



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

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Committee against Torture

Communication No. 425/2010

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

<i>Submitted by:</i>	I.A.F.B (not represented by counsel)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Sweden
<i>Date of complaint:</i>	22 June 2010 (initial submission)
<i>Date of decision:</i>	13 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 issues:</i>	Non-substantiation of the claims, manifestly ill-founded
<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. 425/2010

Submitted by: I.A.F.B. (not represented by counsel)
Alleged victim: The complainant
State party: Sweden
Date of complaint: 22 June 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 13 November 2012,

Having concluded its consideration of complaint No. 425/2010, submitted to the Committee against Torture by I.A.F.B. 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, dated 22 June 2010, is I.A.F.B., born on 26 October 1966 and of Algerian nationality. He claims he would be a victim of a violation of article 3 of the Convention if he were 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 12 July 2010, to refrain from expelling the complainant to Algeria while his communication is under consideration by the Committee. This request was made on the basis of the information contained in the complainant's submission and the State party was advised that it may be reviewed in the light of information and documents received from the parties.

1.3 On 13 April 2011, upon request by the State party, the Rapporteur on new complaints and interim measures, acting on behalf of the Committee, decided to lift the interim measures.

The facts as presented by the complainant

2.1 In 1998, after having doubts about the circumstances of his father's death, which had occurred in 1986, the complainant wrote a letter to the Secretary-General of the Ministry of Defence of Algeria requesting that the context of his father's death be investigated. His father was a commander in the secret services and deputy director of the Department of Intelligence and Security, as well as a former military attaché at the embassy in Damascus. During a New Year's celebration with his former colleagues from military school (the complainant had left before completing his studies), he learned that his father had been assassinated. According to the information from one of his friends, who is in the army, his father died at the military psychiatric hospital after a dispute with the military doctor, during which the complainant's father reportedly revealed military secrets. The military doctor, on instruction by the Ministry of Defence, gave him a strong tranquilizer which led to heart failure. In letters to the President sent on 11 February and 5 May 2005, the complainant requested that the President open an investigation into his father's death. After the complainant's second letter, two individuals, whom a friend from the army identified as military security agents, came to his house during his absence. In December 2005, the complainant wrote a third letter to the President, in which he strongly criticized the authorities and the army, denouncing the army and holding it responsible for two massacres of the civilian population, questioning the way former President Boudiaf had been assassinated and revealing the names of the persons responsible for the attack on a commuter train (RER) in Paris. On 15 December 2005, the complainant was arrested and his passport was confiscated. Over the course of five days, he was beaten and threatened with death, and officials urinated on him. The complainant was held for 20 days; before his liberation on 4 January 2006, he was forced, under the threat of death, to sign a document in which he acknowledged that he had been part of an Islamist group acting in Algiers. Nevertheless, he was never charged with any crime and could travel freely, except that he had to report on a weekly basis to the police station. After he was freed, the complainant's wife took pictures of his bruises, which were shown to the Swedish immigration authorities.

2.2 After his old passport had been confiscated on 15 December 2005, the complainant obtained a new one from an official who had been bribed for that purpose. In 2007, the complainant visited his mother in Egypt. On 20 March 2008, the police station at which the complainant needed to report on a weekly basis following his release requested that he go to the station with his passport. Suspecting that the secret services were continuing to look for him, the complainant decided to make his escape. Accordingly, on 27 March 2008, the complainant arrived in Sweden, where he made a request for asylum. Four days later, his wife's passport was confiscated in Algeria, and for one year after his departure she received regular visits from individuals in plain clothes said to be searching for the complainant and threatening her.

