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International Covenant on Civil and Political Rights

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Views

Communication No. 1544/2007

Submitted by:	Mehrez Ben Abde HAMIDA (represented by counsel, Mr. Stewart Istvanffy)
Alleged victim:	The author
State party:	Canada
Date of communication:	22 January 2007 (initial submission)
Document reference:	Special Rapporteur's rule 92 decision, transmitted to the State party on 26 January 2007 and 29 March 2007 (not issued in document form)
Date of decision:	18 March 2010

* Made public by decision of the Human Rights Committee.

Subject matter:	Expulsion to Tunisia after rejection of an asylum application
Procedural issues:	Inadmissibility
Substantive issues:	Effective remedy, torture and cruel, inhuman or degrading treatment or punishment, right to life, right to protection from unlawful interference with privacy and family, right to a family, equality before the law and equal protection of the law
Articles of the Covenant:	2, 6, 7, 17, 23 and 26
Articles of the Optional Protocol	2 and 3

On 18 March 2010, the Human Rights Committee adopted the annexed text as the Committee's Views under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 1544/2007.

[Annex]

Annex

Views of the Human Rights Committee under Article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights (Ninety-eighth session)

concerning

Communication No. 1544/2007**

Submitted by:	Mehrez Ben Abde HAMIDA (represented by counsel, Mr. Stewart Istvanffy)
Alleged victim:	The author
State party:	Canada
Date of communication:	22 January 2007 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 18 March 2010

Having concluded its consideration of communication No. 1544/2007, submitted to the Human Rights Committee by Mehrez Ben Abde Hamida under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1.1 The author of the communication is Mehrez Ben Abde Hamida, a Tunisian national, born on 8 October 1967. When he submitted his communication, he was living in Canada where an expulsion order, effective as of 30 January 2007, had been issued against him. The author claims to be a victim of the violation, by Canada, of articles 2, 6, 7, 17, 23 and 26 of the International Covenant on Civil and Political Rights. He is represented by counsel, Mr. Stewart Istvanffy.

1.2 On 26 January 2007, pursuant to rule 92 (previously rule 86) of its rules of procedure, the Committee acting through its Special Rapporteur on New Communications and Interim Measures, asked the State party not to expel the author to Tunisia pending consideration of his case. On 14 March 2007 the State party granted this request, but asked

** The following members of the Committee participated in the examination of the present communication: Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Mahjoub El Haiba, Mr. Ahmad Amin Fathalla, Ms. Helen Keller, Mr. Rajsoomer Lallah, Ms. Zonke Zanele Majodina, Mr. Michael O'Flaherty, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabian Omar Salvioli and Mr. Krister Thelin.

the Special Rapporteur to lift the interim measures. On 29 March 2007 the Special Rapporteur, considering that the author's claim was *a priori* well founded, rejected the State party's request.

The facts as submitted by the author

2.1 The author arrived in Canada on 2 October 1999, where he claimed refugee status, alleging that he had a well-founded fear of persecution in his country on account of his political opinions. He says that, at the age of 18, he was taken on as an administrative assistant in the security service of the Tunisian Ministry of the Interior. In 1991 he was promoted to the rank of auxiliary police officer and transferred to the Political Security Directorate of the Ministry of the Interior. In the course of his duties, he realized that force was used in the conduct of police inquiries and decided to resort to subterfuge so as not to participate in such acts. After numerous requests he managed to be transferred to another directorate and often found excuses to be absent from work. In 1993 he was transferred to the Ministry's detention centre where he was instructed to guard detainees. In March 1996 he disobeyed a strict order from his superiors not to feed detainees by offering some of his meal to a hungry young detainee. For this act, he was disarmed, interrogated, accused of sympathizing with political prisoners and placed under arrest for five months before being dismissed. After his release in August 1996, the author attempted to leave Tunisia, but he was stopped at the airport because he had no exit visit from the Director of the Security Services. He was then placed in detention for one month. On leaving prison he was subjected to very strict administrative surveillance, which required him to present himself twice a day to the security service to sign a surveillance register.

2.2 The author managed to leave Tunisia three years later by bribing an employee of the Ministry of the Interior to issue him with a new passport. The author obtained a Canadian and an American visa on the strength of a forged employment certificate as an artistic director of a company, but he chose Canada. The author waited for three months after his arrival as a visitor in Canada on 2 October 1999 before claiming refugee status on 10 January 2000.

