



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

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COMMITTEE AGAINST TORTURE

Thirty-first session  
10 - 21 November 2003

**DECISION**

**Communication No. 189/2001**

<u>Submitted by:</u>	Mr. Bouabdallah LTAIEF (represented by the non-governmental organization Vérité-Action)
<u>On behalf of:</u>	Complainant
<u>State party:</u>	Tunisia
<u>Date of submission:</u>	30 June 2000
<u>Date of the decision:</u>	14 November 2002

[ANNEX]

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\* Made public by decision of the Committee against Torture.

ANNEX

**DECISION OF THE COMMITTEE AGAINST TORTURE UNDER ARTICLE 22 OF  
THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR  
DEGRADING TREATMENT OR PUNISHMENT**

**Thirty-first session**

**Concerning**

**Communication No. 189/2001**

<u>Submitted by:</u>	Mr. Bouabdallah LTAIEF (represented by the non-governmental organization Vérité-Action)
<u>On behalf of:</u>	Complainant
<u>State party:</u>	Tunisia
<u>Date of submission:</u>	30 June 2000

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

Meeting on 14 November 2003,

Having concluded its consideration of complaint No. 189/2001, submitted to the Committee against Torture by Mr. Bouabdallah Ltaief 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, his counsel and the State party,

Adopts the following:

**Decision under article 22, paragraph 7, of the Convention**

1. The complainant is Mr. Bouabdallah Ltaief, a Tunisian citizen, born on 2 June 1967 in Gabès, Tunisia, and resident in Switzerland since 18 March 1999, where he has refugee status. He claims to have been the victim of violations by Tunisia of the provisions of article 1, article 2, paragraph 1, article 4, article 5, article 11, article 12, article 13, article 14, article 15 and article 16 of the Convention. He is represented by the non-governmental organization Vérité-Action.

1.2 Tunisia ratified the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment and made the declaration under article 22 of the Convention on 23 September 1988.

### Facts as submitted by the complainant

2.1 The complainant states that he was an active member of the Islamist organization ENNAHDA (formerly MTI). In July 1987, he was detained while on a camping trip with scouts. The complainant says that he asked the police officers if they were acting on the basis of a judicial warrant, but he was finally forced at gunpoint to remain silent. He states that, during his interrogation, he was deprived of food and sleep and subjected to intimidation by being forced to witness other detainees being tortured. He says that, despite requests to the local police, his family were unable to ascertain where he was being held and that his father was even detained himself for an entire day, because he had been making such representations.

2.2 While being held on Interior Ministry premises, in the cells of the national guard in Bouchoucha and in the police headquarters of Gabès governorate, the complainant maintains that he was subjected to eight torture sessions and provides a detailed description of these sessions.

2.3 He describes what is customarily known as the “roast chicken” position, in which the victim is stripped naked, his hands tied and his legs folded between his arms, with an iron bar placed behind his knees, from which he is then suspended between two tables and beaten, in particular on the soles of his feet. The complainant says that his torturers blew cigarette smoke into his face to choke him.

2.4 The complainant also claims to have been tortured in the “upside-down” position whereby the victim is stripped, hands tied behind his back and suspended from the ceiling by a rope tied to one or both of his feet, with his head hanging downwards. In this position he is kicked and struck with sticks and whips until he passes out. The complainant adds that his torturers tied a piece of string to his penis which they then repeatedly tugged, as if to tear his penis off.

2.5 The complainant claims to have been subjected to the “falka”, in which the victim’s feet are tied to a bar which is then lifted so that his torturers can lash the soles of his feet.

2.6 The complainant also claims to have been subjected to the “chair” torture, in which the victim is stripped and tied to a chair, with his hands behind his back, and beaten across the face, chest and abdomen. He says that his torturers mopped up his blood with paper which they then stuffed into his mouth to stifle his cries.

2.7 The complainant was also prevented from sleeping, from using the lavatory and from washing.

2.8 According to the complainant, following this torture and ill-treatment, he was twice admitted to the emergency service at Gabès hospital, but was unable to receive any visitors or to contact his family or his lawyer.

2.9 The complainant states that, in these conditions, he was forced to make confessions and that at the beginning of September 1987, he was placed in the 9 April prison in a solitary cell and deprived of any contacts with the outside world.

2.10 The complainant was then brought before the examining magistrate in the presence, for the first time, of his lawyers. The examining magistrate would not, however, allow any exchange of information to take place between the complainant and his lawyers, refused to let the lawyers speak, dictated the prosecution's case<sup>1</sup> against the complainant to his secretary, but was unable to get the complainant and his counsel to sign the transcript of the hearing.

2.11 The complainant's case then went before the State Security Court (Cour de Sûreté de l'Etat), where it continued for an entire month and, according to the complainant, was unanimously regarded by the international press as a complete travesty. The complainant says that, prior to the proceedings, the Director of State Security, Mr. Moncef Ben Gbila, attempted unsuccessfully to persuade him to give false testimony against other detainees, including officials of ENNAHDA, in exchange for his release. According to the complainant, during the proceedings, the magistrate of the State security court, Mr. Hechmi Zemmal, forced him to keep his statements brief, thus compromising his right to a defence. In addition, when the complainant was brought face to face with a witness who claimed to have been the victim of an act of violence committed by him, this witness, according to the complainant, repeatedly stated that the complainant was not the person in question. The defence counsel demanded that he be acquitted for lack of evidence, but the magistrate found that the witness had been affected by the shock of having to face his aggressor once again and, on 27 September 1987, sentenced the complainant to 10 years' immediate imprisonment and hard labour and 10 years' administrative supervision.<sup>2</sup>

2.12 The complainant stresses that, like other victims of torture, he was given no opportunity in the examination proceedings and the trial to describe his experiences of torture or to denounce those responsible. According to the complainant, judges brusquely interrupt to prevent anyone, even lawyers, mentioning this topic, and the fear of being subjected again to torture, if the detainee dares raise this issue with the judge, acts as a strong deterrent in the intimidation process.

2.13 The complainant was subsequently moved around repeatedly both within and between the country's various penitentiary establishments. Thus, he was held in isolation with three political prisoners, Fethi Jebrane, Mohamed Charrada and Faouzi Sarraj, in the Borj Erroumi prison in Bizerte, from 1987 to 1992; from 1992 to 1993, he was transferred to a common criminals' cell; from 1993 to 1994, he was held in solitary confinement in a small cell; and from 1994 to 1996 he was held together with two ENNAHDA officials - Habib Ellouz and Ajmi Lourimi - and then transferred to El Kef prison and to the central prison in Tunis, from 1996 to 1997.

