UNITED NATIONS

CAT

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

Distr.
RESTRICTED*

CAT/C/21/D/91/1997
16 December 1998

Original: ENGLISH

COMMITTEE AGAINST TORTURE
Twenty-first session
(9-20 November 1998)

VIEWS

Communication No. 91/1997

Submitted by:	A. (name withheld) [represented by counsel]
Alleged victim:	The author
State party:	The Netherlands
Date of communication:	23 October 1997
Date of adoption of views:	13 November 1998

[See annex]

---

* Made public by decision of the Committee against Torture.

GE.98-05138 (E)

Annex

VIEWS OF THE COMMITTEE AGAINST TORTURE UNDER ARTICLE 22, PARAGRAPH 7, OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT - TWENTY-FIRST SESSION

concerning

Communication No. 91/1997

Submitted by:	A. (name withheld) [represented by counsel]
Alleged victim:	The author
State party:	The Netherlands
Date of communication:	23 October 1997

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 1998,

Having concluded its consideration of communication No. 88/1997, submitted to the Committee against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

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

Adopts its Views under article 22, paragraph 7, of the Convention.

1. The author of the communication is A., a Tunisian citizen born in 1972, currently residing in the Netherlands, where he is seeking asylum. He claims that his forced return to Tunisia would constitute a violation by the Netherlands of article 3 of the Convention against Torture. He is represented by counsel.

Facts as presented by the author

2.1 Author reports that he has had problems with the Tunisian authorities since he was a student because he used to criticize the Government at school. Because of that and an argument he had with his headmaster about a private issue he was dismissed from school in 1988. In July 1989 he travelled to France with a temporary visa and worked there illegally. He had the intention to study in France but after eight months was caught and sent back to Tunisia. Three months later he travelled again to France but he was again caught 13 days after his arrival and sent back.

2.2 After his return to Tunisia the author started private lessons with a teacher who happened to be a prominent member of the illegal *Al-Nahda* movement although he never told him that. On several occasions he was picked up by the police and held for a few days during which he was interrogated about his teacher and beaten. At a certain point an arrest warrant was issued against the teacher, who asked the author for help in leaving the country. The author knew the border region well because his family came from that part of the country. That is why he was able to help the teacher cross the border. In May 1992 the author was arrested. For two weeks he was beaten daily and held in a sort of chicken coop at the police station. That treatment left him with scars on his back and three broken toes. At the end of those two weeks he was sent for military service which he had not yet performed despite having been called up in 1991. As a punishment he was sent to Ghafsa, an army centre in the desert, where he was again subjected to ill-treatment, such as being kept for several days in an underground cell. In August 1992 he managed to escape and left the country immediately through a small border post.

2.3 The author stayed in Algeria for a day and a half and then spent a month and a half in Morocco, where he destroyed his passport. He then went to Ceuta where he stayed for a month and a half and to the Spanish mainland, where he stayed until December 1993. Then he went to Paris where he stayed until March 1994. All these stays were illegal. He arrived in the Netherlands on 21 March 1994 where he asked for asylum and stated that he was an Iraqi national. On 20 September 1994, during an interview with immigration officials, he told them that his name was A. and that he had Algerian nationality. On 14 December 1995 the Secretary of Justice rejected his refugee claim and on 19 June 1996 his appeal was turned down by the President of the Regional Court in Amsterdam. On 15 July 1996, his application for review of the decision of 14 December 1995 was rejected. On 17 January 1997, his appeal against the rejection was dismissed by the President of the Regional Court in Amsterdam.

2.4 On 10 February 1997, the author was arrested by the police in Haarlem during an inspection of the company where he worked. This time he informed the police that he was of Tunisian nationality, but refused to give his real name unless he was given assurances that he would not be sent back to Tunisia. While in detention he filed another request for asylum that was rejected by the Secretary of Justice on 28 February 1997. On 5 March 1997 the author appealed this decision to the President of the Regional Court in Hertogenbosch. The appeal was turned down on 22 October 1997 and the expulsion was planned for 25 October 1997.

