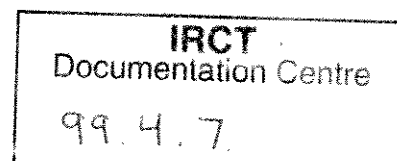
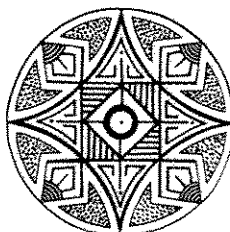


and reliable records of the detention of persons taken into custody by gendarmes, and the lack of any prompt or meaningful enquiry into the circumstances of his disappearance.

Referring to its reasoning in, among other things, its judgement of 19 February 1998 in the case of *Kaya v. Turkey*, the Court considered that the national authorities had been under an obligation to carry out an effective investigation.

The Court, ruling on an equitable basis, awarded GBP 11,534.29 for pecuniary damage to the applicant's brother's spouse and children, GBP 25,000 for non-pecuniary damage to his brother's heirs, GBP 2,500 for non-pecuniary damage to the applicant himself, and GBP 20,000 for costs and expenses.

□



## European Human Rights Court found France guilty of violating the torture prohibition – for the second time

*The Strasbourg Court awarded the torture victim  
FRF 500,000 in compensation*

*Henrik Døcker*

The European Court of Human Rights in Strasbourg has once more found France guilty of violation of the prohibition of torture, as established in article 3 in the European Convention on Human Rights comprising almost all the 41 Council of Europe member countries.

In a judgement delivered at Strasbourg on 28 July 1999 in the case of *Selmouni v. France*, the Court held unanimously that article 3 as well as article 6 § 1 (right to a hearing within a reasonable time) was violated. The applicant made a complaint concerning his treatment in December 1992, and the proceedings are still pending before French courts.

Under article 41 (just satisfaction) of the Convention, the Court awarded the applicant FRF 500,000 for pecuniary and non-pecuniary damage, and FRF 113,364 for legal costs and expenses.

The applicant, 57-year-old *Ahmed Selmouni*, a Dutch and Moroccan national, is currently in prison in Montmédy (France). The European convention covers anyone who may be exposed to violation of his or her rights according to the convention, prisoners included, and it is no condition that you must be a citizen of one of the Council of Europe countries.

France was previously found guilty of violating the torture

prohibition in 1992. A Corsican shopkeeper, *Felix Tomasi*, following a judgement by the European Court of Human Rights, was awarded one million French francs in compensation for being beaten for 40 hours and because it took more than five and a half years to deal with his complaint against the French government. He was suspected of involvement in a murder and an attempted murder in February 1982 by the ex-FLNC (Corsican National Liberation Front).

Four different doctors examined Tomasi in the days following the custody, and the many marks on his body indicated the numerous intense blows that had been inflicted on him. The Court, while recognizing the undeniable difficulties in fighting crime, not least terrorism (a reference to the well-known violent political movements on Corsica), held that the investigation must not remove the necessary protection of physical integrity of individuals.

### **The applicant sentenced for drug-trafficking**

Selmouni was held in police custody in Bobigny in France from 25-29 November 1991, while he was questioned by police officers from the Seine-Saint-Denis Criminal Investigation Department in connection with drug-trafficking proceedings. The maltreatment he suffered in police custody

resulted in six medical examinations, with accompanying certificates.

The Bobigny Criminal Court ultimately sentenced him to 15 years' imprisonment on 7 December 1992, but before that the judge ordered an expert medical report. One year earlier, in December 1991, an expert from the medical department of the Fleury-Mérogis prison, appointed by the investigating judge, examined the prisoner and listed the visible injuries on his body, concluding that they had been sustained at a time that corresponded with the period in police custody.

On 1 December 1992 the applicant was questioned about the events for the first time by an officer of the National Police Inspectorate, and the record of the interview was sent to the Bobigny Public Prosecutor. In February 1993 the applicant lodged a criminal complaint, together with an application to join the proceedings as a civil party.

