



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

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Committee against Torture

Communication No. 346/2008

**Decision adopted by the Committee against Torture at its forty-ninth
session (29 October–23 November 2012)**

<i>Submitted by:</i>	S.A.C. (represented by counsel, Mr. Frank Michel)
<i>Alleged victim:</i>	S.A.C.
<i>State party:</i>	Monaco
<i>Date of complaint:</i>	8 July 2008 (initial submission)
<i>Date of present decision:</i>	13 November 2012
<i>Subject matter:</i>	Expulsion from Monaco to Brazil
<i>Procedural issues:</i>	Case considered by another international settlement body and exhaustion of domestic remedies
<i>Substantive issue:</i>	Risk of torture following extradition
<i>Articles of the Convention:</i>	3 and 22, paragraphs 5 (a) and (b)

Annex

Decision of the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (forty-ninth session)

concerning

Communication No. 346/2008

Submitted by: S.A.C. (represented by counsel, Mr. Frank Michel)

Alleged victim: S.A.C.

State party: Monaco

Date of complaint: 8 July 2008 (initial submission)

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

Meeting on 13 November 2012,

Having concluded its consideration of communication No. 346/2008, submitted by S.A.C. 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, the complainant's counsel and the State party,

Adopts the following:

Decision under article 22, paragraph 7, of the Convention against Torture

1.1 The complainant, S.A.C., born 7 January 1944 in Tradate, Italy, has Brazilian and Italian nationality. He contends that his extradition to Brazil would constitute a violation of article 3 of the Convention against Torture. The complainant is represented by counsel, Mr. Frank Michel.¹

1.2 On 11 July 2008, the Rapporteur for new complaints and interim measures decided not to request interim measures from the State party to suspend the complainant's extradition to Brazil.

The facts as submitted by the complainant

2.1 The complainant used to reside in Brazil, where he worked as a banker. On 31 March 2005, he was sentenced by a single judge of the Court of Justice of the State of Rio de Janeiro to 13 years' imprisonment for embezzlement of funds and fraudulent practices in the management of the Central Bank of Brazil. The complainant was released on a provisional basis. He then left Brazil and went to Italy, where he established a residence.

¹ The State party made the declaration under article 22 of the Convention on 6 December 1991.

The decision to release him was subsequently rescinded by the President of the Supreme Court of Brazil but by that time the complainant was already in Italy.

2.2 On 15 September 2007, the complainant was taken in for questioning by the Monegasque authorities and was placed under provisional arrest at the request of the Brazilian authorities following the issuance of an arrest warrant by a judge in Rio de Janeiro on 19 July 2000.² Based on that arrest warrant and the judgement of the Court of Justice of Rio de Janeiro of 31 March 2005, the Monegasque Court of Appeal, sitting in chambers, authorized the extradition of the complainant by its decision of 15 April 2008. It ruled against a second request for extradition by the same authorities based on an arrest warrant dated 21 September 2007, which dealt with other acts that were not punishable in Monaco.

2.3 The Court of Appeal authorized the extradition of the complainant on the following grounds: that the validity of the international arrest warrant based on the Brazilian court's judgement of 31 May 2005 could not be challenged; that the conviction of the complainant in Brazil was not contrary to Monegasque law merely because it was issued by a single judge, since the use of a collegiate system cannot be considered a necessary condition for a fair trial; that the single judge's decision did not appear to have departed from the fundamental principles of a fair trial inasmuch as the judge had not been involved in the investigation and the principle of adversarial proceedings appeared to have been respected in accordance with article 6 of the European Convention on Human Rights; and that the issuance of an international arrest warrant due to the flight of a person convicted in first instance does not preclude the possibility of the person concerned filing an appeal, and the arrest and extradition of the complainant by the State party was thus not contrary to international law.

2.4 On 19 June 2008, the complainant's appeal against this decision was rejected by the Court of Review of the Principality of Monaco. On 2 July 2008, the Prince of Monaco authorized the extradition of the complainant. At the time of submission of the communication to the Committee, the transfer of the complainant to Brazil was imminent.