2.3 On 1 May 2003 the Immigration and Refugee Board ("the Board") rejected the author's asylum application for two main reasons: first, the Board found that the author had not discharged the burden of proving that he had a well-founded fear of persecution in Tunisia on account of his political opinions. In this connection, the Board noted inconsistencies in the author's allegations, namely that, contrary to his statement that, after dismissal from the police, he was unable to keep a job, the author's identity card described him as the technical director of a company in July 1998. The author had then stated that he had obtained that document with a bogus attestation of employment, but the Board was not convinced by that explanation. The Board noted that the author had not been able to adduce any evidence that he had suffered from reprisals after feeding a detainee and had been unable to explain how he managed to leave the country so easily on a new passport, since freedom of movement at the Tunisian border was strictly controlled. In the Board's opinion, that would suggest that the author was not being sought by the authorities. The fact that the author had waited for three months after his arrival in Canada before claiming refugee status was interpreted by the Board as being at odds with his alleged subjective fear of persecution and consequently as a factor that undermined his credibility.

2.4. Secondly, in the light of the evidence, the Board held that the provisions of the Convention relating to the Status of Refugees (hereinafter referred to as "the Convention") should not be applied to the author by virtue of article 1(F) (a) and (c).[1] The Board took the

[1] "Article 1 ...

view that, as a member of the Political Security Section of the Ministry of the Interior from 1991 to 1993, he had been aware that torture was a routine practice of that section, but he had not shown that he had made a serious effort to dissociate himself, or resign, from that section. The Board considered that that section had the characteristics of an organization "with a limited, brutal purpose" and, applying the pertinent Canadian case law,[2] it arrived at the conclusion that mere membership of this section was sufficient to infer that there were good reasons for thinking that the author had perhaps committed one of the crimes listed in article 1(F) (a) and/or (c) during his years in police service. The Board therefore held that the author was excluded from the application of the Convention. The author attempted to appeal against the Board's decision, but the Federal Court of Canada rejected the application for judicial review on 17 October 2003, without a hearing.

2.5 On 6 December 2004 the author submitted a request for a Pre-Removal Risk Assessment (PRRA), which was rejected on 21 February 2005. An application for judicial review of that decision was lodged with the Federal Court on 23 June 2005, together with an application for stay of deportation. This stay was granted without a hearing and the PRRA decision of 21 February 2005 was set aside by the Federal Court on 16 September 2005. In its decision, the Federal Court ordered that a fresh PRRA decision should be reached by another immigration officer. The file was passed on, but on 30 June 2006 the immigration officer responsible for the new PRRA decision again rejected the request. The decision repeats the statement that the author may not claim refugee status because his application was rejected under article 1(F) of the Convention by the Board. In consequence thereof, the assessment was restricted to an analysis of the risk referred to in section 97 of the Immigration and Refugee Protection Act. Despite further evidence presented by the author, the new PRRA decision arrived at the same conclusions as that of 21 February 2005, namely that, in view of his profile and the manner in which he had left Tunisia, the author had been unable to show that there were substantial grounds for believing that he would be subjected to torture or to cruel treatment or punishment, or that his life would be in jeopardy if he was returned to Tunisia. His request for protection was therefore rejected. An application for judicial review of the PRRA decision was rejected by the Federal Court on 16 November 2006 without a hearing.

2.6. In 2004 the author submitted a sponsored application for residence on humanitarian grounds on the basis of his marriage since 2003 with a woman from Canada, with whom he had been living since 2001. This application was considered at the same time as the second PRRA request by the same officer and rejected on the same date, 30 June 2006. Although the decision acknowledged the author's genuine marriage to a Canadian citizen, his financial and psychological support of his wife and her psychological problems due to the author's long immigration procedures, greater importance was attached to the fact that the Convention relating to the Status of Refugees did not apply to the author on account of crimes to which he had probably been an accessory during his service in the Tunisian political police between 1991 and 1993. The decision gave very little weight to the author's

F. The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:

(a) He has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

...

(c) He has been guilty of acts contrary to the purposes and principles of the United Nations."

Article 1F of the Convention has been incorporated into Canadian law by article 2 (1) of the Immigration and Refugee Protection Act.

