



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

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English
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Committee against Torture

Decision adopted by the Committee under article 22 of the Convention concerning Communication No. 531/2012^{1,2}

<i>Communication submitted by:</i>	L.A.
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Algeria
<i>Date of complaint:</i>	14 August 2012 (initial submission)
<i>Date of present decision:</i>	12 May 2016
<i>Subject matter:</i>	Intimidation and threats against a judge carrying out his functions and failure to conduct an investigation
<i>Procedural issues:</i>	None
<i>Substantive issues:</i>	Right to complain to the competent authorities
<i>Articles of the Convention:</i>	13

¹ Adopted by the Committee at its fifty-seventh session (18 April-13 May 2016).

² The following members of the Committee took part in the consideration of the communication: Essadia Belmir, Alessio Bruni, Felice Gaer, Abdelwahab Hani, Claude Heller Rouassant, Sapana Pradhan-Malla, Ana Racu, Sébastien Touzé and Khening Zhang.

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1. The author of the complaint, dated 14 August 2012, is L.A., an Algerian national born on 30 January 1970, married with three children. He was an investigating judge from 1990 until 2011. He alleges that he is the victim of a violation by Algeria of the Convention, without, however, invoking any articles of the Convention other than article 22. He is not represented by counsel.

The facts as submitted by the complainant

2.1 The complainant was an investigating judge from 1990 until 2011: from 1990 to 1993, at Blida Military Court; from 1993 to 2010, at the civilian courts in Bouira, Médéa and Batna; and subsequently at Guelma Court.

2.2 The complainant emphasizes that the work of investigating judges is extremely sensitive in Algeria, and very difficult when their investigations concern high-ranking individuals or politicians. In the course of his work, he was exposed to attacks and threats each time he investigated such individuals or persons implicated in terrorism cases, and it was for this reason that his wife and daughter had to leave Algeria temporarily in 2007, as their security could no longer be guaranteed.

2.3 At the beginning of 2007, the complainant found a bomb inside a closet situated in front of the door to his apartment. On discovering the bomb, he immediately called the special counter-terrorism squad, which defused it. It turned out to be not an improvised device, but a Russian-made bomb, suggesting that it was not the work of a terrorist group. According to the complainant, only persons close to the army could possess a bomb of that type. He adds that this episode was linked to an investigation he was conducting into a drug trafficking case in which the son of the then Minister of Justice was implicated. The bomb was intended as a warning to the complainant not to pursue his investigation. The authorities, however, categorized the case as an act of terrorism.

2.4 Some time before this incident, a colleague of the complainant's, the investigating judge Chabora Abdel Majid, had had his throat cut while investigating a drug trafficking case. Although he was worried, the complainant continued his work, but acting more carefully, moving house regularly and ensuring his wife's and youngest daughter's safety by arranging for them to leave for France.

2.5 On 5 August 2008, the complainant began an investigation into a major embezzlement case, having obtained the agreement of the public prosecutor. When the investigation was completed, 28 citizens were charged. Most were ordinary people, with the exception of three individuals, namely, the Wali (governor) of Souk Ahras wilaya, the General Secretary of the wilaya and the Director of Administrative Services, all three of whom were suspected of having embezzled 200 million dinars each and losing more than 7 billion dinars. In the course of the investigation, the complainant summoned all of the accused for questioning, but he was unable to question the three aforementioned individuals. He met with a categorical refusal from his superiors, in particular the Chief Prosecutor and the President of the Court and from his superior, the Inspector General of the Ministry of Justice, who on numerous occasions firmly vetoed the summonses.

2.6 Through his inquiries, the complainant succeeded in locating the money embezzled by the Wali of Souk Ahras, which had been deposited in an account at the local development bank. On 26 January 2009, the complainant obtained written authorization from the bank to seize the amount in question. Following the seizure, the complainant received threats and was physically assaulted several times by unknown persons. In April 2009, as he was returning home from work, the complainant was approaching his building when he noticed three armed men about 50 metres away from him. They opened fire on him, injuring his right leg, as a result of which he had to spend nine days in hospital. The complainant adds that, as she was leaving school, his 7-year-old daughter was threatened by

unknown persons, who said to her, while removing her earrings: "Tell your father, the judge, that he can do nothing." After this incident, the complainant's wife and daughter again left Algeria for France, in February 2010. His wife returned to Algeria a few months later.