2.14 The complainant says that the living standards and the treatment meted out to prisoners by the prison authorities made his imprisonment an intolerable ordeal. He refers to the prison crowding, the dirty conditions, the contagious diseases and the lack of medical care. He claims that the punishment cells in which he was held in the Borj Erroumi prison were extremely cramped, dark, with no water or WC, and very damp; his rations were limited to one piece of bread a day and he was forced to wear dirty, flea-infested clothes. He maintains that the political

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<sup>1</sup> The complaint does not specify the accusations brought against the complainant.

<sup>2</sup> The complaint does not specify the reasons given for the finding against the complainant.

prisoners were subjected to discriminatory treatment, as part of a general policy of physical and mental aggression. In support of this claim he explains that he was repeatedly barred from having contact with others and from engaging in joint prayers. He adds that he was deprived of medical care, despite repeated requests, threats to go on hunger strike and his refusal to take exercise in the prison yard. According to the complainant, his family visits were restricted to 10 minutes and the women visitors were forced to remove their veils. The complainant adds that, in punishment cell No. 2 at Borj Erroumi prison, he was stripped naked and tied hand-and-foot to a cot for three days on end. He says that he was then subjected to this punishment again for a period of six days, after requesting medical care for kidney pains. In addition, the warders punched, slapped and kicked him. According to the complainant, in February 1994, the prison director beat him viciously while he was on hunger strike and had been placed in shackles and, in the process, broke his right arm. When the complainant returned from hospital, the prison director ordered him to be returned to the punishment cells, where he was left shackled for eight days, naked and without blankets, thereby aggravating his kidney pains. In El Kef prison, where he spent 10 days in the punishment cells, he had a blanket only from 10 p.m. to 6 a.m., despite the cold temperatures in the town, with the result that for the last three days he was unable to walk. Finally, a few days before his release, he was placed together with 24 other prisoners in Tunis central prison in a cell measuring only 3.5 metres by 2 metres. According to the complainant, with only one very small window high up on the cell wall, it was difficult to breathe, and the overcrowding was so bad that the detainees were unable even to sit.

2.15 The complainant explains that, in a bid to lessen the torture against him, including solitary confinement for periods of between 3 days and one and a half months, he was forced on at least 15 occasions to mount hunger strikes, lasting for periods of between 5 and 28 days.

2.16 On the day of his release, 24 July 1997, the complainant was escorted to the Bouchoucha detention centre, where he was questioned about his plans for the future as a militant and about his fellow detainees. According to the complainant, this questioning was followed by a session of mental harassment and threats. He says that he was released at 4 p.m. with instructions to report to the local police the moment he arrived in his home region of Gabès. There he was subjected to further questioning for a period of four hours. He was ordered to report twice a week to the regional police headquarters and daily at the local police station. According to the complainant, this administrative supervision was accompanied by police checks, including at night, of him and his family, the denial of his right to work and to study, refusal to issue a passport to his father and the confiscation of his brother's passport. He was also required to obtain permission from the local police for any movement away from his place of residence, a requirement which was accompanied by further questioning about his relatives and people with whom he had contacts. The complainant adds that he was detained for 48 hours in November 1998, during President Ben Ali's visit to Gabès governorate. He maintains that, whenever he had any contact with others living in the neighbourhood, both he and the people he met would be taken in for questioning.

2.17 Given this situation, the complainant explains that he then fled Tunisia for Switzerland, where he obtained refugee status.<sup>3</sup>

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<sup>3</sup> He entered Swiss territory on 18 March 1999. There is no indication of the date when he obtained refugee status.

2.18 The complainant provides a list of people who subjected him to torture and ill-treatment.<sup>4</sup>

2.19 The complainant describes the consequences of the torture and ill-treatment that was inflicted on him, namely, an operation in 1988 to remove a fatty growth at the back of his head caused by violent blows administered under torture; scars of cigarette burns on his feet; kidney pains resulting from the detention conditions; and mental problems: he submits a medical certificate attesting to a neuropsychiatric disorder and showing that he has received medical treatment and psychotherapy at a Swiss psychiatric centre.

2.20 As to whether all domestic remedies have been exhausted, the complainant argues that, while such remedies might be provided for in Tunisian law, they are impossible in practice because of the bias of judges and the impunity granted to those responsible for violations. He adds that the regulations governing the activities of bodies which play a role in upholding human rights, such as the Higher Committee for Human Rights and Fundamental Freedoms and the Constitutional Council, prevent them from supporting complaints of torture. To back up his argument, he cites the reports of such non-governmental organizations as Amnesty International, the International Federation for Human Rights and Human Rights Watch.

#### Substance of the complaint

3.1 The complainant maintains that the Tunisian Government has breached the following articles of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment:

Article 1. The practices described above, such as “falka”, the “roast chicken” position, the “upside-down” position, the “chair”, etc., to which the complainant was subjected, constitute acts of torture.

Article 2, paragraph 1. It is alleged that the State party not only failed to take effective measures to prevent torture, but even mobilized its administrative machinery and, in particular, its police force as an instrument of torture against the complainant.

Article 4. It is alleged that the State party has not ensured that all the acts of torture to which the complainant has been subjected are offences under its criminal law.

Article 5. It is alleged that the State party has instituted no legal proceedings against those responsible for torturing the complainant.

Article 11. It is alleged that the authorities have not used their supervisory powers to prevent torture; instead, specific instructions have been given that torture is to be applied.

Article 12. It is alleged that the State party has not carried out an investigation of the acts of torture committed against the complainant.

Article 13. It is alleged that the State party has not effectively upheld the complainant’s right to lodge a complaint with the competent authorities.

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<sup>4</sup> Available for information in the file.

Article 14. It is alleged that the State party has ignored the complainant's right to make a complaint and has thereby deprived him of his right to redress and rehabilitation.

Article 15. It is alleged that on 27 September 1987 the complainant was sentenced to a prison term on the basis of a confession obtained as a result of torture.

Article 16. The repressive measures and practices described above, such as solitary confinement, violation of the right to medical care and the right to send and receive mail, restriction of family visits, etc., applied by the State party against the complainant constitute cruel, inhuman and degrading treatment or punishment.

3.2 The complainant also claims that his freedom of movement and his right to work were infringed by the administrative supervision measures applied against him, as was his right to pursue his studies.

#### State party's observations on admissibility

4.1 On 4 December 2001, the State party challenged the admissibility of the complaint on the grounds that the complainant has neither employed nor exhausted available domestic remedies.