[2] *Ramirez v. Canada* (Minister of Employment and Immigration), (1992) 2 F.C. 306.

arguments regarding the risk he would run if he returned to Tunisia, since it first found that his personal profile was no proof that he would be threatened by the Tunisian authorities if he returned. Since the author had not therefore demonstrated the existence of any exceptional circumstances, he should not be exempted from the normal procedure for applying for permanent residence, an application which he would therefore have to submit in Tunisia. A request for judicial review of this decision was rejected without a hearing by the Federal Court on 26 November 2006.

2.7 On 6 December 2006, the author submitted another request for a PRRA which is still pending.

2.8 The author was served with an expulsion order inviting him to present himself at Montreal airport on 30 January 2007 for final departure to Tunisia. A further application for a stay of execution of the removal order, which also challenged the PRRA decision of 30 June 2006, was lodged. The Federal Court rejected the application on 22 January 2007 pursuant to the principle of res judicata.

The complaint

3.1 In his initial communication, the author states that Canada has violated or, if it expelled him, would violate articles 2, 6, 7, 17 and 26 of the Covenant. He holds that the legal and administrative procedures applied to him are inconsistent with the guarantees set forth in article 2 of the Covenant. In particular, he emphasizes that the PRRA remedy must be deemed illusory, because the staff processing these applications are trained to reject them. He draws attention to the fact that the members of staff in question are employees of the Ministry of Immigration who do not possess the institutional independence and impartiality required before courts.[3] The author likewise contends that the procedure of applying for residence on humanitarian grounds is a chancy remedy, because the immigration officers handling it are of a very low grade and are not independent of the Government either. In his opinion, these remedies are a matter of discretion. The author notes that, when his file was examined under this procedure, the decision was virtually automatic in that, since it had been ruled that he was not covered by the Convention relating to the Status of Refugees, his residence application was rejected ipso facto. His marriage and his wife's rights were not considered and no study of proportionality was made to determine whether he really constituted a risk to Canada. The author takes issue with the fact that the PRRA decision of 30 June 2006 ignored and failed to mention a number of items of evidence in the file, namely a wanted notice of the Tunisian police, letters of support from various human rights organizations and from Radhia Nasraoui, a Tunisian lawyer. Similarly the author takes issue with the fact that the latest decision of the Federal Court (22 January 2007) disregarded proof, which in his opinion, demonstrates the real danger that he would run if he were expelled to Tunisia. The author stresses that the remedies for challenging his deportation are ineffective and of no avail.

3.2 The author refers to systematic human rights violations in Tunisia, including the routine practice of torture. He further submits that his expulsion would jeopardize his life and physical inviolability, in violation of article 6 of the Covenant. He contends that he would be regarded as a political opponent by the Tunisian authorities owing to his former

[3] The author refers to the decision of the European Court of Human Rights in *Chahal v. the United Kingdom, 1996*, 23 E.H.R.R. 413, and the concluding observations of the Committee against Torture (2000) on the third periodic report of Canada, where the Committee, noting that "both the review of security risk and the review of the existence of humanitarian and compassionate grounds are carried out by the same governmental body" said that it was concerned by "the alleged lack of independence of decision-makers" (para. 58 (f)).

attitude in the police and his claim of refugee status in a democratic country. For this reason, return would certainly mean detention in inhuman conditions. The author could also disappear.

3.3. The author submits that his expulsion would expose him to a risk of torture, in violation of article 7 of the Covenant. He refers to the conclusions of the Committee against Torture and the Human Rights Committee. He notes that, although various Canadian authorities have acknowledged that he used to work as a policeman in Tunisia, they did not conclude that he would therefore be under threat if he were to return. The author emphasises that a wanted notice has been issued against him by the Tunisian authorities and that his mother was summoned in September 2006, something which, in his opinion, shows that he would be in real danger if he were expelled to Tunisia.

3.4 As far as articles 17 and 23 are concerned, the author submits that his return would amount to illegal interference in his private life and would break up his family without any justification, because he does not constitute any danger to the public. He adds that he is the economic mainstay of his wife with whom he has lived for more than five years and to whom he has been married for three, a marriage entered into in good faith and recognized as such by the Canadian authorities.