2.3 On 17 December 2009, the immigration services rejected the complainant's request for asylum, on the ground that the documents he had submitted did not sufficiently prove that he had been a victim of torture in the past. The complainant notes that he had been warned by the secret services not to speak to anybody about his detention and not to get any medical certificate. The immigration services recognized that he had written several letters to the President, but they considered that this would not constitute a real risk of torture on his return. The Swedish authorities also noted that the complainant decided to act only after delays of 12 and 19 years following the death of his father. The complainant notes that he was only 20 when his father died and was serving in the army at that time. He explains that he decided to inquire into his father's death when he quit the military and after having received information from his friends in 2005. The Swedish immigration services considered that the events leading to his father's death and the allegation that the complainant would be searched for, in reprisal for the letters he had written to the President, were not credible. They also noted that, in 2007, the complainant had already travelled to

Sweden, without however making a request for asylum, which also cast doubt on his alleged fear of persecution. The complainant notes that, at that moment, he did not feel that he was in danger, as he had not received the convocation by the police. The Swedish Migration Board further found that the allegation that the complainant's wife received regular visits by officials in plain clothes after his departure was not credible, as he had been separated from his wife since 2007 and he indicated a different address on his visa applications to the Swedish authorities. In this regard, the complainant explains that at the time of his visa applications, he had some disputes with his wife and that they divorced according to Muslim rites, without making it official. Before leaving Algeria, they reconciled and therefore annulled the divorce and the family book attests to the fact that he is married. However, to protect his wife from harassment, he claimed before the Algerian authorities that they were still separated. The Migration Board further concluded that the complainant's claim that his passport had been confiscated was not likely; the greater likelihood is that his old passport needed renewal, as there were no pages left. The response of the complainant on this issue had been that it would be illogical to renew a passport in which he had an Egyptian residence permit valid until 23 August 2008. He also explains that the fact that he waited for 14 months before travelling attests to his fear of being arrested. On 16 March 2010, the Administrative Court of Gothenburg rejected his appeal and, on 3 June 2010, the Appeal Court also rejected his appeal. On 7 June 2010, he was notified that he needed to leave the territory of Sweden within one month, otherwise he would face expulsion.

The complaint

3.1 The complainant claims that his expulsion to Algeria would violate article 3 of the Convention. He claims that the Swedish authorities did not take into consideration that human rights are not respected in Algeria, which has been in a state of emergency for the past 18 years. He also claims that torture is a systematic practice by the secret services and that its agents act with impunity. He submits that he would be exposed to a real danger of torture if he was returned to Algeria. He also submits that Algerian citizens who return after having failed to obtain asylum in a third country are generally suspected to be Islamic terrorists, which makes them vulnerable to reprisals.

3.2 The complainant further claims that the migration authorities were influenced by a letter from the Swedish embassy in Algiers, in which a staff member informed the responsible immigration officer that she had refused the complainant a visa in 2007 and regretted that it had been granted by another colleague in 2008.

State party's observations on admissibility and the merits

4.1 On 24 March 2011, the State party submitted its observations on admissibility and the merits and requested that the interim measures be lifted.

4.2 The State party notes that some of the translations provided by the complainant do not reflect accurately the proceedings before the domestic authorities and proceeds to clarify the facts. On 27 March 2008, the complainant applied for asylum at the Migration Board, providing a passport, issued on 5 June 2006, valid until 4 June 2011, with a Schengen visa valid up to 30 March 2008. In the first interview, the complainant stated that he was being threatened by the military security services because of the letters he had sent enquiring into the causes of his father's death. He claimed that he had been arrested and tortured as a consequence. In his submissions to the Migration Board, the complainant claimed that he would risk at least 20 years' imprisonment, during which he would be tortured. He further claimed that the reason for the threats and persecution were the letters he sent to the Minister of Defence in 1998 and to the President on 11 February, 5 May and 4 December 2005 and 22 March 2008 asking for clarification of the cause of death of his

father. On 15 December 2005, the complainant was reportedly arrested and subjected to physical ill-treatment. The complainant claimed that before his release on 4 January 2006 he was forced to sign a confession that he belonged to an Islamist group, and he had to undertake to report on a weekly basis to the police. The complainant noted that he had not been convicted of any crime but that he was under police surveillance. On 20 March 2008, the complainant was allegedly summoned to the police with a request to bring his passport. Since his passport was with the Egyptian embassy, he promised to bring it on 27 March 2008. Instead, he left the country. He stated that four days after he had left the country, his wife's passport was confiscated.