4.2 The State party points out that the complainant is a well-known activist of the illegal extremist movement ENNAHDA, which foments religious and racial hatred and practises violence. The State party explains that the complainant was sentenced on 27 September 1987 by the State Security Court to 10 years' immediate imprisonment and hard labour for having carried out a terrorist attack against Ali Bouhlila, by throwing sulphuric acid over his face and abdomen on 21 March 1987. According to the State party, the complainant was also found guilty, at the same trial, of aiding and abetting other terrorist acts.

4.3 The State party maintains that the complainant may still have recourse to the available domestic remedies, since, under Tunisian law, the limitation period for acts alleged to be, and characterized as, serious offences is 10 years.

4.4 The State party explains that, under the criminal justice system, the complainant may submit a complaint, from within Tunisia or abroad, to a representative of the Public Prosecutor's Office with jurisdiction in the area in question. He may also authorize a Tunisian lawyer of his own choice to submit such a complaint or request a foreign lawyer to do so with the assistance of a Tunisian colleague.

4.5 Under the same rules of criminal procedure, the Public Prosecutor will receive the complaint and institute a judicial inquiry. In accordance with article 53 of the Code of Criminal Procedure, the examining magistrate to whom the case is referred will hear the author of the complaint. In the light of this hearing, he may decide to hear witnesses, question suspects, undertake on-site investigations and seize physical evidence. He may also order expert studies and carry out any actions which he deems necessary for the uncovering of evidence, both in favour of and against the complainant, with a view to discovering the truth and verifying facts on which the trial court will be able to base its decision.

4.6 The State party explains that the complainant may, in addition, lodge with the examining magistrate during the pre-trial proceedings an application for criminal indemnification for any harm suffered, over and above the criminal charges brought against those responsible for the offences against him.

4.7 If the examining magistrate deems that the public right of action is not exercisable, that the acts do not constitute a violation or that there is no prima facie case against the accused, he shall rule that there are no grounds for prosecution. If, on the other hand, the magistrate deems that the acts constitute an offence punishable by imprisonment, he shall send the accused before a competent court - which in the present instance, where a serious offence has been committed, would be the indictment chamber. All rulings by the examining magistrate are immediately communicated to all the parties to the proceedings, including the complainant who brought the criminal indemnification proceedings. Having been thus notified within a period of 48 hours, the complainant may, within four days, lodge an appeal against any ruling prejudicial to his interests. This appeal, submitted in writing or orally, is received by the clerk of the court. If there is prima facie evidence of the commission of an offence, the indictment chamber sends the accused before the competent court (criminal court or criminal division of a court of first instance), having given rulings on all the counts established during the proceedings. If it chooses, it may also order further information to be provided by one of its assessors or by the examining magistrate; it may also institute new proceedings, or conduct or order an inquiry into matters which have not yet been the subject of an examination. The decisions of the indictment chamber are subject to immediate enforcement.

4.8 A complainant seeking criminal indemnification may appeal on a point of law against a decision of the indictment chamber once it has been notified. This remedy is admissible when the indictment chamber rules that there are no grounds for prosecution; when it has ruled that the application for criminal indemnification is inadmissible, or that the prosecution is time-barred; when it has deemed the court to which the case has been referred to lack jurisdiction; or when it has omitted to make a ruling on one of the counts.

4.9 The State party stresses that, in conformity with article 7 of the Code of Criminal Procedure, the complainant may bring criminal indemnification proceedings before the court to which the case has been referred (criminal court or criminal division of the court of first instance) and, as appropriate, may lodge an appeal, either with the Court of Appeal if the offence in question is an ordinary offence, or with the criminal division of the Court of Appeal if it is a serious offence. The complainant may also appeal to the Court of Cassation.

4.10 Second, the State party maintains that the domestic remedies are effective.

4.11 According to the State party, the Tunisian courts have systematically and consistently acted to remedy deficiencies in the law, and stiff sentences have been handed down on those responsible for abuses and violations of the law. The State party says that, between 1 January 1988 and 31 March 1995, judgements were handed down in 302 cases involving members of the police or the national guard under a variety of counts, 227 of which fell into the category of abuse of authority. The penalties imposed varied from fines to terms of imprisonment of several years.<sup>5</sup>

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<sup>5</sup> The examples cited by the State party are available for information in the file.

4.12 The State party maintains that, given the complainant's political and partisan motives and his offensive and defamatory remarks, his complaint may be considered an abuse of the right to submit complaints.

4.13 The State party explains that the extremist movement of which the complainant is an active member has perpetrated a number of terrorist acts, including an attack in a hotel in Monastir, in August 1987, which caused a British tourist to lose both legs. Furthermore, this "movement" is not recognized under current Tunisian law.

4.14 The State party explains that the claims by the complainant demonstrate his political aims and confirm the biased and partisan nature of his allegations. Such is the case, according to the State party, when the complainant states that, in a State where the people do not have the right to express their views on the major issues of public life, legality is de facto diminished by the lack of any form of democratic oversight. The State party maintains, in addition, that the complaint contains offensive and defamatory remarks about the institutions of the Tunisian State, such as the complainant's statement that the entire administration is at the beck and call of the police apparatus, which turns the State into an effective instrument of torture.

#### Complainant's comments on the State party's observations

5.1 On 3 June 2002, the complainant challenged the State party's argument that he was supposedly unwilling to turn to the Tunisian justice system and make use of domestic remedies. He enumerates, by way of introduction, the efforts he made, to no avail, to approach the judicial and prison authorities with his complaints of ill-treatment, which made his situation worse, causing fear and reluctance to take action. He refers once again to the insurmountable obstacles placed in his way by the administrative supervision arrangements, which also embodied a definite threat of reprisals if he made a complaint.

5.2 The complainant believes that the recourse procedures are excessively protracted. He describes, in this context, how he drew the judge's attention to the torture inflicted on him, so that the judge would take the necessary steps to bring the culprits to justice - but to no avail. He adds that, over the last 20 or 30 years, complaints about deaths resulting from torture have been ignored, while to this day the torturers continue to enjoy the protection of the State.

5.3 The complainant also maintains that the available remedies are not likely to succeed. He says that he complained to the judge of ill-treatment against him and requested a medical check, but to no avail. It therefore seemed unlikely to him that he would obtain satisfaction from the judicial authorities. The complainant explains that his case with the judge was not an isolated instance and, in that context, submits an extract from a report by the Tunisian Committee for Human Rights and Freedoms. The complainant maintains that the judicial system is not independent and gave him no protection during his trial and conviction. He also cites extracts from reports by the International Federation for Human Rights and the Tunisian Committee for Human Rights and Freedoms in support of his observation that complaints of torture do not succeed and that the authorities exert pressure to prevent the lodging of such complaints. He also maintains that the administrative supervision under which he was placed, which involved constant supervision by a number of different authorities accompanied by acts of intimidation, was not a circumstance conducive to the lodging of complaints.