3.5 Although the author also relies on a violation of article 26 of the Covenant, he does not substantiate this allegation in his complaint.

The State party's observations on admissibility and merits

4.1 In its observations of 11 December 2008, the State party refers to the Committee's general policy of not evaluating evidence or reviewing facts as established by the domestic courts, but of confining itself to ascertaining whether the latter have interpreted domestic law in good faith and in a manner that is not manifestly unreasonable. It disputes the admissibility and the merits of the communication and contends that the communication is inadmissible and unfounded. The State party notes that since the author's last PRRA request, which he presented on 6 December 2006, is still pending, he has not therefore exhausted domestic remedies. The State party asserts, however, that it will not yet object to the admissibility of the communication, without prejudice to its right, at a later stage, to plead that it is inadmissible because domestic remedies have not been exhausted. The State party notes that the facts of the communication are identical to those presented to various Canadian authorities which found that the author did not have serious grounds for believing that he was likely to be subjected to torture or ill-treatment, or that his life would be in danger, if he had to return to Tunisia. The Committee is not therefore competent to re-evaluate the evidence or the findings of fact or of law adopted by the Canadian courts.

4.2. As far as the violation of article 2 is concerned, the State party considers that his claim is incompatible with the provisions of the Covenant and therefore inadmissible. It refers to the Committee's earlier decisions[4] that this article confers an accessory rather than an autonomous right, which may be exercised only after another violation of the Covenant, has been found to have occurred. Consequently and insofar as the author has relied on article 2 in isolation, this allegation should be rejected by the Committee as inadmissible under article 3 of the Optional Protocol. Subsidiarily, the State party considers that there has been no violation of article 2, because in Canada there are many remedies offering protection against return to a country where there might be a risk of torture or other

[4] Communication `No. 1153/2003, *Huamán v. Peru* (Views adopted on 4 October 2005), para. 5.4, communication No. 275/1988, *S.E. v. Argentina* (inadmissibility decision adopted on 26 March 1990) and communication No. 345/1988 *R.A.V.N. v. Argentina* (inadmissibility decision adopted on 26 March 1990).

prohibited treatment. These remedies are open to judicial review subject to the permission of the competent court. The Committee and the Committee against Torture have considered PRRA requests and requests for exemption from the application of the normal provisions of immigration law on humanitarian grounds to be effective remedies.[5] As for the author's allegations regarding the quality, independence and impartiality of PRRA remedies and appeals on humanitarian grounds, the State party submits that the Committee's role should be confined to examining the instant case, rather than assessing the Canadian system for determining refugee status.[6]

4.3 With regard to the claims that articles 6 and 7 would be violated if the author were returned to Tunisia, the State party argues that the conclusions adopted by various domestic courts in the light of the facts, refute these allegations. The author has been unable to substantiate his allegations that, if he were returned to Tunisia, his life would be threatened and he would risk torture or ill-treatment. All the pertinent bodies have ruled that the author's arguments are not credible and that he has adduced no evidence in support of his assertions. The author has been unable to explain the delay in producing the wanted notice concerning him. Moreover the fact that he has been detained by the Tunisian authorities in the past does not signify that he risks persecution in the future. Numerous documentary sources consulted by the Canadian authorities have also revealed that only opponents of the Tunisian regime are at risk of persecution by the authorities. Since the author has not shown that he belongs to this category, he has therefore failed to establish that prima facie he would face a real, personal risk of a breach of his rights under articles 6 and 7. The communication must therefore be declared inadmissible in respect of these two provisions.

4.4 With regard to the contentions concerning articles 17 and 23, the State party emphasizes that the application of the Immigration and Refugee Protection Act does not entail a violation of these articles. As far as article 17 is concerned, the State party refers to general comment No. 16 of the Committee, which defines the notions of arbitrary or unlawful interference with privacy. As for article 23, the State party refers to Committee's general comment No. 19 and notes that the Covenant does not guarantee the right of a family to choose the country in which to settle and that Governments enjoy wide discretion when expelling aliens from their territory. In addition, when he married, the author could not ignore the fact that he was in a precarious situation, without any status in Canada. Articles 17 and 23 do not guarantee that a person will never be removed from the territory of a State party if that would affect that person's family life.[7] The return of an individual to a country where the rest of his family is living will violate article 17 only if immigration laws are arbitrarily applied or conflict with the Covenant's provisions.[8] In the present case, the author has not established a prima facie violation of articles 17 and 23. The communication must therefore be deemed inadmissible with respect to these articles.