The complaint

3.1 Counsel states that the hearing into the author's claim before the court on 22 October 1997 took place without his and the author’s presence and that a request for postponement awaiting relevant medical evidence which would only be available on 23 October was rejected by the court. The reason for the haste was that the Tunisian embassy had issued a laissez-passer for the author which would only be valid for a few days.

3.2 Counsel provides the report of a follow-up interview held on 24 February 1997 between the author and the Immigration and Naturalization Department in which the author acknowledged that his real name was not A. and explained that he would only reveal his real name and provide proof of his identity if he was given assurances that he would not be sent back to Tunisia. He also said that his father had experienced problems when he tried to obtain an extract from the birth register after his departure. He was questioned by officials of the municipality and later by the police who asked him for the author's whereabouts.

3.3 Counsel indicates that according to reports by Amnesty International there is a consistent pattern of gross human rights violations in Tunisia. He also provides copy of a letter sent by the United Nations High Commissioner for Refugees on 4 March 1997 to a colleague of his in connection with the asylum request of another Tunisian in which the following is stated: "We can confirm that the mere fact of being perceived by the Tunisian authorities as a member or supporter or even having just simple contacts with the *Al-Nadha* movement could lead to persecution. Moreover, we are in fact aware that some individuals have been interrogated and even harassed by the Tunisian police on the mere ground of having received letters from Tunisians abroad who are considered by the Tunisian authorities to be members of *Al-Nadha*. Therefore, claims of persecution from asylum seekers of the first mentioned category may well be of a nature that would entitle them to be recognized as refugees."

3.4 The author claims that if he is returned to Tunisia he will be arrested for having deserted and that his desertion would be construed by the Tunisian authorities as evidence of his links with the *Al-Nahda* movement. In view of his experience during his previous detentions he believes he will be subjected to torture again.

State party's observations

4.1 On 24 October 1997 the Committee, acting through its Special Rapporteur for new communications, transmitted the communication to the State party for comments and requested the State party not to expel or deport the author to Tunisia while his communication was under consideration by the Committee.

4.2 In a submission dated 23 December 1997 the State party indicates that the author applied for asylum on 24 March 1994, after he had been discovered living illegally in the Netherlands under the name of M.A.O., born in Iraq. Later on, he declared to the authorities that he was in fact an Algerian national and that his name was A. His application was rejected by decision of 14 December 1995. He then lodged an objection against this decision and asked the President of the District Court for an interim injunction to prevent his expulsion. In the objection he claimed to have Tunisian nationality and to live in fear of the Tunisian authorities. The application for an interim injunction was dismissed on 19 July 1996 and the author's objection was held to be unfounded by decision of 15 July 1996. An appeal against this decision was declared to be unfounded by judgement of 17 January 1997.

4.3 On 10 February 1997 the author was detained following a check for illegal labour in a company and placed in custody pending expulsion. On 12 February 1997 he submitted a second application for asylum, which was

rejected by decision of 28 February 1997. This decision was delivered to the author on 4 March 1997 and, at the same time, he was notified that he would have to leave the Netherlands immediately.

4.4 On 5 March 1997 the author lodged an objection against the negative decision and filed an appeal with the District Court. He also applied to the President of the District Court for an interim injunction to prevent his expulsion. This request was again refused, and the objection and appeal were again declared to be ill-founded. Following his communication to the Committee and the Committee's request under rule 108, paragraph 9, of its rules of procedure the author was released from custody on 11 November 1997 and his expulsion suspended.

4.5 The State party considers that the author has exhausted all domestic remedies and, not being aware of any other grounds for inadmissibility, has no objection to the admissibility of the communication.

4.6 As for the merits of the case, the State party argues that in the proceedings that followed his first request for asylum the author stated that he had previously lied about his nationality and that he was Algerian. He explained that in 1989 he had fallen in love with the daughter of his school's headmaster. The latter did not accept the liaison and in the course of an argument the author destroyed some property. As a result he was detained in a youth detention centre for three months. After his release he went to France but the French authorities deported him in 1990.