5.4 The complainant also challenges the State party's argument that a Tunisian lawyer can be instructed from abroad to lodge a complaint.

5.5 The complainant cites serious encroachments by the authorities on the free and independent exercise of the legal profession. According to him, lawyers who dare to defend complaints of torture are subject to harassment and other abuses, including prison sentences. As an example, he cites the cases of the lawyers Néjib Hosni, Béchir Essid and Anouar Kosri, and quotes extracts from reports and statements by Amnesty International, the World Organization against Torture, the International Federation for Human Rights and the International Commission of Jurists. He adds, also on the basis of these reports by non-governmental organizations, that none of the complaints lodged by victims of torture over recent years, particularly following the promulgation in 1988 of article 13 bis of the Code of Criminal Procedure, providing for the possibility of medical visits, have been followed up. He also explains that, in certain cases, medical checks have been allowed after a long delay, once all traces of torture have disappeared, and that the checks are sometimes carried out by compliant doctors who will fail to find anything wrong with the detainees' physical condition, even if there are traces of torture. The complainant believes that, in these circumstances, it would not make much difference to appoint a lawyer. The complainant also stresses that the lodging of a complaint from abroad with the Tunisian authorities is likely to be covered by article 305, paragraph 3, of the Code of Criminal Procedure, which provides that "any Tunisian who commits any of the offences mentioned in article 52 bis of the Criminal Code abroad may also be prosecuted and brought to trial, even if the aforementioned offences are not punishable under the legislation of the State in which they were committed". The complainant believes that a complaint submitted by him from abroad could be construed as an insult against the regime, given that the State party has declared him to be a terrorist. Lastly, he explains that his situation as an asylum-seeker, then as a political refugee in Switzerland, precludes him from successfully concluding any proceedings that he might initiate, given the restrictions placed on contacts between refugees and the authorities in their own countries. He explains that severance of all relations with the country of origin is one of the conditions on which refugee status is granted, and that it plays an important role when consideration is being given to withdrawing asylum. According to the complainant, such asylum would effectively end if the refugee should once again, of his own volition, seek the protection of his country of origin, for example by maintaining close contacts with the authorities or paying regular visits to the country.

5.6 The complainant also challenges the affirmation by the State party of the existence of available remedies.

5.7 He argues that the State party has confined itself to repeating the procedure described in the Code of Criminal Procedure, which is far from being applied in reality, particularly where political prisoners are concerned. In support of his argument, the complainant cites reports by Amnesty International, Human Rights Watch, the World Organization against Torture, the National Consultative Commission on Human Rights in France and the National Council for Fundamental Freedoms in Tunisia. The complainant also refers to the Committee against Torture's concluding observations on Tunisia, dated 19 November 1998. He stresses that the Committee against Torture recommended, among other things, that the State party should, first, ensure the right of victims of torture to lodge a complaint without the fear of being subjected to

any kind of reprisal, harassment, harsh treatment or prosecution, even if the outcome of the investigation does not prove their allegations, and to seek and obtain redress if those allegations are proven correct; second, ensure that medical examinations are automatically provided following allegations of abuse and that autopsies are performed following any deaths in custody; and third, ensure that the findings of all investigations concerning cases of torture are made public and that such information includes details of any offences committed, the names of the offenders, the dates, places and circumstances of the incidents and the punishment received by those found guilty. The Committee also noted that many of the regulations existing in Tunisia for the protection of arrested persons were not adhered to in practice. It also expressed its concern over the wide gap that existed between law and practice with regard to the protection of human rights, and was particularly disturbed by the reported widespread practice of torture and other cruel and degrading treatment perpetrated by security forces and the police, which, in certain cases, resulted in death in custody. The complainant also notes the lack of independence of the judicial system and the bodies set up to monitor application of the law. Lastly, he emphasizes that the State party's reply, in the current case, shows that no domestic investigation has been held into the rather detailed information contained in the complaint under consideration.

5.8 The complainant challenges the State party's argument that the domestic remedies are effective.

5.9 With regard to the 302 cases involving police or national guard officers against whom, according to the State party, sentences have been handed down, the complainant points out that there is no tangible proof that these cases, which have not been published or made public in any way, actually took place; that the 277 cases cited by the State party as examples of abuse of authority are not relevant to the case in question; and that the State party refers only to cases which do not tarnish the image of Tunisia and therefore include no case of inhuman or degrading treatment. He explains that the cases adduced by the State party took place during the period 1988-1995 and were covered by the concluding observations of the Committee against Torture mentioned above. Lastly, citing extracts from reports by the Tunisian Committee for Human Rights and Freedoms and Amnesty International in particular, he draws attention to the immunity enjoyed by officials involved in acts of torture, some of whom have even been promoted. The complainant adds that Tunisia has helped Tunisian officials evade arrest warrants issued against them abroad on the basis of complaints by victims of torture

5.10 Finally, the complainant rejects the comments by the State party characterizing his complaint as an abuse of rights. He says that, with its references in this context to political commitment and terrorism, the State party is demonstrating its bias and, by extension, the impossibility of obtaining any remedy in Tunisia. The complainant also stresses that the prohibition of torture and inhuman or degrading treatment is a provision which admits of no exception, including for terrorists. He believes that, in its response to this complaint, the State party is resorting to a political manoeuvre which has no legal relevance and which constitutes an abuse of rights.

#### Additional information from the State party on admissibility

6.1 On 8 November 2002 the State party again challenged the admissibility of the complaint. It maintains that the complainant's claims about recourse to the Tunisian justice system and the

use of domestic remedies are baseless and unsupported by any evidence. It affirms that appeal procedures do not take an unreasonable time, and that proceedings in respect of the allegations made in the complaint are not time-barred, since the time-limit for bringing proceedings in such cases is 10 years. Contrary to what the complainant alleges, the State party says that he can instruct a lawyer of his choice to lodge a complaint from abroad. It adds that the complainant's claims that a complaint lodged from abroad with the Tunisian authorities might be covered by article 305, paragraph 3, of the Code of Criminal Procedure, which permits the prosecution of those guilty of terrorist acts, are baseless. The State party maintains that domestic remedies before the Tunisian judicial authorities are not only possible in the current case but indeed effective, as shown by the fact that victims of violations in Tunisia have obtained satisfaction. Fourth, the State party argues that the complainant is abusing the right to lodge complaints by seeking to misrepresent and distort the points made in the State party's response of 4 December 2001.