2.7 Meanwhile, the complainant received four anonymous telephone calls, in which he was enjoined to release the seized funds. He did not yield to this pressure, however, and pursued his inquiries. In February 2010, the investigation was complete, but the disputed funds remained blocked in the bank account.

2.8 In June 2010, the Director General of Police, Colonel Ali Tounsi, a close friend of the complainant's, was assassinated. Officially, the persons responsible for his death were never found. The complainant, however, claims that the death was linked to inquiries that were being conducted into a case involving the embezzlement of oil revenue, in which the Ministry of Energy and Mines was implicated, and also to the Colonel's refusal to grant the market for the supply of police helicopters to the brother of President Bouteflika. Colonel Tounsi had been aware that his life was in danger. Three days before his murder, he had confided in the complainant that he was afraid his opposition would cost him his life. After Colonel Tounsi's death, some of his relatives also disappeared. The complainant, who was very concerned for his safety, shared his fears with the Director of Military Justice. Subsequently, he received several threatening telephone calls.

2.9 On 15 July 2010, the complainant left on holiday for about a month. On his return, he discovered that he had been transferred, without his knowledge, to Guelma Court, where he was to work as a legal adviser on civil law. This post did not correspond either to his training or to his professional experience as an investigating judge, having specialized in criminal law for the previous 20 years. The transfer made it clear to him that his situation would become ever more difficult and that an attempt was being made, before eliminating him completely, first to neutralize him professionally, by stripping him of his powers as an investigating judge.

2.10 Moreover, the complainant discovered that the funds he had ordered to be seized had been released. He was informed by the director of the bank that the latter had received an application signed by the complainant himself for the unblocking of the account in question. The application had obviously been forged and his signature falsified. Following his transfer, no investigating judge had replaced the complainant, so no one could have signed the application on his behalf. On 25 August 2010, the complainant submitted a report to the Chief Prosecutor at Souk Ahras Court denouncing the falsification of his signature. This report was not acted on. Having received no response, the complainant lodged another complaint with the Chief Prosecutor, on 13 September 2010.

2.11 Between late September and early October 2010, the complainant received threatening telephone calls. As he no longer felt at all safe in Algeria, he succeeded in obtaining a visa for his wife, who again left Algeria on 20 October 2010.

2.12 The complainant contacted a friend, a member of the Algerian army, General X, to whom he told everything. He also spoke to the Inspector General of the Ministry of Justice, in November 2010. Following this conversation, on 4 January 2011, the complainant was summoned to the office of the Inspectorate General, where the Inspector General received him with hostility, shouting that it was of course the complainant who had signed the application to the bank. The Inspector General sought to force the complainant to admit that he had signed the application to release the disputed sum of money, in exchange for which he would be granted a promotion. The complainant denied categorically having done so and refused the offer, whereupon the Inspector General attacked him, grabbing an exposed electrical cable and twice pressing the wires to the complainant's chest, inflicting powerful

electric shocks. Overcome with panic, the complainant tried to open the window to escape. The Inspector General then ordered him to leave the office, shouting: "I am the law!"

2.13 On arriving home, the complainant telephoned the Guelma Chief Prosecutor to lodge a complaint. The latter refused to record the complaint but warned the complainant against the Inspector General, who, he emphasized, was all-powerful. Not satisfied with this response, the complainant demanded a hearing at the Ministry of Justice, which he was denied.

2.14 On 23 January 2011, the complainant lodged a formal complaint with the Guelma Chief Prosecutor against the Inspector General of the Ministry of Justice for acts of torture and arbitrary detention. On 9 May 2011, the proceedings in respect of his complaint were discontinued.³ The complainant emphasizes that this decision is not subject to appeal.

2.15 The complainant contacted a friend, a colonel in the army, who told him that he was in danger and should find a secure, secret place in which to hide. The complainant requested permission from the Ministry of Justice to leave the country for medical treatment.⁴ On 10 February 2011, the complainant applied to the Consulate of France for a visa, which he was granted. He then left Algeria definitively for Paris on 16 February 2011.

2.16 On 18 February 2011, the complainant lodged a complaint with the President of Algeria, to which there has been no follow-up. He notes that, following his complaint, the President transferred the Inspector General to another post, in April 2011.

The complaint

3. The complainant alleges that he was the victim of torture and threats because of his work as an investigating judge and the sensitive information in his possession, including in relation to the murder of the Director General of Police. He does not invoke any articles of the Convention other than article 22.

