Court of Appeal, if necessary. The Committee is of the view that there is nothing to indicate

that this new procedure would be ineffective, in the case of the complainant, should the facts and circumstances so warrant.<sup>2</sup>

6.3 In the light of the foregoing, the Committee concludes that the present communication is inadmissible under article 22, paragraph 5 (b), of the Convention for failure to exhaust domestic remedies in the sense that there still exists an effective alternative remedy locally.

7. The Committee therefore decides:

(a) That the communication is inadmissible under article 22, paragraph 5 (b), of the Convention;

(b) That this decision may be reviewed under rule 116, paragraph 2, of the Committee's rules of procedure upon receipt of a request by or on behalf of the complainant containing information to the effect that the reasons for inadmissibility no longer apply;

(c) That this decision shall be communicated to the complainant and to the State party.

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

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<sup>2</sup> See communication No. 365/2008, *S.K and R.K. v. Sweden*, decision adopted on 21 November 2011, para. 11.3.