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Slovakia: Constitutional Court upholds the absolute prohibition of torture

Amnesty International welcomes the decision by the Slovak Constitutional Court on 26 June 2008 in the case of Mustapha Labsi, which reaffirms the absolute duty on the authorities not to send any person to any place where they face a real risk of torture or other ill-treatment, and underscores the obligation of Slovakia not to rely on diplomatic assurances.

The Constitutional Court's ruling was made in the context of reviewing the decision of the Supreme Court which gave the green light to the Slovak authorities to extradite Mustapha Labsi to Algeria. The Constitutional Court concluded that the decision by the Slovak Supreme Court, violated Mustapha Labsi's rights to judicial protection because the Supreme Court had not taken into consideration the human rights situation in Algeria and the fact that Mustapha Labsi would be at risk of torture if returned there.

Based on its research on the human rights situation in Algeria, Amnesty International has repeatedly expressed concerns that there is a real risk Mustapha Labsi would face serious human rights violations if forcibly returned from Slovakia to Algeria. In particular the organization considers that if returned to Algeria Mustapha Labsi would be at risk of being detained incommunicado in a secret location, and as such being subjected to torture or other ill-treatment. Furthermore Amnesty International considers that if returned to Algeria, Mustapha Labsi also faces a real risk of an unfair trial. Therefore, Amnesty International has concluded that his extradition to Algeria would violate both Slovak law and Slovakia's obligations under the European Convention for the Protection of Human Rights and Fundamental Freedoms and the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The Constitutional Court's ruling also underscored that the Slovak authorities cannot base a decision to extradite Mustapha Labsi on any promises made by Algerian officials that Mustapha Labsi would be well-treated in Algeria. As underscored by the UN General Assembly, the UN High Commissioner for Human Rights and the UN Special Rapporteur against Torture, as well as Amnesty International such 'assurances' do not release the Slovak authorities from their obligations under international law not to send a person to a place where they face a real risk of serious human rights violations, including torture and other ill-treatment.

Commenting on the judgment of the Constitutional Court the lawyer who represented Mustapha Labsi in the proceedings, Mária Kolíková, said: "This case is about the principle that the prohibition of torture applies to everyone without discrimination -- and that the state that seeks to extradite or expel a person to another country for any reason must take into consideration whether this person will be at risk of torture."

In its ruling the Constitutional Court also sent a strong message to the Supreme Court, as well as lower instance courts, reminding them of their obligation to guarantee human rights protection, not relying only on the Constitutional Court, or any other body, to provide this protection.

Mustapha Labsi's case will now be reconsidered by the Supreme Court of Slovakia, in the light of the ruling of the Constitutional Court.

Background Information

Mustapha Labsi has been held in custody in Slovakia since 3 May 2007, on the basis of an extradition request by Algeria. On 24 September 2007 the Migration Office of Slovakia refused Mustapha Labsi's request for asylum and for subsidiary protection. The Supreme Court confirmed on 22 January 2008, a previous ruling

by the Bratislava Regional Court, which gave the green light for the extradition of Mustapha Labsi to Algeria.

According to information submitted to Slovakia by the Algerian authorities, Mustapha Labsi was tried *in absentia* in Algeria and sentenced to life imprisonment on charges related to terrorism. The Slovak authorities have also obtained diplomatic assurances from Algeria that if Mustapha Labsi were to be returned he would have the right to a new, fair trial, where he would be entitled to legal representation, in front of a regular criminal jury.

However, Amnesty International has documented cases in which the rights of persons, like Mustapha Labsi, who are suspected of being linked to “terrorism” were violated while they were in the custody of Algeria’s Department for Information and Security (*Département du renseignement et de la sécurité*, DRS, also known as Military Security), and during the course of their trial proceedings.

It should be noted that the UN Human Rights Committee recently voiced similar concerns. On 1 November 2007, after reviewing Algeria’s implementation of its obligations under the International Covenant on Civil and Political Rights, the UN Human Rights Committee raised concerns about reports of cases of torture or inhuman and degrading treatment carried out in Algeria, which appeared to be attributable to the DRS. It also stated that the length of *garde à vue* (police custody) detention permitted by the Algerian law is incompatible with international human rights standards. The Committee also raised concern about the fact that, under Algerian law, detainees are not guaranteed access to legal counsel during the period of *garde à vue* detention or the right to remain silent. It noted that in practice the rights to examination by a doctor, to access to families or to be brought before a court within a reasonable time are not respected.

Moreover, the UN Human Rights Committee expressed concern that the use in courts of “confessions” extracted under torture was not prohibited in Algerian law.

Amnesty International Documents

Amnesty International has received dozens of reports of detainees whose rights have been violated in Algeria, among them people who had returned from overseas, either voluntarily or at the hands of foreign governments.

These cases are documented in briefings on Algeria submitted by Amnesty International to the Committee against Torture and the Human Rights Committee (*Algeria: Briefing to the Committee Against Torture* (AI Index: MDE 28/001/2008), *Algeria: Briefing to the Human Rights Committee*, AI Index: MDE 28/017/2007), and a recent Amnesty International report, *Unrestrained powers: Torture by Algeria’s Military Security* (AI Index: MDE 28/004/2006), available at the following links:

<http://web.amnesty.org/library/Index/ENGMDE280172007?open&of=ENG-DZA>

<http://web.amnesty.org/library/Index/ENGMDE280042006?open&of=ENG-DZA>

Other documents which illustrate Amnesty International’s concerns in similar cases can be also found at:

<http://web.amnesty.org/library/Index/ENGMDE280012007?open&of=ENG-DZA>

<http://web.amnesty.org/library/Index/ENGMDE280022007?open&of=ENG-DZA>

<http://web.amnesty.org/library/Index/ENGMDE280112007?open&of=ENG-DZA>

<http://web.amnesty.org/library/Index/ENGEUR450012007?open&of=ENG-GBR>

See also:

Slovakia: Extradition to Algeria would put Mustapha Labsi at risk of torture or other ill-treatment (AI Index: EUR 72/011/2007) <http://www.amnesty.org/en/library/info/EUR72/011/2007/en>

Slovakia: Justice Minister must stop extradition (Press release) <http://www.amnesty.org/en/for-media/press-releases/Slovakia-Justice-minister-must-stop-extradition-20080122>

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