State party's observations

4.1 On 20 June 2013, the State party submitted observations on admissibility and on the merits of the communication.

4.2 The State party maintains, first, that the communication should be declared inadmissible because the complainant has failed to exhaust all domestic remedies. According to the State party, the decision of the Guelma Chief Prosecutor to discontinue proceedings, which was submitted by the complainant, is a forgery. The Guelma Chief Prosecutor affirms that no complaint was ever lodged with his office by the complainant, that he has never signed a decision to discontinue the proceedings in respect of such a complaint and that, moreover, drawing up such a document does not fall within his remit, but rather that of the public prosecutor. After this situation was discovered, a criminal investigation was opened against the complainant for forgery on 7 May 2013, on the basis of a complaint by the Chief Prosecutor, whose signature had been falsified.

4.3 Regarding the merits, the State party notes that, during the month of September 2010, the public prosecutor at Souk Ahras was informed that the complainant had issued a forged order to release seized funds to an accused. He in turn informed the Chief Prosecutor at Guelma Court, who instructed him to institute proceedings. The public prosecutor took the matter to the director of the bank that had executed the order, who confirmed the information and gave him a copy of the order, which, contrary to the requirements of the law, did not bear the stamp of the prosecutor's office, but instead that of the second

³ Decision in the file.

⁴ The complainant suffers from renal failure.

investigating chamber, and the falsified signatures of the investigating judge of that chamber and his clerk.

4.4 Pursuant to a decision of the Supreme Court, a criminal investigation was then opened by the investigating judge at Skikda; as a judge, the complainant benefited from jurisdictional privilege. The complainant was summoned for questioning several times by the investigating judge but did not appear, which had led the latter to draw up a warrant, on 15 June 2011, for the complainant to be brought before him. As the latter persisted in his refusal to appear, the investigating judge issued a warrant for his arrest on 28 June 2011.

4.5 Once the investigation was complete, the investigating judge at Skikda referred the case back to the Indictments Chamber, which, on 19 September 2011, issued an order committing the complainant for trial before the criminal court sitting at Skikda, where he would face charges of forgery of public documents and abuse of office, which are offences under article 214 of the Criminal Code and article 33 of Act No. 06.01 on preventing and combating corruption.

4.6 On 23 November 2011, the criminal court sitting at Skikda handed down a judgment convicting the complainant in his absence and sentencing him to life imprisonment.

4.7 The State party says the rest of the facts alleged by the complainant are no more than a “series of inventions and falsehoods not worthy of further attention”.

Complainant’s comments on the State party’s submission

5.1 On 24 February 2014, the complainant contested the State party’s arguments and reiterated his allegations in their entirety. He maintained in particular that the State party had not provided any response to his allegations or any evidence in support of its own accusations. He attaches copies of the reports which he had sent to the prosecutor, just after he had been informed that, in his absence, his signature had been falsified in order to draw up a forged release order, and which he had submitted to the prosecutor a second time, in person, on 13 September 2010.

5.2 The complainant denies having been summoned to appear before the investigating judge at Skikda Court, as the State party claims.

Additional submissions by the complainant

6.1 On 20 November 2014, the complainant informed the Committee that death threats had been made against him on 6 November 2014 in front of El-Ihsan Mosque, in Argenteuil, France, where he is now living, by two individuals, whom he named and who claimed to be agents of the Intelligence and Security Department (DRS). They enjoined him to withdraw the complaint he had submitted to the Committee, adding: “Otherwise, you’re dead.” The complainant filed a complaint with the Argenteuil police, on 8 November 2014, for death threats. He attached to his submission a copy of an article from the 6 July 2014 edition of the Algerian daily *El Watan* detailing his complaint to the Committee. According to the complainant, this was what triggered the death threats made against him.

6.2 On 5 February 2015, the rapporteur on reprisals under article 22 requested the State party to take all necessary measures to protect the life, safety and personal inviolability of the complainant and to ensure that he did not suffer any irreparable harm. The State party was given 30 days, until 6 April 2015, to inform the Committee of the measures taken pursuant to this request. No response has been received.

6.3 On 7 May 2015, the complainant informed the Committee that the investigation into the death threats had been completed and that the case had been referred to the Pontoise

Court of Major Jurisdiction (*tribunal de grande instance*), where a hearing was scheduled for 21 October 2015.⁵

6.4 On 5 June 2015, the complainant informed the Committee that his sister, who lives in Algeria, had been threatened and that her house had been damaged, unknown persons having blocked all the entrances with concrete and armoured doors.