4.7 The author stated that he had been called up for military service in 1992 but failed to comply because of a lung condition. As a result he was arrested in 1993. His request for exemption on medical grounds was denied. Three months later he deserted and stayed with a friend until he left for Italy on 23 November 1993. He stayed in Italy for two and a half months before travelling by train to the Netherlands.

4.8 In the additional grounds accompanying the objection of 4 April 1996 the author stated that he in fact came from Tunisia where he had had problems with the authorities because of his ties with a teacher who was a fundamentalist and a supporter of the *Al-Nahda* party. He claimed that he had been arrested, questioned and beaten on several occasions and accused of disseminating fundamentalist pamphlets.

4.9 In the autumn of 1992, after having helped the teacher to escape to Algeria, he was arrested and questioned for nine days concerning the latter's whereabouts. He also stated that he had been ill-treated: his feet were beaten with a stick, breaking three of his toes, and he remained confined in a chicken coop. When he reported back one month after his release he was informed that he would be prosecuted and brought to trial.

4.10 He also stated that he had heard from his father that friends in similar circumstances had been sentenced to three years of imprisonment and that he himself had been sentenced to 15 months for desertion. The author expects to be punished for his desertion when he returns to his country.

4.11 The State party argues that the general situation in Tunisia is not such that asylum seekers from that country can automatically be regarded as refugees and that the author should be able to argue plausibly that certain facts and circumstances exist that objectively justify his fear of persecution within the meaning of the law relating to refugees.

4.12 The author's individual account is above all implausible. He has made conflicting statements on a number of points, including his nationality, the reasons for his journey to the Netherlands, the route by which he travelled there and his arrests in Tunisia. Furthermore, during the preparations for his expulsion to Tunisia it was established on the basis of fingerprints that he is known to the Tunisian authorities under the name of M. The inconsistencies in the author's statements are of a substantive nature and indeed raise doubts about the general veracity of his claims.

4.13 The author has at no time been politically active, nor has he put himself in the public eye as such in any other way. During the proceedings he stated that he had no contact with the *Al-Nahda* party. He had problems solely because he had contacts with a teacher who was a member and had helped him to flee the country. Even if it is true that the author did help that person, he has not convincingly shown that he experienced problems with the Tunisian authorities as a result and that he was held in detention for nine days. Nor has the author argued convincingly that he is to be prosecuted and brought to trial. Even if this were true, the fact that the author was merely told to report back a month after his release certainly does not suggest that the Tunisian authorities consider him as a serious opponent.

4.14 The author has also argued that he had been found guilty of desertion. The State party does not consider this plausible, because it is based solely on a statement made by the author's father and is not supported by any documentary proof. The State party does not believe, in any case, that he deserted on the basis of any political or religious conviction. It is not plausible that the author would experience problems upon returning to his country because of his desertion, since he cannot be regarded as a dissident. It has not been convincingly argued that any punishment imposed for refusal to perform military service will be disproportionately severe or that the author will be subjected to discriminatory persecution instead of an ordinary punishment.

4.15 The State party contends that whenever an asylum seeker states that he has been ill-treated or tortured the Immigration and Naturalization Service asks the Medical Assessment Section of the Ministry of Justice to give an opinion. The doctors attached to this section can either examine the person concerned themselves or seek the opinion of a medical practitioner who has treated him. Given the limited capacity of this section, however, asylum cases are only submitted to it for assessment when there are good reasons to subject the individual concerned to further examination in the interest of assessing his or her request for asylum. Aside from this, the individual concerned or his legal representative can always consult a medical practitioner independently. The latter can then supply a medical certificate stating that certain scars could have been caused by the alleged ill-treatment for use in the proceedings and the assessment of the request for asylum.

4.16 In the present case the author did not indicate that he had psychological problems until a letter of 17 October 1997, i.e. three and a half years after his arrival in the Netherlands. During the proceedings concerning his first asylum request he never mentioned having had traumatic experiences.