The reasons given were "*assault occasioning actual bodily harm resulting in total unfitness for work for more than eight days; assault and wounding with a weapon (namely a baseball bat); indecent assault; assault occasioning permanent disability (namely the loss of an eye); and rape aided and abetted by two or more accomplices*". All this, done by police officers, occurred between 25 and 29 November 1991.

### Several years' prison for the police torturers

In February 1993 a judicial investigation into the complaint opened in the Bobigny *tribunal de grande instance*, lodged both by the applicant, Selmouni, and by another person who had been taken into police custody. An identity parade was organized on 10 February 1994. The applicant picked out four police officers (a fifth officer was identified by the other civil party on 7 March 1996).

In a judgement of 27 April 1994 the Court of Cassation decided to remove the case from the Bobigny investigating judge and transfer it to a judge attached to the Versailles *tribunal de grande instance*, in the interests of the proper administration of justice. The identified police officers were charged in January, February, and March 1997. On 21 October 1998 they were committed for trial at the Criminal Court on charges of assault occasioning unfitness for work for less than eight days and indecent assault committed collectively and with violence and coercion.

In a judgement of 25 March 1999 the Versailles Criminal Court sentenced the police officer who had been in charge to four years' imprisonment, issuing a warrant for his immediate arrest, and three years' imprisonment for the other officers. In a judgement of 1 July 1999 the Versailles Court of Appeal convicted the police officers of assault, in the course of their duty and without legitimate reason, with or under the threat of the use of a weapon, occasioning *total unfitness for work* for less than eight days in the case of Selmouni and for more than eight days in the case of the other victim. The police officers were given suspended prison sentences of twelve to fifteen months; the officer in charge was sentenced to eighteen months' imprisonment, of which fifteen months were suspended.

### Tortured to obtain confession

The Court found that all the injuries recorded in the various medical certificates, and the applicant's statements regarding the ill-treatment to which he had been subjected while in police custody, established the existence of physical and un-

doubtedly (notwithstanding the regrettable failure to order a psychological report on Selmouni after the events complained of) mental pain and suffering.

The course of the events also showed that pain and suffering had been inflicted on the applicant intentionally for the purpose of, *inter alia*, making him confess to the offence of which he had been suspected of committing. Lastly, the medical certificates annexed to the case file showed clearly that the numerous acts of violence had been directly inflicted by police officers in the performance of their duties.

In other words, it remained to establish in the present case whether the "*pain or suffering*" inflicted on Mr Selmouni could be defined as "*severe*" within the meaning of Article 1 of the *United Nations Convention against Torture*, which came into force on 26 June 1987. The Court considered that this "*severity*" was, like the "*minimum severity*" required for the application of Article 3, in the nature of things, relative; it depended on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects, and, in some cases, the sex, age, and state of health of the victim, etc.

### Severe pain and suffering

The Court was satisfied that a large number of blows had been inflicted on Selmouni. Whatever a person's state of health, it could be presumed that such intensity of blows would cause substantial pain. Moreover, a blow did not automatically leave a visible mark on the body. However, it could be seen from the expert medical report of 7 December 1991 that marks of violence covered almost all of Selmouni's body.

The Court also observed that the applicant had been subjected to a certain number of acts that would have been heinous and humiliating for anyone, irrespective of their condition. The Court noted, lastly, that the above events had not been confined to any one period of police custody during which, without this in any way justifying the heightened tension and emotions, might have led to such excesses. It had been clearly established that Selmouni had endured repeated and sustained assaults over a number of days of questioning.

Under these circumstances, the Court was convinced that the physical and mental violence, considered as a whole, committed against the applicant's person had caused *severe* pain and suffering and had been particularly serious and cruel. Such conduct had to be regarded as acts of torture for the purposes of Article 3 of the Convention.

Selmouni requested a transfer to the Netherlands to serve the remainder of his sentence there. The Netherlands government, having regard to the circumstances of the case, supported his request, observing that the two states concerned were parties to the European Convention on the Transfer of Sentenced Persons of 21 March 1993. The Court however reiterated that article 41 of the convention did not give it jurisdiction to make such an order against a contracting state. □

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