2.5 On 24 June 2008, the complainant filed a complaint with the European Court of Human Rights, which was rejected.

The complaint

3.1 The complainant contends that if he were deported to Brazil, he would have to serve the prison term to which he had been sentenced. He would therefore be subjected to inhuman and degrading treatment, given prison conditions in Brazil and the specifics of his case.

3.2 The complainant had been sentenced to 13 years' imprisonment in Brazil for a financial offence, which he considered to be a disproportionate penalty even if he were guilty, which he maintains he was not. He has produced extracts of reports by organizations such as Human Rights Watch and Amnesty International, press articles and videos showing the poor conditions existing in Brazilian prisons, which included overcrowding (at the time the complaint was submitted, the prison population in Brazil was four times greater than the system's capacity),³ deplorable hygiene conditions, and physical and psychological

² According to the ruling of the Court of Appeal dated 15 April 2008, the international arrest warrant had been issued by the Brazilian judicial authorities on 19 July 2000 and renewed on 26 June 2006 as a result of the flight of the person concerned to Italy.

³ The complainant refers to information published on the website www.leduecittà.it (Review of the Italian prison administration).

violence, including the torture of prisoners by the police in order to extract confessions or for the purposes of intimidation or extortion.⁴

3.3 The complainant refers to an article published on the website Prisoners of Silence, which focuses on the situation of Italian nationals detained in foreign countries who are at risk of becoming the victims of human rights violations. According to this article, following a request from an Italian national detained in Brazil for the Italian Ministry of Foreign Affairs to intervene on his behalf, a bilateral agreement was signed by Italy and Brazil under which Italian nationals who are convicted by Brazilian courts have the option to serve their sentences in a prison in their country of origin, i.e., Italy. The complainant argues that this agreement could apply to his case in the event of a definitive conviction by the Brazilian courts, on condition that the case was tried in accordance with the fundamental legal safeguards recognized in Italy.

3.4 Although the prison situation in Brazil was brought to the attention of the Monegasque Court of Appeal, sitting in chambers, by means of a petition signed by Brazilian detainees denouncing the prison conditions in Brazil and a letter addressed by a former lawyer held in custody in Brazil to the Sovereign Prince of Monaco, the Court of Appeal did not consider it necessary to include a provision in its judgement that would require guarantees regarding respect for article 3 of the Convention from the Brazilian authorities in the event of extradition. The complainant adds that he is elderly and in poor health, as he suffers from hypertension, which is an aggravating factor.

3.5 For the last 10 years, the complainant has been portrayed by the Brazilian press and authorities as a public enemy. He is therefore afraid that he would be exposed to retaliatory measures owing to his unpopularity as a result of the media campaign. He has, in fact, written a book about his situation, which he has attached to this complaint. The case is highly political because the complainant was prosecuted, along with other managers of the Central Bank of Brazil, on suspicion of insider trading at the highest levels of the Brazilian Government, and the complainant himself had made accusations in that regard. In his book, the complainant denounces corruption among members of the judiciary, including the judge who issued the arrest warrant for him in 2007 and who was later himself charged with corruption.

3.6 The complainant considers that his fundamental rights were not respected during the judicial proceedings in Brazil, inasmuch as the decision to grant him provisional release was simply rescinded without giving him the opportunity to challenge that measure. The harassment to which he was subjected was so serious that his daughter committed suicide. In addition, at the time of the submission of his complaint to the Committee, Brazil was in the midst of national elections, and the Brazilian authorities and the press could have considered the complainant to be in possession of information that would incriminate top-ranking Brazilian authorities of that time.

State party's observations on admissibility

4.1 On 9 September 2008, the State party challenged the admissibility of the communication under article 22, paragraphs 5 (a) and (b), of the Convention.