4.3 On 17 December 2009, the Migration Board rejected the complainant's application for asylum, holding that the police summons was of poor quality and the text was illegible. They further found that it was odd that the police would send a summons to a person who was allegedly reporting to them once a week. From the photos the complainant submitted as proof of his past torture, it was impossible to draw any conclusion about the nature of the injuries and about the time when they arose, the more so because no medical evidence was provided. The Migration Board acknowledged that the complainant had written the letters to the President. However, it took the view that this evidence by itself did not support a risk of persecution. It further found that it was not probable that the complainant's passport had been confiscated, as the copy of the old passport showed that it didn't have any pages left and a renewal had become necessary. It further stated that it was remarkable that the author sought to clarify the matter of his father's death 12 and 19 years after the event. The claim that his father had been killed by the military or the regime was considered to be far-fetched and improbable. The Migration Board further noted that the visit of two policemen in plain clothes during his absence in May 2005 was not credible. Neither was his story that the authorities were looking for him at his wife's residence. It further stated that the fact that the complainant had spent time in the Schengen area without applying for asylum indicated that he did not feel that he was in need of protection. He also spent two years in Algeria after the alleged torture. Furthermore, the Migration Board held that the complainant did not appear to risk any disproportionately severe punishment for the letters he had sent.

4.4 On 16 March 2010, the Migration Court dismissed the complainant's appeal, holding that the complainant had not plausibly shown that he had been summoned to the police because of the contents of his letters to the authorities, and that the complainant would not risk being given a disproportionately severe sentence if convicted at all of a crime relating to his allegations. It further took into account that, during the period from 2006 to 2008, the complainant was able to travel to Egypt several times without any obstacles and that in 2007 he stayed in the Schengen area without seeking international protection. The facts of his case made it improbable that he was of any interest to the authorities in Algeria. With regard to his alleged grievance that he was at risk for having applied for asylum abroad on the ground that he is supposedly suspected of having a connection to Islamic terrorists, the Court found that it was not probable that the complainant risked reprisals, as he had allegedly been forced to sign a confession stating that he had voluntarily given himself up to the police. This implied that the complainant no longer has any connection to such groups. On 3 June 2010, the Migration Court of Appeal refused leave to appeal. On 23 June 2010, the Migration Board decided not to grant a residence permit or an order for a re-examination of the case. On 8 July 2010, the Migration Court of Appeal found that the letter from the First Secretary of the Embassy of Sweden in Algiers had not had any effect on the asylum process and rejected the complainant's request for a new hearing.

4.5 On admissibility, the State party acknowledges that all domestic remedies have been exhausted and that it is not aware that the same matter has been or is being examined under another procedure of international investigation or settlement. It submits that the complainant's assertion that he is at risk of becoming a victim of a violation of article 3 if

returned to Algeria is insufficiently substantiated for purposes of admissibility and the communication is manifestly ill-founded, and should therefore be declared inadmissible under article 22, paragraph 2, of the Convention.¹

4.6 On the merits, the State party submits that it does not wish to underestimate the concerns that may legitimately be expressed with respect to the current human rights situation in Algeria, considering President Bouteflika's re-election in 2009, the absence of fair trials for persons suspected of terrorism, the absence of investigations into allegations of torture and ill-treatment, the practice of admitting confessions obtained under duress, and the break-up of protests despite the lifting of the state of emergency in February 2011.² However, these are not of themselves sufficient to establish that the complainant's deportation to Algeria 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 the Migration Board made its decision after having held two interviews with him and that 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 the foreseeable, real and personal risk of the complainant. It therefore underlines that great weight must be given to the appreciation of the facts on the ground by the State party's migration authorities.