6.5 On 27 November 2015, a reminder was addressed to the State party, in which reference was made to the letter dated 5 February 2015 from the above-mentioned rapporteur, asking the State party to inform the Committee of the measures it had taken pursuant to the rapporteur's request.

6.6 On 8 February 2016, the complainant informed the Committee that, on 8 January 2016, the French National Court on the Right of Asylum had granted him refugee status, along with his wife and three children.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 The Committee has ascertained, as it is required to do under article 22 (5) (a) of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

7.2 The Committee notes that the State party has contested the admissibility of the complaint on the grounds of non-exhaustion of domestic remedies, since it considers the decision of the Guelma Chief Prosecutor to discontinue proceedings, which was submitted by the complainant, to be a forgery. The Committee notes, however, that, other than this assertion, the State party has not responded in any way to the facts presented by the complainant. The Committee finds that, under the circumstances, the inaction of the competent authorities has made it unlikely that any remedy that might provide effective relief can be initiated. The Committee therefore finds that it is not precluded from considering the communication under article 22 (5) (b) of the Convention.

Consideration of the merits

8.1 The Committee has examined the complaint in the light of all information made available to it by the parties, in accordance with article 22 (4) of the Convention.

8.2 The Committee notes the complainant's claim that, because of his work as an investigating judge, he was the victim of a plot and of intimidation and threats to his physical integrity by various officials of the State party between 2009 and 2011. The complainant has alleged, moreover, that on 4 January 2011 he was the victim of acts of torture by the Inspector General, who sought to force him to admit that he had signed the application to release the 160 billion Algerian dinars that the complainant, in his capacity as investigating judge, had ordered to be blocked in the context of an investigation into embezzlement.

8.3 The Committee has taken note of the State party's submission, in which it gives a different account of the facts, without, however, responding to the allegations documented by the complainant. The Committee further notes that the complainant has provided a certain number of documents, notably a copy of the complaint he addressed to the Guelma Chief Prosecutor on 23 January 2011, in which he relates his assault by the Inspector General on 4 January 2011. The State party has not denied these claims.

⁵ The complainant has provided no further updates in this regard.

8.4 The Committee also observes that, while the State party has maintained that, from September 2010, the complainant was under investigation for using forged documents with intent to defraud, it appears from the file that on 20 January 2011 he requested permission to leave the territory, which was granted on 10 February 2011, and that he was then able to obtain a visa for France; this would seem to suggest that there were no proceedings pending against him at the time of his departure from the country and to support the complainant's version of events, to which the Committee gives due weight.

8.5 The parties' divergent accounts notwithstanding, the Committee recalls that it is incumbent on States parties to ensure that any individual who alleges he or she has been subjected to torture in any territory under their jurisdiction has the right to complain and to have his or her case promptly and impartially examined. The State party has provided no justification for its failure to take action in respect of the threats made against the complainant from 2009, followed by acts of violence committed against him by the Inspector General in January 2011. After his arrival in France, the threats against the complainant and his family continued, and the State party has likewise declined to make any comment in that regard, despite the Committee's requests that it should take all necessary measures to protect the personal inviolability of the complainant and his family and that it should inform the Committee of the measures taken.

8.6 The Committee notes that the complainant has not made any specific claims under provisions of the Convention. Nevertheless, in the light of the information made available to it and without characterizing the acts to which the complainant was subjected, the Committee concludes that the State party has failed to fulfil its responsibility under article 13 of the Convention to guarantee the complainant's right to lodge a complaint, which presupposes that the authorities provide a proper response to such a complaint by launching a prompt and impartial investigation.⁶

8.7 The Committee, acting under article 22 (7) of the Convention, finds that the facts before it disclose a violation of article 13 of the Convention.

9. Pursuant to rule 118 (5) of its rules of procedure (CAT/C/3/Rev.6), the Committee urges the State party to: (a) conduct an independent, transparent and effective investigation into the events in question; (b) take all necessary measures to prevent any threats or acts of violence to which the complainant and his family might be exposed, in particular as a result of having lodged the present complaint; and (c) inform the Committee, within 90 days of the date of transmittal of this decision, of the steps it has taken in response to the views expressed above.

⁶ See communication No. 402/2009, *Abdelmalek v. Algeria*, 23 May 2014, para. 11.7.