4.2 The State party notes that, according to information submitted by the complainant himself, the case has also been submitted to the European Court of Human Rights, with the

⁴ The complainant refers to numerous documents issued by Human Rights Watch, in particular "Brazil: Investigate Killings of Brazilian Prisoners", dated 20 February 2001, and the report entitled "Behind Bars in Brazil" (and specifically chapter VII of that report, entitled "Prisoner-on-Prisoner Abuses") of December 1998.

complainant citing article 3 of the European Convention on Human Rights, which prohibits torture and inhuman or degrading treatment or punishment. That being so, the same question has been brought before another international body. Moreover, in a decision dated 24 June 2008 regarding a request for interim measures under Rule 39 of the Court that would suspend the extradition of the complainant, the President of Section V of the European Court of Human Rights decided not to indicate the requested interim measure to the State party.

4.3 Moreover, the State party contends that, prior to submitting a complaint to the Committee, the complainant should have ensured that all domestic remedies had been exhausted. In the event, the complainant did not avail himself of the opportunity to file an appeal, under article 90 of the Constitution, with the Supreme Court to overrule the State's decision to extradite him.⁵ Furthermore, articles 39 and 44 of the law of 16 April 1963 on the organization and procedures of the Supreme Court provide for urgent measures with respect to the suspension of the execution of an order and interim relief. Article 40 offers the opportunity for the complainant to request the suspension of the execution of a decision until the Supreme Court rules on the merits. No such appeal has been filed by the complainant, however, and domestic remedies have therefore not been exhausted.

4.4 The State party is of the opinion that the prospect of extradition did not render such an appeal ineffective. Although extradition is recognized in international law as a sovereign act, the Supreme Court has ruled that an extradition may come within its purview if the nature of the case is such that it appears to "depart from the requirements of normal extradition practice",⁶ which is what the complainant continued to claim by arguing that proper procedures were not followed in the course of his judicial appeals. Moreover, even though the law does not expressly refer to a suspensive effect, decisions on extradition may not be put into effect until the Director of Judicial Services is able to provide a full report on all aspects of the case to the Prince in line with the procedures set out in the Extradition Act of 28 December 1999 and, in particular, those relating to ongoing proceedings as provided for under article 17 of the Act. The State party notes that, in any case, the Prince did not authorize the extradition of the complainant until 2 July 2008, that is, after the European Court of Human Rights and the Committee had refused to grant interim measures.

State party's observations on the merits

5.1 On 5 January 2009, the State party submitted its observations on the merits. With regard to the human rights situation in Brazil, the State party acknowledged the criticisms reported in the press regarding overcrowding in prisons in Brazil, as noted by the Committee itself in its concluding observations on Brazil dated 16 May 2001. However, the State party also notes that, in its observations, the Committee also acknowledged a number of positive developments, such as the legislative reform of April 1997, which made it possible to punish acts of torture as criminal offences. The Brazilian authorities' concern about the need to improve prison conditions led to the ratification on 12 January 2007 of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment of 18 December 2002. Regardless of whether or not the Committee's recommendations were implemented by Brazil, the complainant was entitled to avail himself of a domestic remedy under the aforementioned law of April 1997.

⁵ Article 90 of the Constitution, which defines the jurisdiction of the Supreme Court, states that, in administrative matters, the Supreme Court may issue final rulings on: "(2) appeals in cassation against decisions of administrative courts of final instance".

⁶ See the Supreme Court judgement in the Van Troyes case of 28 June 1986.

5.2 In addition, in its official request for the complainant's extradition dated 20 September 2007, the Brazilian Ministry of Justice stated that the Brazilian Constitution prohibits capital punishment, life imprisonment, sentences of forced labour and any other form of cruel punishment; thus, any punishment that constitutes an affront to human dignity is constitutionally unlawful and therefore cannot be imposed in Brazil. The State party further notes that, to this day, no complaint has been lodged with the Committee against Brazil, even though the country has recognized the competence of the Committee to consider individual complaints.