#### Committee's decision on admissibility

7.1 At its twenty-ninth session, the Committee considered the admissibility of the complaint, and in a decision of 20 November 2002 declared it admissible.

7.2 With regard to the issue of the exhaustion of domestic remedies, the Committee noted that the State party challenged the admissibility of the complaint on the grounds that the available and effective domestic remedies had not been exhausted. In the present case, the Committee noted that the State party had provided a detailed description both of the remedies available, under law, to any complainant and of cases where such remedies had been applied against those responsible for abuses and for violations of the law. The Committee considered, nevertheless, that the State party had not sufficiently demonstrated the relevance of its arguments to the specific circumstances of the case of this complainant, who claims to have suffered violations of his rights. It made clear that it did not doubt the information provided by the State party about members of the security forces being prosecuted and convicted for a variety of abuses. But the Committee pointed out that it could not lose sight of the fact that the case at issue dates from 1987 and that, given a statute of limitations of 10 years, the question arose of whether, failing interruption or suspension of the statute of limitations - a matter on which the State party had provided no information - action before the Tunisian courts would be disallowed. The Committee noted, moreover, that the complainant's allegations related to facts that had already been reported to the authorities. The Committee pointed out that to date it remained unaware of any investigations voluntarily undertaken by the State party. The Committee therefore considered it very unlikely in the present case that the complainant would obtain satisfaction by exhausting domestic remedies, and decided to proceed in accordance with article 22, paragraph 5 (b), of the Convention.

7.3 The Committee noted, in addition, the argument by the State party to the effect that the complainant's claim was tantamount to abuse of the right to lodge a complaint. The Committee considered that any report of torture was a serious matter and that only through consideration of the merits could it be determined whether or not the allegations were defamatory. Furthermore, the Committee believed that the complainant's political and partisan commitment adduced by the State party did not impede consideration of this complaint, in accordance with the provisions of article 22, paragraph 2, of the Convention.

7.4 Lastly, the Committee 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.

#### State party's observations on the merits

8.1 In its observations of 3 April 2003 and 25 September 2003, the State party challenges the complainant's allegations and reiterates its position regarding admissibility.

8.2 In relation to the allegations concerning the State party's "complicity" and inertia vis-à-vis "practices of torture", the State party indicates that it has set up preventive<sup>6</sup> and dissuasive<sup>7</sup> machinery to combat torture so as to prevent any act which might violate the dignity and physical integrity of any individual.

8.3 Concerning the allegations relating to the "practice of torture" and the "impunity of the perpetrators of torture", the State party considers that the complainant has not presented any evidence to support his claims. It emphasizes that, contrary to the complainant's allegations, Tunisia has taken all necessary legal and practical steps, in judicial and administrative bodies, to prevent the practice of torture and prosecute any offenders, in accordance with articles 4, 5 and 13 of the Convention. Equally, according to the State party, the complainant has offered no grounds for his inertia and failure to act to take advantage of the effective legal opportunities available to him to bring his case before the judicial and administrative authorities (see paragraph 6.1). Concerning the Committee's decision on admissibility, the State party emphasizes that the complainant cites not only "incidents" dating back to 1987, but also "incidents" dating from 1994, 1996 and 1997, that is, the time when the Convention against Torture was fully incorporated into Tunisian domestic law and when he reports "ill-treatment" that he claims to have suffered while being held in "Borj Erroumi prison", El Kef prison and Tunis prison. Hence the statute of limitations has not expired, and the complainant should urgently act to interrupt the limitation period, either by contacting the judicial authorities directly, or by performing an act which has the effect of interrupting the limitation. The State party also mentions the scope for the complainant to lodge an appeal for compensation for any serious injury caused by a public official in the performance of his duties,<sup>8</sup> noting that the limitation period stands at 15 years.<sup>9</sup> The State party points out that the Tunisian courts have

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<sup>6</sup> This includes instruction in human rights values in training schools for the security forces, the Higher Institute of the Judiciary and the National School for training and retraining of staff and supervisors in prisons and correctional institutions; a human-rights-related code of conduct aimed at senior law enforcement officials; and the transfer of responsibility for prisons and correctional institutions from the Ministry of the Interior to the Ministry of Justice and Human Rights.

<sup>7</sup> A legislative reference system has been set up: contrary to the complainant's allegation that the Tunisian authorities have not criminalized acts of torture, the State party indicates that it has ratified the Convention against Torture without reservations, and that the Convention forms an integral part of Tunisian domestic law and may be invoked before the courts. The provisions of criminal law relating to torture are severe and precise (Criminal Code, art. 101 bis).

<sup>8</sup> Under the Administrative Court Act of 1 June 1972, the State may be held responsible even when it is performing a sovereign act if its representatives, agents or officials have caused material or moral injury to a third person. The injured party may demand from the State compensation for the injury suffered, under article 84 of the Code of Obligations and Contracts, without prejudice to the direct liability of its officials vis-à-vis the injured parties.

<sup>9</sup> Administrative Court - judgement No. 1013 of 10 May 1003 and judgement No. 21816 of 24 January 1997.

always acted systematically to remedy deficiencies in the law on acts of torture (see paragraph 4.11). According to the State party, the complainant has merely put forward false, contradictory, not to say defamatory remarks.

8.4 As for the allegations of failure to respect guarantees relating to judicial procedure, the State party regards them as unfounded. It refers to the complainant's inertia and failure to act. According to the State party, the authorities did not prevent him from lodging a complaint before the courts - on the contrary, he opted not to make use of domestic remedies. As for the "obligation" of judges to ignore statements made as a result of torture, the State party cites article 15 of the Convention against Torture, and considers that it is incumbent on the accused to provide the judge with at least basic evidence that his statement has been made in an unlawful manner. In this way he would confirm the truth of his allegations by presenting a medical report or a certificate proving that he had lodged a complaint with the public prosecutor's office, or even by displaying obvious traces of torture or ill-treatment to the court. However, the State party points out that the complainant did not deem it necessary to lodge a complaint either during his detention or during his trial; this formed part of a strategy adopted by the ENNAHDA illegal extremist movement in order to discredit Tunisian institutions by systematically alleging acts of torture and ill-treatment but not making use of available remedies.

