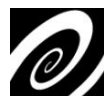


UN Committee against Torture 45th Session (November 2010)

MARCH 2012

SUMMARIES OF DECISIONS on admissibility and merits taken by the UN Human Rights Committee during its 45th session in November 2010. Produced by lawyers at the Open Society Justice Initiative in order to bring the decisions of global human rights tribunals to the widest possible audience.



All decisions are UN Doc. CAT/C/45/D/[communication number]

Decisions on the Merits

[Güclü v. Sweden](#) (Communication no. 349/2008)

Former PKK member has provided sufficient evidence of risk of torture if returned to Turkey; although claim that PKK may kill her as deserter inadmissible because no government involvement or acquiescence.

[A.M.A. v. Switzerland](#) (Communication no. 344/2008)

Togolese national failed to produce sufficient evidence to corroborate his claim that he would risk being subjected to torture upon return to Togo.

[T.I. v. Canada](#) (Communication no. 333/2007)

Ethnic Tartar failed to provide sufficient evidence of discrimination against Tartars in Uzbekistan or of alleged prior torture, and thus failed to show he was at personal risk of torture if returned to Uzbekistan.

[Amini v. Denmark](#) (Communication no. 339/2008)

Evidence of prior torture and recent reports of government targeting monarchist groups shows sufficient risk of torture if Applicant returned to Iran.

[Aytulun and Guclu v. Sweden](#) (Communication no. 373/2009)

Former PKK member has provided sufficient evidence of risk of torture if returned to Turkey; although claim that PKK may kill him as deserter inadmissible because no government involvement or acquiescence.

Decisions on the Merits

Güclü v. Sweden

11 November 2010, UNCAT, 349/2008

Violation of Art 3 (non-refoulement); Torture; Non-refoulement; Jurisdiction; Private actors; Evidence

Applicant was a member of the Kurdish Workers' Party (PKK) for 15 years, including being politically active, before developing doubts and being detained by the PKK for a number of months. She later escaped. She claimed that she is wanted by the Turkish authorities for her PKK involvement and risks torture in detention; and that if returned she will also be identified as a defector and killed by the PKK. Claim regarding risk of pain and suffering at hands of PKK not admissible, as must be inflicted by or with consent or acquiescence of government. Although government formally has new zero tolerance policy, evidence suggests torture still widespread; and fact that applicant worked on occasion for the leader of the PKK and there is a criminal case against her means there is real and foreseeable risk of torture if returned.

Link to [full decision](#) (PDF)

A.M.A. v. Switzerland

12 November 2010, UNCAT, 344/2008

No violation of Art. 3 (non-refoulement); Torture; Non-refoulement; Evidence; Burden of Proof

Applicant and his father witnessed soldiers dumping bodies after attack on demonstration in Togo in early 2005. Applicant told opposition party, and later fled country; father disappeared, uncle and friends beaten when they looked for him, and body later found. State claims situation has improved and stories of applicant are implausible and inconsistent with other testimonies. Domestic authorities examined case thoroughly and attempted to shed light on facts. Given discrepancies, Applicant has not provided sufficient evidence of real, present and foreseeable risk of torture if returned.

Link to [full decision](#) (PDF)

T.I. v. Canada

15 November 2010, UNCAT, 333/2007

No violation of Art. 3 (non-refoulement); Torture; Non-refoulement; Exhaustion of domestic remedies; Evidence; Credibility

Applicant is an ethnic Tartar from Uzbekistan. His father was arrested by security services because of the father's involvement with ethnic Tartars and a Uighur writer, and Applicant claims he was detained, interrogated and tortured regarding his father's activities. Multiple asylum claims in Europe rejected. Canadian asylum claim rejected because lack of credible evidence of risk, concerns over identity, and concerns about claims of discrimination because of Tartar ethnicity. Failure to seek review of the "humanitarian and compassionate" application does not mean inadmissible as this is discretionary and executive, rather than legal, decision. Although use of torture is routine in Uzbekistan during investigations, not sufficient evidence of discrimination against Tartars to extent that it would put him at personal risk of torture, and no evidence of his prior torture which could substantiate such a personal risk.

Link to [full decision](#) (PDF)

Amini v. Denmark

15 November 2010, UNCAT, 339/2008

Violation of Art 3(non-refoulement); Torture; Non-refoulement; Evidence

Applicant tortured in Iran because of activities with monarchist movement. Hospitalised because of results of torture and escaped from hospital. Sought asylum in Denmark and became active in Danish branch of Constitutional Party of Iran. Medical evidence supports torture, but asylum repeatedly rejected because lack of information regarding monarchist movement's activities and claims that evidence of past torture does not show risk of torture in future. Given the medical reports, it is probable that Applicant detained and tortured as he alleged. There are also recent reports of monarchists being targeted in Iran. Therefore Applicant would face personal risk of torture if returned.

Link to [full decision](#) (PDF)

Aytulun and Guclu v. Sweden

19 November 2010, UNCAT, 373/2009

Violation of Art 3(non-refoulement); Torture; Non-refoulement; Jurisdiction; Private actors; Evidence; Standard of proof

Applicant was a member of the Kurdish Workers' Party (PKK), as a soldier and later teacher, for 14 years. He started a relationship with another PKK soldier, now his wife; was arrested for breach of rules, and later "deserted" the PKK. He claims he is wanted by the Turkish authorities and his family's phone is tapped. Claims that he will be identified as a defector and killed by the PKK are inadmissible, as any torture must be inflicted by or with consent or acquiescence of government. Risk of torture must be more than mere theory or suspicion, but do not have to show it is highly probable. Here, there is a criminal case against the Applicant in Turkey; and despite formal zero tolerance policy, the number of torture cases in Turkey reported has increased. Therefore is a real and foreseeable risk of torture if returned.

Link to [full decision](#) (PDF)

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