

**R. (name withheld) v. France, Communication No. 52/1996,
U.N. Doc. CAT/C/19/D/52/1996 (1997).**

Communication No. 52/1996

Submitted by: R. (name withheld)

Alleged victim: The author

State party: France

Date of communication: 20 June 1996

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

Meeting on 10 November 1997,

Adopts the following decision:

Decision on admissibility

1. The author of the communication is R., an Algerian citizen currently residing in France and threatened with deportation. The author claims that his deportation from France would constitute a violation of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Summary of the facts as submitted by the author

2.1 The author states that he became a member of the Front Islamique du Salut (FIS) in Algeria in February 1988. He was first arrested in October 1988 for participating in a demonstration organized in Sidi-Bel Abbes. He allegedly broke into a Monoprix store and threw a Molotov cocktail into the officers' residence. He was found guilty and sentenced to six months' imprisonment and to pay 2,000 Algerian dinars in damages. When freed from prison, he was dismissed by his employer. After that he devoted himself to his political activities for the FIS.

2.2 In June 1989, he was arrested again because he was distributing propaganda flyers for the FIS. He was sentenced to two months' imprisonment.

2.3 In November 1990, he was arrested for the third time and held in detention for an unspecified period. He was allegedly subjected to torture on the orders of the

superintendent of police, and forced into painful positions, such as having his hands tied behind his legs and being hung up with a rag in his mouth. When released, he was sent to the hospital by the police, who claimed that he had attempted suicide. Two medical certificates, dated 14 November 1990 and 2 September 1993, and one admission certificate dated 8 August 1993 attest that R. was hospitalized from 4 to 13 November 1990. The author also states that abrasions from the torture are still visible, in particular scars around his ankles. A medical certificate dated 18 January 1993 attests that the marks found on the author's body are compatible with the torture he describes.

2.4 In March 1992, the author and two other members of the FIS were arrested. He claims that he was falsely accused of an attack on a hotel in December 1990. He does not say what sentence he received after being found guilty. After two months' detention, he went on a hunger strike to assert his claim of innocence. After another month he was granted bail under judicial supervision (*mise en liberté provisoire sous contr_ le judiciaire*) for health reasons. In June 1992, while on bail, he left Algeria and fled to France.

2.5 In France, after his request for asylum was rejected, the author requested a residence permit, which was refused him by the prefect of the Val d'Oise on 12 August 1993. His appeal was also rejected.

2.6 In November 1993, a deportation order was issued against him. His appeal was rejected by the Tribunal Administratif de Versailles.

The complaint

3. The author argues that if he returns to Algeria he will be arrested and tortured again because of his participation in the political activities of the FIS. He states that if France goes ahead with the deportation order, it will be violating article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Comments of the State party on the admissibility of the communication

4. On 25 September 1996, the Committee, through its Special Rapporteur, transmitted the communication to the State party for comments, requesting it not to expel the author while his communication was under consideration by the Committee.

5.1 In a reply dated 9 December 1996, the State party challenges the admissibility of the complaint.

5.2 The State party recalls that the author entered French territory on 15 June 1992 and filed a request for asylum on 11 August 1992. His request was rejected on 30

September by the Office Français de Protection des Réfugiés et Apatrides (OFPRA) on the grounds that the cursory and muddled explanations of the author, and their lack of credibility, make it impossible to determine the reality of his political commitment and the extent to which his fears of persecution by the Algerian authorities are justified. On 29 June 1993, the Refugee Board (Commission de recours des réfugiés) confirmed that decision.

5.3 On 12 August 1993, the author received a formal request to leave French territory. As he failed to comply within the specified time limit, a deportation order was issued against him by the prefect of the Val d'Oise on 25 November 1993. The author appealed against that order to the Tribunal Administratif de Versailles. The Tribunal rejected his appeal on 26 November 1993 as inadmissible on the grounds of failure to provide a statement of facts and arguments.

5.4 The State party notes that the author requested a residence permit, which was refused him by the prefect of the Val d'Oise on 12 August 1993. His appeal against that decision was turned down by the Minister of the Interior on 30 August 1993. On 13 June 1995, the Tribunal rejected the author's appeal against the Minister's decision. On 10 November 1995, the author was appealing against that latest decision before the Conseil d'Etat.

5.5 The State party maintains that domestic remedies have not been exhausted. According to the State party, the author could ask the administrative court for an annulment of the request to leave French territory, which he has not done. The State party also points out that the Conseil d'Etat has yet to rule on the author's appeal against the refusal to grant him a residence permit.

5.6 Lastly, the State party stresses that the author has not exhausted available remedies against the deportation order. It observes that his request to the Tribunal Administratif de Versailles was rejected because it was inadmissible owing to its lack of substantiation. The State party maintains that, owing to the subsidiary nature of appeal to international bodies, settled judicial practice dictates that domestic judicial remedies are not exhausted simply by being invoked; the matter must also have been referred to the national authorities in the proper manner. Citing the judicial practice of the European Commission, the State party asserts, accordingly, that the author of a communication whose application for domestic remedy has been declared inadmissible because of its failure to meet the requirements of national law, particularly as to form and time limit, has not exhausted domestic judicial remedies. As in this case the author has not brought the matter to court in the manner required, the State party maintains that he has therefore not made good the claim of a violation of article 3 of the Convention, which would have been an entirely effective recourse.

5.7 The State party observes that an appeal against a deportation order is particularly effective, since it results in the suspension of the administrative

decision for deportation and since the court must give a ruling within 48 hours of the matter being referred to it.

Comments of the author

6.1 In a letter dated 10 February 1997, the author asserts that the Tribunal Administratif de Versailles did not take account, in its decision of 13 June 1995 to refuse him a residence permit, of the documents submitted to it as supporting evidence of his integration into French society. He adds that he did not receive a summons to appear in court to hear the decision.

6.2 The author maintains that his lawyer filed an appeal against the request to leave French territory of 12 August 1993, and that it was rejected.

6.3 The author explains that he was never informed of the many judicial remedies available to him. He therefore did not know he could ask the administrative court for an annulment of the request to leave French territory.

6.4 He points out that the proceedings before the Conseil d'Etat will probably take three years and that he cannot wait for its reply.

6.5 The author submits supporting documents to substantiate his integration into French society.

Considerations of the Committee

7.1 Before considering any claim in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention.

7.2 Pursuant to article 22, paragraph 5 (b), of the Convention the Committee is precluded from considering any communication unless it has been ascertained that all available domestic remedies have been exhausted; this rule does not apply if it is established that the application of domestic remedies has been or would be unreasonably prolonged or would be unlikely to bring effective relief to the presumed victim. In the case under consideration, the author has not asked the administrative judge for an annulment of the request to leave French territory; he has not completed his appeal against the deportation order before the Tribunal Administratif de Versailles; and the rejection of his request for a residence permit is under appeal before the Conseil d'Etat. The author has not presented any reasons for believing that these appeals have little chance of success. The Committee finds that the requirements under article 22, paragraph 5 (b), of the Convention have not been met.

8. The Committee therefore decides:

(a) That the communication as it stands is inadmissible;

(b) That this decision shall be communicated to the author and, for information, to the State party.

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