8.5 Concerning the allegations relating to the trial, the State party maintains that the complainant is mistaken in claiming that he did not sign the record of his questioning by the examining magistrate. According to the State party, his counsel did indeed speak on the substance of the matter, at the invitation of the examining magistrate, in accordance with the applicable rules of criminal procedure. The State party points out that the complainant was found guilty of throwing acid at his victim, among other offences, and that he admitted the act before the examining magistrate and the court, where he expressed his regret, stating that his action had given rise to psychological problems due to a feeling of guilt and the ghastly nature of the act. As for the complainant's statement that he had taken steps to request a medical examination, without success, the State party points out that an examination is not ordered in response to a mere request, but requires the presence of indications which would justify such an examination. Accordingly the examining magistrate had rejected the complainant's request for a medical examination, since, according to the State party, the complainant displayed no obvious signs of violence.

8.6 Concerning the allegations relating to his confession, the State party considers baseless the complainant's claim that he was found guilty on the sole basis of his confession. It points out that, under the last paragraph of article 69 and article 152 of the Code of Criminal Procedure, a confession on the part of the accused cannot relieve the judge of the obligation to seek other evidence, while confessions, like all items of evidence, are a matter for the independent appreciation of the judge. On that basis, it is a constant of Tunisian case law that an accused cannot be found guilty on the sole basis of a confession.<sup>10</sup> Moreover, according to the State party, the complainant's allegation that he confessed under torture his membership of the ENNAHDA movement is contradicted by the certificate supplied by Mr. Ltaief to the Swiss

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<sup>10</sup> Judgement No. 4692 of 30 July 1996, published in the *Revue de Jurisprudence et Législation* (R.J.:L); judgement No. 8616 of 25 February 1974 R . J . L . 1975; and judgement No. 7943 of 3 September 1973 R.J.L 1974.

authorities in support of his application for political asylum, since the certificate, from the “leader of the ENNAHDA movement”, confirmed his membership of the “movement”.

8.7 Concerning the allegations relating to prison conditions, and in particular the arrangements for transfers between one prison and another, which the complainant considers an abuse, the State party points out that, in keeping with the applicable regulations, transfers are decided upon in the light of the different stages of the proceedings, the number of cases and the courts which have competence for specific areas. The prisons are grouped in three categories: for persons held awaiting trial; for persons serving custodial sentences; and semi-open prisons for persons found guilty of ordinary offences, which are authorized to organize agricultural labour. According to the State party, as the complainant had changed his status from that of remand prisoner to that of a prisoner serving a custodial sentence, and bearing in mind the requirements as to investigations in his case or in other similar cases, he was transferred from one prison to another, in accordance with the applicable regulations. The conditions in which the complainant was held, wherever he was held, were in keeping with the prison regulations governing conditions for holding prisoners in order to ensure prisoners’ physical and moral safety. The State party points out that prisoners’ rights are scrupulously protected in Tunisia, without any discrimination, whatever the status of the prisoner, in a context of respect for human dignity, in accordance with international standards and Tunisian legislation. Medical, psychological and social supervision is provided, and family visits are allowed. The State party maintains that the conditions in which the complainant was held were in keeping with Tunisian regulations governing prison establishments, which conform to relevant international standards.

8.8 Contrary to the allegations that the medical consequences suffered by the complainant are due to torture, the State party rejects any causal link. It notes in particular that the medical certificate recording a neuropsychiatric disorder, which was produced by the complainant, dates from 29 July 1999, that is, some 10 years after the “incidents”. The State party also cites the psychological problems to which the complainant referred in court (para. 8.5). In addition, according to the State party, the complainant, contrary to his allegations, enjoyed proper medical supervision and appropriate care during his stay at the prison of Borj Erroumi.

8.9 Concerning the allegations that he was denied visits, according to the State party the complainant regularly received visits from his brothers, his uncle, his father and his mother, in accordance with the prison regulations, as demonstrated by the visitors’ records in the prisons in which he was held.

8.10 Concerning the allegations relating to article 11 of the Convention, the State party rejects them and refers to systematic monitoring<sup>11</sup> of compliance with rules, instructions, methods and practices of interrogation and provisions relating to the holding<sup>12</sup> and treatment of persons who have been arrested, detained or imprisoned.<sup>13</sup>

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<sup>11</sup> In addition to legislation, protective institutional machinery has been set up by stages, including surprise visits to prisons by the Chairman of the Higher Committee for Human Rights and Fundamental Freedoms, and the creation on 31 July 2000 of a post of “judge for the enforcement of sentences” who is responsible for closely monitoring the enforcement of custodial sentences and conducting periodic visits to prisons.

<sup>12</sup> Act No. 99-90 of 2 August 1999 amended and supplemented a number of provisions of the Code of Criminal Procedure, and in particular reduced the length of police custody to three days, renewable once only for a further three days. Under the Act, criminal investigation officers may not hold a suspect for more than three days; they

8.11 Concerning the allegations relating to the social position of Mr. Ltaief's family, the State party maintains that his family is not suffering any form of harassment or restrictions, that the family is living in decent circumstances, and that the complainant's father is receiving a pension.

Observations by the complainant :

9.1 In his observations dated 20 May 2003, the complainant sought to respond to each of the points contained in the above observations by the State party.

9.2 Concerning the preventive arrangements for combating torture, the complainant considers that the State party has confined itself to listing an arsenal of laws and measures of an administrative and political nature which, he says, are not put into effect in any way. To support this assertion he cites a report prepared by the non-governmental organization "National Council for Fundamental Freedoms in Tunisia" (CNLT).<sup>14</sup>

9.3 In relation to the establishment of a legislative reference system to combat torture, the complainant considers that article 101 bis of the Code of Criminal Procedure was adopted belatedly in 1999, in particular in response to the concern expressed by the Committee against Torture at the fact that the wording of article 101 of the Criminal Code could be used to justify serious abuses involving violence during questioning. He also claims that this new article is not applied, and attaches a list of the victims of repression in Tunisia between 1991 and 1998 prepared by the non-governmental organization "Vérité-Action". He also points out that the cases cited by the State party to demonstrate its willingness to act to combat torture relate only to accusations of abuse of authority and violence and assault, as well as offences under the ordinary law, and not to cases of torture leading to death or cases involving physical and moral harm inflicted on the victims of torture.