5.3 The State party adds that, in line with the jurisprudence of the Committee, the existence of violations, even if they were confirmed to have taken place, does not in itself constitute a sufficient reason to conclude that a person runs the risk of being tortured, since the risk must be personal. It is therefore up to the complainant to show evidence of a risk and to prove that this risk extends beyond mere suppositions or suspicions. The complainant has not, however, provided any such evidence to the Committee, nor did he submit any to the Monegasque judicial authorities during the domestic court case. The only pieces of evidence submitted to the Monegasque courts were two letters from Brazilian prisoners containing general complaints regarding prison conditions in Brazil and a petition signed by several prisoners. None of these documents referred specifically to a prison in which the complainant might eventually be held, and the State party therefore has legitimate doubts as to the actual value of these documents.

5.4 The State party notes that the complainant did not claim that he would be at risk of torture when his case was before the Court of Appeal, sitting in chambers, even though he had applied to that court to rescind the extradition order. The complainant had simply made mention of the documents referred to above (see paragraph 5.3) but did not cite them as grounds for his request for the extradition order to be set aside, even though the risk of ill-treatment or torture does constitute a legal ground for a refusal to extradite under article 6 of Extradition Act No. 1.222 of 28 December 1999. The complainant therefore did not give the courts the opportunity to rule on this point. Yet, in a previous case concerning the extradition of a person from the State party to the Russian Federation, the Court of Appeal had requested guarantees from the Russian authorities by appending a number of requirements to its ruling, such as the authorization of family and consular visits, since the person concerned had produced evidence that he had previously been subjected to ill-treatment in the Russian Federation.⁷ This portion of the case law of the Court of Appeal was known to the complainant's counsel, since he had also served as counsel for the person concerned in the case dealing with extradition to the Russian Federation, which had taken place prior to the case at hand. The State party therefore wonders why the same counsel did not put forward this plea in the complainant's case. The State party suggests that the omission of this argument shows that counsel was unable to establish that the complainant would run any risk of torture or ill-treatment if he were returned to Brazil.

5.5 Moreover, the pleadings submitted by the complainant's counsel to the Court of Appeal of Monaco made only general points and referred to the possibility of violations of the right to a defence. They did not provide any real evidence of incidents of ill-treatment constituting a consistent pattern of gross, flagrant or mass violations of human rights. Counsel instead focuses on his assertions that the complainant was unjustly convicted, that he was convicted by a single judge in a highly political climate and that he was given a disproportionately severe sentence.

⁷ The State party cites the decision of the Court of Appeal, sitting in chambers, in the case of E. Bourmaga dated 30 November 2004 (copy provided).

5.6 The State party also recalls that on 26 February 2008, the Monegasque Court of Appeal, sitting in chambers, requested that it be provided with full information on the complainant's earlier appeals against his conviction in Brazil and requested assurances from the Brazilian Government that the appeal would be considered in adversarial proceedings should the complainant be extradited on the basis of the arrest warrant. In response, the Brazilian authorities, in a note verbale dated 20 February 2008, confirmed that all appeals submitted to the Brazilian judiciary were examined in adversarial proceedings and that Brazil undertook to examine any appeals filed by the complainant, including appeals against his conviction.

5.7 The State party considers that the Committee's refusal and, prior to that, the refusal by the European Court of Human Rights to grant interim measures in this case also demonstrate the unfounded nature of the complainant's argument regarding the risk of torture or ill-treatment. It recalls the Committee's jurisprudence, according to which the complainant must prove that he would be at risk of being subjected to torture, that there are serious reasons for believing that this risk exists, and that the complainant is personally and currently at risk.⁸ With regard to the complainant's claim that he runs a personal risk for political reasons because, more than 10 years after the events in question, he is still considered to be public enemy No. 1 and that he would be in danger because he has incriminating information in his possession, the State party considers these assertions to be no more than theories, suspicions and suppositions, since no evidence has been submitted by the complainant in support of his argument.