4.17 In connection with the author's alleged medical problems, the State party observes that he has not submitted a single medical document. His claims about certain scars were too insubstantial to prompt a medical examination. Even if it is assumed that the author is indeed experiencing psychological problems, the Aliens Advisory Office held, in its report on this case dated 23 October 1997, that, given the available information on the opportunities for obtaining psychiatric treatment in Tunisia, there is no need for the author to remain in the Netherlands for the purpose of receiving psychiatric treatment.

4.18 The State party further contends that, according to sources such as Amnesty International and the UNHCR, supporters of the *Al-Nahda* party risk being subjected to torture or inhuman treatment in Tunisian prisons. For this reason it exercises particular care in decisions on requests for asylum received by members of this group. It has been established, however, that the author is not a supporter of the *Al-Nahda* party. Moreover, he has failed to make a convincing case for his assertion that because of his ties with supporters of this party he risks being tortured in prison. In any case, the author has failed to argue plausibly that on the basis of his ethnic background, his alleged political affiliation and his history of detention he would be in danger of being subjected to torture upon his return. The State party is therefore of the opinion that the communication is ill-founded.

Counsel's comments

5.1 In his comments on the observations made by the State party, counsel points out that the State party did not include in its submission to the Committee the information provided by the author in his follow-up interview with the immigration authorities where he acknowledged having lied about his identity and nationality and explained his reasons for having done so. The inconsistencies referred to by the State party were explained in that interview, a report of which has been provided to the Committee. Counsel also refers to previous jurisprudence in which the Committee noted that some of the author's claims and corroborating evidence had been submitted only after the refugee claim had been refused by the refugee board and deportation procedures had been initiated and concluded that this behaviour was not uncommon among victims of torture.

5.2 With respect to the different statements about his nationality, the author explained that during his first interviews he was too afraid to immediately give his correct country of origin and name in view of the fact that Tunisia is a popular tourist destination and for that reason Tunisians are not granted asylum in Europe. In any case the Tunisian Embassy has confirmed that the author is indeed a Tunisian citizen.

5.3 Counsel also contends that the court tried the author's case in great haste in order not to allow a laissez-passer issued by the Tunisian Embassy for a few days to expire. As a result the author and his counsel had no possibility to provide the court with useful information in support of the author's claim.

5.4 Counsel stresses that the author was tortured and kept for 15 days (not 9 as indicated in the State party's submission) in a chicken coop (a wooden cage especially designed to lock people up) at police headquarters at Kaf. The State party barely mentions the fact that his toes were broken and he has scars on his back as a result of torture. The author could have provided many details about the places in which he was held and those details could have been verified by the Dutch authorities, for example the fact that soldiers sent to Ghafsa are mainly those considered to be opponents of the Government and that they are treated completely differently from soldiers in any other barracks. The report on the follow-up interview shows, however, that the authorities never asked for such details and that those provided by the author were ignored, as were the report of Amnesty International and the letter from UNHCR referred to above. Counsel further argues that in the period 1990-1992 the author's sister was arrested, convicted and held in prison for six months because she was openly sympathising with *Al-Nahda*.

5.5 With respect to the medical issues, counsel argues against the State party's assertion that the author did not submit a single medical document. The authorities had received a letter (copy of which is provided to the Committee) dated 20 October 1997 from a social worker who has been in close contact with the author since 1995 and reports serious mental and physical difficulties as a result of torture and the fear of being sent back to Tunisia. The letter indicates that the author suffered from sleeping disorders. Periods of sleeplessness alternated with periods of troubled sleep during which he had recurrent nightmares in which he was arrested and relived his experiences of being maltreated. He also went through periods of depression and lived in constant fear of having to return to Tunisia and being arrested and tortured again. His physical condition during the day was characterized by continuous tension which led to headaches, stomach aches and back complaints. He also had respiratory difficulties caused by a medical disorder of the lungs. According to the social worker the author had told him that he had been tortured following his contacts with a politically active member of the *Al-Nahda* party. This fact together with his desertion from the army were considered offences by the Tunisian authorities. The author also described to the social worker the kind of treatment to which he had been subjected and showed him the scars on his back. In his view, the fact that the author first gave two other identities was the result of lack of trust in the authorities and his fear of not being taken seriously. The social worker also stated that in view of his health problems he had referred the author to a Riagg physician from whom he had not received much assistance. In the counsel's view that letter shows that the State party is wrong when it suggests that the claim of serious psychological problems was used mainly in order to prolong the asylum procedure.