9.4 Concerning the practice of torture and impunity, the complainant maintains that torturers do enjoy impunity, and that in particular no serious investigation has been carried out into those suspected of committing crimes of torture. He considers that, in his own case, the State party's observations display a selective approach to the facts, by concluding that the allegations of ill-treatment date back to 1987, whereas the complainant recounts his "martyrdom" in prison from 1987 to 1997. The complainant also points out that, whereas a State governed by the rule of law should automatically follow up any report of a criminal act which may be regarded as a serious

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must notify the public prosecutor, who may, by written decision, extend the length of police custody once only for a further three days. The criminal investigation officer must inform the suspect of the measure being taken against him and its duration, and his rights under the law, notably the possibility of undergoing a medical examination during his period in custody. The officer must also inform one of the suspect's parents or children, brothers or sisters or spouse, as selected by him, of the measure being taken against him. These safeguards were further strengthened under the constitutional reform of 26 May 2002, which granted constitutional status to supervision of police custody by the judiciary, stipulating that this custodial measure could be imposed only by order of a court.

<sup>13</sup> The Act of 24 April 2001 on conditions for the imprisonment and treatment of detainees strengthened safeguards for the protection of prisoners and provided for prisoners to be prepared for a working life by offering them opportunities for paid employment.

<sup>14</sup> "Pour la réhabilitation de l'indépendance de la justice», April 2000- December 2001.

offence, the Tunisian authorities are content to accuse the alleged victims of terrorism and manipulation. The complainant also produces a list of complaints by Tunisian public figures which were recently reported and ignored by the authorities. He considers that he has drawn up a detailed account of his individual case, giving names, places, dates and treatment inflicted, but the State party contents itself with a blanket denial of such treatment. The complainant did not mention torturers because of their membership of the security forces, but because of specific and repeated attacks on his physical and moral integrity and his private and family life. The initiation of an investigation designed to check whether a person belonging to the security forces has committed acts of torture or other acts does not constitute a violation of the presumption of innocence but a legal step which is vital in order to investigate a case and, if appropriate, place it before the judicial authorities for decision. In relation to appeals before the courts, the complainant considers that the State party has confined itself to repeating the description of legal options open to victims set out in its previous submissions without responding to the last two sentences of paragraph 7.2 of the decision on admissibility. He reiterates that the theoretical legal options described by the State party are inoperative.

9.5 Concerning the claim of inertia and lack of action, the complainant considers that the State party is inconsistent in holding that acts of torture are regarded as serious offences in Tunisian law and accordingly prosecuted automatically, while awaiting a complaint by the victim before taking action. He also re-emphasizes his serious efforts to demand a medical examination and an investigation into the torture he had suffered, referring to the examining magistrate's refusal of his request for a medical examination, and the medical certificate indicating a neuropsychiatric disorder.

9.6 The complainant maintains that his counsel refused to sign the transcript of the questioning before the examining magistrate, thereby proving the abnormal conditions in which the proceedings took place. He also notes that by its own admission, but by means of legal reasoning which he finds strange, the State party acknowledges that the examining magistrate refused his request for a medical examination because of the absence of any obvious traces of violence. The complainant explains that holding an individual in pre-trial detention beyond the time limits laid down by law for the purposes of concealing the traces of torture, and then denying him the right to a medical examination on the grounds that there were no obvious traces of torture, falls within a pattern of institutionalization of torture. Lastly, according to the complainant, the State party thereby acknowledges that it prevented him from initiating an elementary and obvious procedure which would provide him with the initial evidence he requires. He adds that in his extremely serious case, in which he was brought before a court of special jurisdiction (the State Security Court), this refusal deprived him of the last resort which would have enabled him to defend his interests. According to the complainant, given the serious charges made against him, the slightest doubt and the slightest allegation of ill-treatment should have triggered a process of checking. Furthermore, the examining magistrate's refusal to authorize a medical examination lessened the complainant's chances of resubmitting the request to the court (even though the request was indeed resubmitted).

9.7 Concerning the allegations relating to his confession, the complainant maintains that his confession was extracted under torture, and, citing the reports of CNLT, states that such methods are used in political trials and sometimes in trials involving offences under ordinary law. As for the State party's endeavours to detect signs of contradiction in his acknowledgement of membership of the ENNAHDA movement (para. 8.6), the complainant is surprised at this

strange reasoning, and explains that his conviction related to an alleged attack using acid, and not membership of the ENNAHDA movement.

9.8 Concerning the conditions in which he was held, the complainant considers that the State party is taking refuge behind legal texts in order to dismiss his plentiful, specific and substantiated evidence. He explains that he was transferred for purposes of punishment, and not for any matter related to cases pending before the courts. He points out that the question of transferring him for the purposes of the investigation never arose, and calls on the State party to prove the contrary.

9.9 In relation to visits, the complainant considers that denial of visits constituted a form of revenge against him each time he sought to exercise a right and took action to that end, for example in the form of a hunger strike. He explains that the actual conditions in which the visits took place - the ill-treatment inflicted on the members of his family at the place of the visit and by the local police on their return home - constituted breaches of national and international standards.

9.10 Concerning the allegations relating to the provision of care, the complainant draws the Committee's attention to the medical certificate contained in his file, pointing out that it was supplied only 10 years after the incidents as that was the first available opportunity. He also notes that the State party, while it accepts the existence of psychological problems, but only on the grounds of an alleged feeling of guilt and not because of the torture he suffered, refuses to produce the file which would confirm the extent of the regrets of which the court was informed. Concerning the treatment cited by the State party, the complainant demands the production of his medical file by the State party.

9.11 In relation to administrative supervision, the complainant considers that any punishment, including those provided for in the Tunisian Criminal Code, may be characterized as inhuman and degrading if the goal pursued does not include the reconciliation of the offender with his social environment. He notes in particular that he was arbitrarily prevented from continuing his studies, during his 10 years in prison but above all afterwards. He deplores the fact that aside from a remark on the resumption of studies, the State party contented itself with a blanket denial of his assertions, without any supporting investigation or evidence. According to the complainant, administrative supervision serves only to bolster the police's stranglehold over the freedom of movement of former prisoners.

9.12 Concerning the situation of his family, the complainant records the suffering caused by the police surveillance and various forms of intimidation, ill-treatment during visits and the denial of passports for a period of years, continuing up to the present.

9.13 Concerning the application of article 11 of the Convention, the complainant considers that the State party once again contents itself with a theoretical description of its legal arsenal and a reference to the activities of the Higher Committee on Human Rights and Fundamental Freedoms, a non-independent institution. Citing documents issued by non-governmental organizations,<sup>15</sup> the complainant notes violations relating to the supervision of detention and

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<sup>15</sup> Alternative report by FIDH to Tunisia's second periodic report to the Committee against Torture; communiqué issued on 20 February 2003 by the International Association for Support for Political Prisoners in Tunisia.

police custody, such as manipulation of the dates when arrests were recorded, and incommunicado detention. He notes that the State party has not responded to his precise allegations relating to his detention for over two months.

