

## [Algerian case of enforced disappearance violates right to life and constitutes torture](#)

16.09.2013

### **MERITS DECISION**

#### **Boudjemai v Algeria (1791/2008)**

##### **Summary**

In March 2013, the Human Rights Committee was asked to consider whether Algeria had violated its obligations under the International Covenant on Civil and Political Rights in holding an individual in incommunicado detention and refusing to provide their family with information regarding their fate.

The communication was submitted by an Algerian national on behalf of both herself and her missing son under the Optional Protocol to the Covenant.

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##### **Background**

On 3 July 1995, the author's son, Djaafar Sahbi, was arrested by two police officers at the exit of the hospital where he worked.

On 6 July 1995, police officers entered the Sahbi family home by force without a warrant and when no member of the family was present, confiscating documents and property belonging to the author's son.

During his incommunicado detention, the author's son was not charged or brought before a judicial authority and no official information was given to his family regarding his whereabouts or fate, despite multiple requests.

The family repeatedly contacted competent authorities regarding the author's son's disappearance, including various police stations, prisons, and other administrative authorities, but without result. On 25 August 1996, the family referred the matter to the prosecutor of the Court of El Harrach, the chief prosecutor of the Court of Algiers, the Minister of Justice and the President of the Republic, again without result.

On 19 October 1998, the case was submitted to the Working Group on Enforced or Involuntary Disappearances (the **Working Group**). However, Algeria did not respond to the Working Group's subsequent requests for information.

On 12 March 2007, the Ministry of the Interior and Local Authorities officially recognised the author's son's disappearance, but did not accept any responsibility for his disappearance.

On 26 May 2008, the author filed this communication with the Committee under the Optional Protocol to the Covenant. The author claimed violations of articles 6(1), 7, 9, 10(1), 16 and 17 of the Covenant as a result of Algeria's violation of her son's rights to freedom from inhuman or degrading treatment, liberty and security of the person, humanity and respect for the inherent dignity of the human person, and recognition as a person before the law.

The author also claimed that Algeria had violated its obligations under articles 7 and 17 of the Covenant in respect of her own rights due to the anguish and distress caused by her son's disappearance and the unlawful interference with her home respectively, as well as its obligation under article 2(3) to provide the author and her son with an effective remedy for violation of their respective rights under the Covenant.

### **The Committee's decision**

Regarding the admissibility of the author's claims, the Committee recalled that the examination of a complaint by the Working Group did not generally constitute a procedure of international investigation or settlement for the purposes of article 5(2)(a) of the Optional Protocol. Further, the Committee considered that the prohibition against bringing legal proceedings against the Algerian defence and security services under Ordinance No. 60-01 meant that the author did not have recourse to an effective remedy in relation to her son's enforced disappearance. Accordingly, the author had exhausted all domestic remedies for the purposes of article 5(2)(b). As the author had sufficiently substantiated her allegations, the Committee declared the author's claims to be admissible under the Optional Protocol.

On the merits, the Committee noted the incommunicado nature of the author's son's detention and recalled its General Comment No. 20 which recommended that State parties make provision against such detention. It also noted that, despite the author's multiple requests, the author's son had not been brought before a judicial authority during his detention, no investigation had been carried out, and no official information had been given to his family concerning his whereabouts or fate.

The Committee recalled that, in cases of enforced disappearance, concealment of the disappeared person's fate or a refusal to acknowledge the deprivation of their liberty, effectively removes the person from the protection of the law and places his or her life at serious and constant risk, for which the State is accountable. It also considered that the author's son's enforced disappearance had deprived him of his right to recognition as a person before the law, and that the police officers' entry into the family home in such circumstances constituted unlawful interference.

In light of the above, the Committee found Algeria to have breached articles 6(1), 7, 9, 10(1), 16 and 17 of the Covenant and article 2(3) read in conjunction with these articles with regard to the author's son. The Committee also considered that Algeria had also violated articles 7, 17 and article 2(3) with regard to the author.

The Committee therefore concluded that Algeria was under an obligation, in accordance with article 2(3) of the Covenant, to provide the author with an effective remedy, including by:

- (a) conducting a thorough and effective investigation into the disappearance of the author's son;
- (b) providing the author and her family with detailed information about the results of its investigation;
- (c) releasing him immediately if he is still being detained incommunicado;
- (d) in the event that the author's son is deceased, handing over his remains to his family;
- (e) prosecuting, trying and punishing those responsible for the violations committed; and

(f) providing adequate compensation to the author for the violations suffered, and to the author's son if he is still alive.

The Committee also observed that Algeria was under an obligation to prevent similar violations in the future and, in particular, to ensure that it upholds the right to an effective remedy for crimes such as torture and enforced disappearance.

Algeria must now submit its written response within six months of the Committee's decision, including information on the action taken in light of the Committee's recommendations, and ensure that the Committee's decision is published widely.

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