4.5 In the opinion of the State party, the author has been unable to demonstrate a prima facie violation of article 26. The author's allegations that the process for determining refugee status, especially the PRRA procedure, is biased and lacks independence, are

[5] Communication No. 1302/2004, *Khan v. Canada* (inadmissibility decision adopted 25 July 2006), para. 5.5 and communication No. 273/2005, *T.A. v. Canada* (Committee against Torture) (inadmissibility decision adopted on 15 May 2006), para. 6.4.

[6] The State party refers to communication No. 15/1994, *Khan v. Canada* (Committee against Torture) (Views adopted on 15 November 2004), para. 12.1.

[7] The State party refers to communication No. 538/1993, *Stewart v. Canada* (views adopted on 1 November 1996).

[8] The State party refers to communication No. 35/1978, *Aumeeruddy-Cziffra and 19 Other Mauritian Women v. Mauritius* (Views adopted on 9 April 1981), para. 9.2.

unrelated to any of the forms of discrimination prohibited by article 26 and are not substantiated by any pertinent facts.

4.6. Subsidiarily, if the Committee were to take the view that the author's communication is admissible the State party submits that it is ill-founded for the same reasons as those put forward in respect of the plea that it is inadmissible.

Author's comments on the State party's submission

5.1 In his submissions filed on 18 July 2008 the author maintains that his communication is well founded and supported by conclusive evidence which was not examined by the Canadian authorities after the first refusal of the asylum application by the Board. He explains that he did not present the wanted notice until four years after it was issued because it took him that long to obtain the document. The author likewise mentions other evidence which was not considered, such as his mother's summons, a letter from his family, letters of support from Amnesty International, the Association for Human Rights in the Maghreb, the Quebec League of Rights and Liberties, a member of Parliament and Radhia Nasraoui, a Tunisian lawyer. He notes that this evidence is not mentioned in the State party's submission either. The author holds that the large-scale abuse of human rights in Tunisia is unquestionable,[9] as is objective proof of known danger to his person if he were to return to Tunisia. He faces real, personal danger and several documents in support of his application, which were ignored in the Canadian decisions, demonstrate the Tunisian authorities' interest in detaining him. If he were to return, he might be tortured or executed extrajudicially.

5.2 With regard to his right to respect of his family life, the author argues that many Canadian decisions disregarded the existence of his wife and his family life. The breakup of his family, which would be a direct, unavoidable consequence of his removal, would clearly be arbitrary. His removal would violate the principle of proportionality, according to which the Canadian authorities ought to have taken account of the fact that he has been living in Canada for nine years,[10] and has been married to a Canadian woman for five years. The decision on his application for residence on humanitarian grounds, which found that he would not have excessive difficulty in applying for residence from Tunisia, is illogical and pays no heed to the human rights situation in Tunisia.

Additional observations of the State party

6.1 In its observations of 11 December 2008, the State party, referring to recent information on human rights violations in Tunisia, notes that, according to these sources, Tunisian State repression is particularly directed at political opponents, human rights defenders and terrorist suspects. The State party reiterates that the author has not shown that he would run a real personal risk of torture and that he is not credible. It observes that his comments contain nothing which would permit the Canadian authorities to alter their conclusions.

6.2 The State party notes with regard to the evidence mentioned by the author that it was presented only with the most recent PRRA request submitted by the author on 6 December 2006. This request will not be examined as long as the author's return has been stayed. The letters of support from various human rights organizations merely echo the author's allegations and are not corroborated by objective proof. The letter from his family does not constitute independent, objective evidence and is therefore of little probative value. The

[9] Reference is made to the Judgment the Grand Chamber of the European Court of Human Rights in *Saadi v. Italy*, Application No. 37201/06 of 28 February 2008.

[10] And therefore now for 11 years.

summons issued to his mother does not indicate its purpose and it would be mere speculation to infer that it was connected with the author. With regard to the letter from the lawyer Radhia Nasraoui,[11] the State party notes that removal to Tunisia does not necessarily entail any risks for the author.[12] The fact that a person who has been returned might be questioned on arrival by the Tunisian immigration services does not mean that that person would be detained or tortured. In the present case, the evidence adduced does not suggest that the author is likely to be tortured or to be subjected to ill-treatment. The State again asserts that it has been found that the wanted notice issued with respect to the author does not prove that he is wanted in Tunisia.