9.14 In relation to the ENNAHDA movement, the complainant maintains that the organization is well known for its democratic ideals and its opposition to dictatorship and impunity, contrary to the State party's explanations. In addition, he challenges the accusations of terrorism levelled by the State party, which in fact form part of a complete fabrication.

9.15 Lastly, according to the complainant, the State party is endeavouring to place the burden of proof on the victim, accusing him of inertia and failure to act, seeking protection behind a panoply of legal measures which theoretically enable victims to lodge complaints and evading its duty to ensure that those responsible for crimes, including that of torture, are automatically prosecuted. According to the complainant, the State party is thus knowingly ignoring the fact that international law and practice in relation to torture place greater emphasis on the role of States and their duties in order to enable proceedings to be completed. The complainant notes that the State party places the burden of proof on the victim alone, even though the supporting evidence, such as legal files, registers of police custody and visits, and so on, is in the sole hands of the State party and unavailable to the complainant. Referring to European case law,<sup>16</sup> the complainant points out that the European Court and Commission call on States parties, in the case of allegations of torture or ill-treatment, to conduct an effective investigation into the allegations of ill-treatment and not to content themselves with citing the theoretical arsenal of options available to the victim to lodge a complaint.

#### Consideration of the merits

10.1 The Committee examined the complaint, taking due account of all the information provided to it by the parties, in accordance with article 22, paragraph 4, of the Convention.

10.2 The Committee took note of the State party's observations of 3 April 2003 challenging the admissibility of the complaint. It notes that the points raised by the State party are not such as to prompt reconsideration of the Committee's decision on admissibility, notably owing to the lack of new or additional information from the State party on the matter of investigations voluntarily carried out by the State party (see paragraph 7.2). The Committee therefore does not consider that it should review its decision on admissibility.

10.3 The Committee therefore proceeds to examine the merits of the complaint, and notes that the complainant alleges violations by the State party of article 1, article 2, paragraph 1, article 4, article 5, article 11, article 12, article 13, article 14, article 15 and article 16 of the Convention.

10.4 Article 12 of the Convention, the Committee notes that article 12 of the Convention places an obligation on the authorities to proceed automatically to a prompt and impartial investigation whenever there is reasonable ground to believe that an act of torture or ill-treatment has been committed, no special importance being attached to the grounds for the suspicion.<sup>17</sup>

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<sup>16</sup> Guide to Jurisprudence on Torture and Ill-Treatment - Article 3 of the European Convention for the Protection of Human Rights, Debra Long (APT); Ribitsch v. Austria; Assenov v. Bulgaria.

<sup>17</sup> Communication No. 59/1996 (Encarnación Blanco Abad v. Spain).

10.5 The Committee notes that the complainant maintains that in 1987 he complained to the examining magistrate of acts of torture inflicted on him and requested a medical examination in that regard, to no avail. The Committee also notes that the State party acknowledges that the examining magistrate rejected the complainant's request for a medical examination on the grounds that he displayed no obvious traces of violence. The Committee considers that the State party's reply referring to the lack of obvious traces of violence does not necessarily constitute a response to the complainant's complaint of acts of torture, which under the definition of torture set out in article 1 of the Convention give rise to "severe pain or suffering, whether physical or mental" and may leave non-obvious but real traces of violence. In that regard, the Committee notes the certificate produced by the complainant reporting a neuropsychiatric disorder. Lastly, the Committee takes note of the detailed and substantiated information provided by the complainant regarding the hunger strikes he carried out while in prison from 1987 to 1997, on at least 15 occasions, for periods of between 5 and 28 days, in protest at the treatment he had suffered. The Committee notes that the State party did not comment on this information. The Committee considers that these elements, taken together, should have been enough to trigger an investigation, which was not held, in breach of the obligation to proceed to a prompt and impartial investigation under article 12 of the Convention.

10.6 The Committee also observes that article 13 of the Convention does not require either the formal lodging of a complaint of torture under the procedure laid down in national law or an express statement of intent to institute and sustain a criminal action arising from the offence, and that it is enough for the victim simply to bring the facts to the attention of an authority of the State for the latter to be obliged to consider it a tacit but unequivocal expression of the victim's wish that the facts should be promptly and impartially investigated, as prescribed by this article of the Convention.<sup>18</sup>

10.7 The Committee notes, as already indicated, that the complainant explains that he did complain to the examining magistrate of the treatment inflicted on him, and resorted to hunger strikes in protest at the conditions imposed on him. Yet notwithstanding the jurisprudence under article 13 of the Convention, the Committee notes the State party's position maintaining that the complainant should have made formal use of domestic remedies in order to lodge his complaint, for example by presenting to the court a certificate proving that a complaint had been lodged with the office of the public prosecutor, or displaying obvious traces of torture or ill-treatment, or submitting a medical report. On this latter point, to which the Committee wishes to draw its attention, it is clear that the complainant maintains that his request for a medical check was denied, and that the State party justifies this decision by citing the lack of obvious traces of violence. The Committee points out that this reply on the part of the State party does not necessarily answer the complainant's precise allegation of acts of torture which left actual traces, particularly of a neuropsychiatric nature. Finally, the Committee refers to its consideration of the report submitted by Tunisia in 1997, at which time it recommended that the State party should arrange for medical examinations to be organized systematically when allegations of abuse were made.

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<sup>18</sup> Communications No. 6/1990 (Henri Unai Parot v. Spain) and No. 59/1996 (Encarnación Blanco Abad v. Spain).

10.8 In the light of its practice relating to article 13 and the observations set out above, the Committee considers that the breaches enumerated are incompatible with the obligation stipulated in article 13 to proceed to a prompt investigation.

10.9 Finally, the Committee considers that there are insufficient elements to make a finding on the alleged violation of other provisions of the Convention raised by the complainant at the time of adoption of this decision.

11. The Committee against Torture, acting under article 22, paragraph 7, of the Convention, is of the view that the facts before it disclose a violation of articles 12 and 13 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

12. Pursuant to rule 112, paragraph 5 of its rules of procedure, the Committee urges the State party to conduct an investigation into the complainant's allegations of torture and ill-treatment, and to inform it, within 90 days from the date of the transmittal of this decision, of the steps it has taken in response to the views expressed above.

[Adopted in English, French, Russian and Spanish, the French text being the original version. Subsequently to be issued also in Arabic and Chinese as part of the Committee's annual report to the General Assembly.]

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