5.6 Counsel also finds it surprising that the medical investigation carried out by the Bureau Vreemdelingen Advisering dated 23 October 1997 was merely limited to establishing that there are facilities for psychiatric help in

Tunisia, and that the statements of the author about the torture, the scars he bears and the traumas he has indicated were not even considered. This, along with the letter from the social worker, should have prompted a more thorough examination.

5.7 Counsel also provides copy of a medical report dated 23 October 1997 made by the psychiatrist who examined the author at the aliens detention centre "De Geniepoort" in which it is indicated that the author presents a suspicious attitude which might possibly result from a psychiatric disorder. It is also indicated that, because of that attitude and the incomplete information concerning his prior history, a diagnosis cannot be made with certainty but a schizophrenic development cannot be excluded. Further examination is required.

Issues and proceedings before the Committee

6.1 Before considering any claims contained in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement. The Committee also notes that all domestic remedies have been exhausted and finds that no further obstacles to the admissibility of the communication exist. Since both the State party and the author's counsel have provided observations on the merits of the communication, the Committee proceeds with the consideration of those merits.

6.2 The issue before the Committee is whether the forced return of the author to Tunisia would violate the obligation of the Netherlands under article 3 of the Convention not to expel or to return a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

6.3 The Committee must decide, pursuant to paragraph 1 of article 3, whether there are substantial grounds for believing that the author would be in danger of being subjected to torture upon return to Tunisia. In reaching this decision, the Committee must take into account all relevant considerations, pursuant to paragraph 2 of article 3, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. The aim of the determination, however, is to establish whether the individual concerned would be personally at risk of being subjected to torture in the country to which he or she would return. The existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his return to that country; specific grounds must exist indicating that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

6.4 Reports from reliable sources have over the years documented cases suggesting that a pattern of detention, imprisonment, torture and ill-treatment of persons accused of political opposition activities, including links with the *Al-Nahda* movement, exist in Tunisia.

6.5 The Committee notes that in the proceedings that followed his first request for asylum the author lied about his identity and his nationality and expressed a number of inconsistencies as to the reasons that prompted his departure from Tunisia. In the Committee's view, however, these inconsistencies were clarified by the explanations given by the author in his interview with immigration authorities on 24 February 1997, explanations which have not been referred to in the State party's submission.

6.6 With respect to the medical evidence provided by the author, in the Committee's view the State party has failed to explain why his claims were considered insufficiently substantial as to warrant a medical examination.

6.7 The author has repeatedly stated that he is not a supporter of the *Al-Nahda* movement. This fact leads the State party to conclude that the Tunisian authorities would not have interest in him. The Committee notes, however, that the State party does not dispute that the author was tortured while held in police custody as a result of assisting an *Al-Nahda* member to flee to Algeria and emphasizes the fact that it occurred because of the *Al-Nahda* association. It also notes that the author escaped from the barracks where he was performing military service. If the author was tortured in the past despite not being an *Al-Nahda* supporter, he could be tortured again in view of his past history of detention, his assistance of an *Al-Nahda* member to flee to Algeria and his desertion from the military barracks in Ghafsa.

6.8 In the circumstances, the Committee considers that substantial grounds exist for believing that the author would be in danger of being subjected to torture if returned to Tunisia.

7. In the light of the above, the Committee is of the view that, in the prevailing circumstances, the State party has an obligation, in accordance with article 3 of the Convention, to refrain from forcibly returning the author to Tunisia or to any other country where he runs a real risk of being expelled or returned to Tunisia.

[Done in English, French, Russian and Spanish, the English text being the original version.]