6.3 As for the author's right to respect for his family life, the State party contends that the principle of proportionality has not been violated. The author married when his status in Canada was extremely precarious, since his asylum application had been rejected only a few months before his marriage.[13] The fact that he is still in Canada nine years after his arrival and five years after his marriage is due to the proceedings brought by him and should not prevent Canada from returning him.[14] Moreover the court which considered his first asylum application established that, even if he did have a well-founded fear of persecution should he return to Tunisia, which he has been unable to prove in this particular case, the author would be excluded from the protection of the Convention relating to the Status of Refugees by virtue of article 1F (a) and (c). Only in exceptional circumstances will a State party have to provide reasons going beyond the application of its laws to justify the removal of an alien without status in its territory.[15] The author's marriage is an important factor which was duly taken into account by the competent courts. It is not, however, a circumstance making his return unreasonable, because his wife could follow him to Tunisia. The State party likewise argues that no child has been born of the marriage. Lastly, it is noted that since the author has presented his claim solely on his own behalf, the Committee must consider only his rights.[16]

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not the communication is admissible under the Optional Protocol to the Covenant.

7.2 With regard to article 5, paragraph 2 (b), of the Optional Protocol, the Committee notes that the author's last PRRA request, which he presented on 6 December 2006, remains pending before the State party's authorities. It however notes that the State party

[11] The letter says that "any Tunisian who has requested asylum in a foreign country is deemed by the Tunisian authorities to have 'sullied the country's image'".

[12] The State party refers to two decisions of the Committee against Torture, *Adel Tebourski v. France*, communication No. 300/2006 (Views adopted on 11 May 2007) and, *a contrario*, communication No. 179/2001, *B.M. v. Sweden* (Views adopted on 30 April 2002).

[13] His application was rejected on 24 April 2003 and he married in October 2003.

[14] The State party relies on communication No. 820/1998, *Rajan v. New Zealand* (inadmissibility decision adopted on 6 August 2003), para. 7.3 and communication No. 930/2000, *Winata v. Australia* (Views adopted on 26 July 2001), para. 7.3.

[15] The State party cites, in support of its argument, communication No. 893/1999, *Sahid v. New Zealand* (Views adopted on 28 March 2003), para. 8.2, communication No. 930/2000, *Winata v. Australia* (Views adopted on 26 July 2001) and communication No. 1011/2001, *Madafferi v. Australia* (Views adopted on 26 July 2004), para. 9.8.

[16] The State party relies on communication No. 1222/2003, *Byahuranga v. Denmark* (Views adopted on 1 November 2004), para. 11.8.

has not objected to the admissibility of the communication, and therefore considers that, for purposes of admissibility, domestic remedies have been exhausted.

7.3 With regard to the alleged violation of article 2, the Committee takes note of the State party's argument that this claim is inadmissible because it is incompatible with the Covenant, since article 2 may not be invoked independently. The Committee is of the view that the alleged violations that relate solely to article 2 of the Covenant are inadmissible under article 2 of the Optional Protocol.

7.4 The Committee further notes that the author claims to be a victim of a violation of article 26, without substantiating this allegation. He has failed to show in what way the process applied to him to determine whether he was eligible for refugee status in Canada was discriminatory in that it was based on a ground prohibited by article 26. The Committee is therefore of the opinion that the allegation is inadmissible under article 2 of the Optional Protocol.

7.5 As far as articles 6, 7, 17 and 23 are concerned, the Committee has taken note of the State party's argument that these claims should be declared inadmissible because, in the light of the author's contentions and the findings of law adopted by various Canadian authorities, the author has been unable to demonstrate a *prima facie* violation of these provisions. The Committee is, however, of the opinion that, for the purposes of admissibility, the author has substantiated his allegations with plausible arguments in support thereof.

7.6 The Committee therefore concludes that the author's communication is admissible insofar as it raises issues under articles 6, 7, 17 and 23 of the Covenant.

Consideration of the merits

8.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as provided in article 5, paragraph 1, of the Optional Protocol.