4.7 The State party submits that the complainant's claim before the Committee rests on the same grounds and evidence as the one before the State party's authorities. However, in addition thereto, the complainant has submitted additional explanations for the inconsistencies in his accounts. The State party submits that there are several reasons to question the veracity of the complainant's claims. It notes that his allegation that he pretended to be separated from his wife to save her from harassment had not been presented previously and is in contradiction with his previous claim that in February 2008 he and his wife had marital problems, which were resolved after the complainant's visa application to Sweden. It further underlines that the complainant's argument that it would be illogical to have a passport replaced in which there was a valid Egyptian residence permit runs counter to his previous statement that the residence permit was no longer valid as he had been outside of Egypt for more than six months. This undermines the complainant's credibility with respect to the claim that his passport was confiscated by the police. The State party further notes that stamps in the complainant's passport show that he was able to leave and re-enter Algeria without problems. It notes that the complainant has not explained how he was able to leave and re-enter Algeria before he allegedly paid a bribe to leave the country on 27 March 2008. Furthermore, the complainant admitted that he was not charged with any crime. In the event of his passport having been confiscated to prevent him from leaving the country, it seems unlikely that he could have done so without this coming to the attention of the security services or the police. A number of other factors do not make sense, such as that the complainant still remained in Algeria after allegedly having been tortured in 2005; he had several opportunities to leave the country, either to Egypt, the place of residence of his mother and where he had a residence permit, or to the Schengen

¹ See communication No. 216/2002, *H.I.A. v. Sweden*, decision adopted on 2 May 2003, para. 6.2.

² See for example Amnesty International's annual report on Algeria for 2010; Human Rights Watch, *World Report 2010* and *World Report 2011*; United States Department of State, "Country reports on human rights practices – Algeria" (11 March 2010); United Kingdom of Great Britain and Northern Ireland, Home Office, *Algeria: Country of Origin Information Report* (14 March 2011); the report on human rights in Algeria for 2007, published by the Swedish Ministry of Foreign Affairs; and the United Kingdom, Home Office, "Operational guidance note: Algeria" (22 May 2006).

area, but he did not do so. The State party therefore finds that the explanation as to why the complainant waited until March 2008 to seek protection and did not do so during one of his earlier trips outside Algeria, when he was allegedly tortured in 2005, is not credible. The State party therefore submits that the complainant has not been able to show that it is probable that he has been subjected to torture in the past, nor that he would suddenly have become of such interest to the authorities before leaving Algeria that he would run such risks at the time of his departure or on return.

4.8 The State party further notes that even if the complainant could be considered to have sent the alleged letters to the President and Minister of Defence, and despite international human rights reports attesting to imprisonment for up to six months for slander in 2008 and 2009, the complainant's letters of 2005 have not led to any prosecution and it would therefore not be probable that his letter of 22 March 2008 would constitute a plausible ground for such a risk. The letter does not contain any acknowledgment of receipt and there has not been any information that it led to prosecution.

4.9 The State party acknowledges that it is a punishable offence to leave Algeria illegally using forged documents or to exit the country other than via official border stations. However, the facts indicate that the complainant has exited Algeria at an ordinary border station using a genuine passport; therefore, there is no reason to assume that he would be at risk of any punishment under this law.

4.10 According to information available at the time of submission, the rejection of a request for asylum is not per se supposed to have an impact on a return to Algeria. Although information in some reports suggests that there is a risk that individuals returning after having an asylum application rejected may be suspected by the Algerian authorities of having been involved in terrorist acts, it relates to persons who have been denied asylum on the grounds of national security.³ This is not relevant in the complainant's case. There is no evidence to suggest that individuals who have been absent from Algeria for any period of time or who are returning after a application for asylum has been denied are at risk of torture. Furthermore, there is nothing to indicate that the Algerian authorities would know that the complainant has applied and been denied asylum, and on previous re-entries from Europe and other countries the complainant has not encountered any problems, despite his claim to have signed a confession that he had belonged to an Islamist group.