5.8 Moreover, the fact that the complainant was filmed in handcuffs during his transfer from prison to the court in Brazil, although humiliating, is not serious enough to qualify as ill-treatment. Yet these are the only instances of humiliation of which the complainant makes mention. The State party adds that, with regard to the age of the complainant and his state of health, which he describes as poor, the complainant has not shown that he cannot receive adequate medical treatment in the prison where he is being held in Brazil. Nor has the complainant demonstrated that he does not receive adequate protection from the Brazilian authorities. The State party notes that, since he was extradited to Brazil in mid-July 2008, the complainant has not reported any acts of torture or serious ill-treatment.

5.9 The complainant has therefore failed to advance any arguments or evidence which demonstrate that the legal extradition procedures carried out by the State party in accordance with the principles of international law placed him at a personal, real and foreseeable risk of torture or ill-treatment in Brazil.

Complainant's comments on the State party's submission

6.1 In comments dated 30 June 2009, the complainant does not mention the State party's observations on the admissibility of the communication but comments only on its merits.

6.2 The complainant challenges the argument made by the State party at the time, according to which he would not be at risk as defined under article 3 of the Convention if he were extradited to Brazil. He claims that he provided sufficient evidence of that risk in his initial submission and in the course of his appeals before domestic courts. The complainant recalls what he describes as the undeniably political nature of the case, since it was seen as an affair of State in Brazil involving a financial scandal in which some of the authorities holding office at the time could be implicated.

⁸ The State party refers, in particular, to the Committee's decision regarding communication No. 245/2004, *S.S.S. v. Canada*, adopted on 16 November 2005, paras. 8.3 and 8.5.

6.3 The complainant also rejects the State party's argument that his counsel had not claimed that he ran a risk of torture even though he had done so in a previous extradition case involving the Russian Federation. On the contrary, his counsel had argued before the Court of Appeal that the complaint did in fact run such a risk. This fact had also been raised in the complaint submitted to the European Court of Human Rights.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any complaint contained in a communication, the Committee against Torture must decide whether it is admissible under article 22 of the Convention. The Committee notes that on 25 June 2008, the complainant filed a complaint (registration number 30114/08) with the European Court of Human Rights and that this complaint was based on the same grounds (extradition to Brazil contrary to the principle of non-refoulement). However, the complaint had been rejected without an examination of the merits. The Committee is of the opinion that, under these circumstances, the case cannot be deemed to have been examined under another procedure of international investigation or settlement within the meaning of article 22, paragraph 5 (a), of the Convention. The Committee is consequently not precluded from considering the complaint on that basis.

7.2 The Committee notes that the State party has contested the admissibility of the complaint on the ground of failure to exhaust all domestic remedies, since the complainant did not file an application before the Supreme Court under article 90 of the Constitution for the revocation of the State's decision to request extradition. The Committee observes that the complainant has not refuted or contested that argument. The Committee also notes that during its consideration of the fourth and fifth periodic reports submitted by Monaco under article 19 of the Convention, the State party cited the applicable procedure in this respect, stating that it is possible to appeal to the Supreme Court against return (refoulement) and expulsion orders, which are administrative decisions adopted by the Minister of State. In the absence of an opposing argument by the complainant, the Committee concludes that this remedy applies *mutatis mutandis* to extradition decisions and that it constitutes an effective remedy so long as it has suspensive effect in practice, as mentioned by the State party in its observations on admissibility in paragraph 4.4 of this decision.⁹

7.3 The Committee concludes that the complainant has not exhausted domestic remedies and that the current complaint is therefore inadmissible under article 22, paragraph 5 (b), of the Convention.

7.4 As a result, the Committee against Torture decides:

- (a) That the communication is inadmissible;
- (b) That this decision shall be transmitted to the State party and to the complainant.

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

⁹ See the combined fourth and fifth periodic reports of Monaco to the Committee against Torture, (CAT/C/MCO/4-5), para. 13 ff.