8.2 In respect of the author's allegations under articles 6 and 7 of the Covenant, it is necessary to bear in mind the State party's obligation under article 2, paragraph 1, of the Covenant to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, including in the application of its processes for expulsion of non-citizens. .[17]

8.3 The Committee has taken note of the author's submission that his expulsion would expose him to certain detention and to a risk of torture or disappearance. The Committee observes that these allegations have been refuted by the Immigration and Refugee Board ("the Board") which found that the author had not shown that, if he were to return to Tunisia, his life would be in jeopardy and that he was likely to be tortured or subjected to ill-treatment on the grounds of his political opinions. In addition, the Committee observes that the Board rejected the author's asylum application on the grounds that the Convention relating to the Status of Refugees did not apply to him by virtue of article 1F (a) and (c), of that Convention.

8.4 The Committee recalls its jurisprudence that it is generally for the courts of the States parties to the Covenant to evaluate facts and evidence of a particular case, unless it is found that the evaluation was clearly arbitrary or amounted to a denial of justice[18].

[17] General comments Nos. 6 and 20 of the Committee.

[18] See for example communication No. 541/1993, Errol Simms v. Jamaica, inadmissibility decision adopted on 3 April 1995, para. 6.2.

8.5 In the present communication the Committee observes that the material before it shows that, when the author's claims were considered by the State party's authorities, much weight was given to the fact that the Convention relating to the Status or Refugees did not apply to him and it appears that inadequate consideration was given to the specific rights of the author under the Covenant and such other instruments as the Convention Against Torture

8.6 As far as article 6 is concerned, the Committee notes that the information submitted to it does not suggest that the author's expulsion to Tunisia would expose him to a real risk of a violation of his right to life. The author's contentions in this respect are no more than general allegations mentioning the risk of detention in inhuman conditions and the fact that he would be deprived of access to justice and might disappear, but without reference to any particular circumstances suggesting that his life would be in danger. In these circumstances, the Committee considers that the facts before it do not show that his expulsion would result in a real risk of a violation of article 6.

8.7 As for article 7, the Committee observes that the State party, in its submissions, refers mainly to the decisions of various authorities which have rejected the author's applications essentially on the grounds that he lacks credibility, having noted inconsistencies in his statements and the lack of evidence in support of his allegations. The Committee observes that the standard of proof required of the author is that he establishes that there is a *real* risk of treatment contrary to article 7 as a necessary and foreseeable consequence of his expulsion to Tunisia.[19] The Committee notes that the State party itself, referring to a variety of sources, says that torture is known to be practised in Tunisia, but that the author does not belong to one of the categories at risk of such treatment. The Committee considers that the author has provided substantial evidence of a real and personal risk of his being subjected to treatment contrary to article 7 of the Covenant, on account of his dissent in the Tunisian police, his six-month police detention, the strict administrative surveillance to which he was subjected and the wanted notice issued against him by the Ministry of the Interior which mentions his "escape from administrative surveillance". These facts have not been disputed by the State party. The Committee gives due weight to the author's allegations regarding the pressure put on his family in Tunisia. Having been employed by the Ministry of the Interior, then disciplined, detained and subjected to strict surveillance on account of his dissent, the Committee considers that there is a real risk of the author being regarded as a political opponent and therefore subjected to torture. This risk is increased by the asylum application which he submitted in Canada, since this makes it all the more possible that the author will be seen as a regime opponent. The Committee therefore considers that the expulsion order issued against the author would constitute a violation of article 7 of the Covenant if it were enforced.

8.8 As for the alleged violation of the author's right to family life under articles 17 and 23, the Committee considers that, since it found that article 7, of the Covenant would be violated if the author were returned to Tunisia, it deems it not necessary to further examine these claims.

9. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the author's expulsion to Tunisia would, if implemented, violate his rights under article 7 in conjunction with article 2, of the Covenant.

10. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy, including a full

[19] See communication No. 692/1996, *A.R.J. v. Australia* (Views adopted on 28 July 1997), para. 6.14.

reconsideration of his expulsion order, taking into account the State party's obligations under the Covenant. The State party is also under an obligation to avoid exposing others to similar risks of a violation.

11. Bearing in mind that, by becoming a State party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to its Views. The State party is also requested to publish the Committee's Views.

[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.]