4.11 Finally, the State party submits that the alleged torture took place more than five years ago, if at all; when the complainant left Algeria he had been able to live in Algeria for more than two years after he was allegedly tortured and had also been able to leave and return to Algeria without problems. It notes that there is little to suggest that the complainant would still be of interest to the authorities in Algeria. Therefore, the State party submits that the evidence and circumstances invoked by the complainant do not show that the alleged risk of torture in his case fulfils the requirements that it is foreseeable, real and personal. It submits that the allegation of a violation of article 3 is manifestly ill-founded.

The complainants' comments on the State party's observations

5.1 On 3 May 2011, the complainant submitted his comments on the State party's observations, and notes that the State party has not addressed the issue of the letter by the First Secretary of the Swedish Embassy in Algiers, which should give him the right of re-evaluation of his case in domestic courts, in particular as the principles of independence and

³ The Country of Return Information Project, "Country sheet: Algeria" (May 2009), pp. 12-13; see also Amnesty International, "United Kingdom: deportations to Algeria at all costs" (26 February 2007).

impartiality were not respected. He notes that the intervention of the First Secretary is a repercussion for his insistence on receiving his original documents back after his first request for a Swedish visa was rejected on 18 June 2007. He notes that the First Secretary's comments about his character, the insulting manner in which it was written and the prejudices it contained influenced the Migration Board in its decision. The complainant also notes that the State party has failed to explain why the official of the Migration Board who interviewed him was not the person who took the decision.

5.2 The complainant reiterates that the situation in Algeria is not stable, in particular given the events following the uprisings in other Arab countries. The complainant reiterates that he had to sign a confession that he was part of an Islamic group, and that in his letters to the President he exposed the implication of the army in massacres of civilians, as well as the assassination of President Boudiaf by the Department of Intelligence and Security and the Department's implication in the attacks on the Paris commuter train.

5.3 The complainant further notes that the photos are proof of his ill-treatment and that he was not able to obtain a medical certificate due to the threats he received, in particular as the medical certificate would have had to be issued by a forensic doctor working at a public hospital. That would have entailed that the police, which has a station in each public hospital, would have been informed of his visit.

5.4 With regard to the confiscation of his passport, the complainant notes that the last stamp in his old passport was dated November 2005, one month before it was confiscated, and that had it been renewed this would have been done within the regular period of one month. However, his new passport was obtained on 5 June 2006, six months after the confiscation. He further notes that he waited for a considerable period before leaving the country on 24 August 2007 because he feared that the authorities would discover his new passport and that he would be arrested.

5.5 With regard to his freedom of movement, the complainant notes that the Department of Intelligence and Security could not lay any charges against him and that it thought that with the confiscation of his passport he would be blocked from leaving Algeria. Given that the authorities did not have any knowledge of his new passport, that he was not wanted and that he made his trips discreetly, he was able to travel freely without raising suspicion. He further reiterates that during his first trip to the Schengen zone, he did not feel he was in danger, as he had not yet received the police convocation of 20 March 2008.

6. On 10 May 2011, the complainant informed the Committee that the procedure for his expulsion to Algeria had started. On 20 July 2011, the complainant informed the Committee that, on 13 July 2011, fearing deportation to Algeria, he voluntarily left Sweden for Egypt.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 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.

7.2 The Committee recalls that, in accordance with article 22, paragraph 5 (b), of the Convention, it shall not consider any communications from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Committee notes that, in the instant case, the State party has recognized that the complainant has exhausted all available domestic remedies.

7.3 The Committee takes note of the State party's argument that the communication should be declared inadmissible as manifestly ill-founded. The Committee notes that on 13 July 2011, the complainant voluntarily left the State party for Egypt and concludes therefore that with his departure to Egypt the communication before the Committee no longer serves any purpose and has by that fact turned out to be incompatible with the provisions of the Convention in accordance with article 22, paragraph 2, as he is no longer at any risk of being sent back to Algeria by the State party.

8. The Committee therefore decides:

- (a) That the communication is inadmissible under article 22, paragraph 2, of the Convention;
- (b) 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.]
