

UN Committee against Torture 41st Session (November 2008) and 42nd Session (May 2009)

FEBRUARY 2012

SUMMARIES OF DECISIONS on admissibility and merits taken by the UN Human Rights Committee during its 41st and 42nd sessions in November 2008 and May 2009. 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/41/D/[communication number] or CAT/C/42/D/[communication number], depending on the session at which the decision was delivered.

Admissibility Decisions

[J.H.A. v. Spain](#) (Communication no. 323/2007)

Complainant's failure to obtain express authorization to represent a group of detained victims before the Committee, even though the victims were able to provide such consent and authorized an NGO to represent them in domestic proceedings, rendered the complaint inadmissible.

Decisions on the Merits

[Keremedchiev v. Bulgaria](#) (Communication no. 257/2004)

Police beating of the complainant, which was corroborated by multiple medical examinations, amounted to "cruel, inhuman or degrading treatment" under the Convention, and the authorities' failure to conduct a prompt inquiry and consider medical evidence violated the duty to investigate.

[A.A. et al. v. Switzerland](#) (Communication no. 285/2006)

Algerian citizen of Palestinian origin sought to prevent extradition to Algeria claiming likelihood of torture by associates of former employer, a retired Algerian army general. Committee rejected claims as lacking sufficient detail and proof of a foreseeable, real and personal risk of torture.

[Ali v. Tunisia](#) (Communication no. 291/2006)

Police stripped French-Tunisian woman of her headscarf and beat her to unconsciousness after arguing with a passport office clerk, which amounted to torture under the Convention. 23-month delay in opening criminal investigation violated the obligation investigate and provide redress.

[E.J. et al. v. Sweden](#) (Communication no. 306/3006)

Azerbaijani citizen failed to show sufficient risk of torture upon extradition despite claims of having belonged to an opposition party, enduring physical violence during two arrests, and himself and family receiving multiple threats.

[L.J.R. v. Australia](#) (Communication no. 316/2007)

American citizen arrested in Australia on a pending murder charge in USA claimed torture in Australian prison and possibility of torture if extradited. Claims too vague as must show personal risk of torture, not simply a pattern of such violations.

[Osmani v. Serbia](#) (Communication no. 261/2005)

Police beating of Roma residents during the dismantling of a camp was cruel, inhuman or degrading treatment, and authorities' failure to examine the facts or identify perpetrators violated their duty to investigate, as well as the complainants' right of petition, under the Convention.

[X. v. Australia](#) (Communication no. 324/2007)

A Lebanese Palestinian failed to offer sufficient proof of risk of torture from Lebanese authorities if extradited to Lebanon. No proof offered that complainant was actively sought by the Lebanese government.

Admissibility Decisions

J.H.A. v. Spain

21 November , UNCAT, 323/2007

Inadmissible under Art. 22(1) (lack of competence to represent victims) – Standing

Facts. On 31 January 2007, Spanish authorities rescued from a capsized cargo vessel 369 Asian and African immigrants. The Spanish and Mauritanian governments agreed to allow the passengers to disembark in Mauritania, where they were detained until they voluntarily repatriated or initiated asylum proceedings. Two weeks later, only 23 Indian nationals remained in Mauritania, where authorities allegedly detained them in poor conditions. In March 2007, the victims authorized the Spanish Commission for Refugee Assistance to institute domestic proceedings contesting their treatment. On 4 April, 2007, the complainant, a Spanish human rights activist, submitted a complaint to the Attorney General’s office, which was declared inadmissible. On 7 May, the complainant appealed to the Committee on behalf of the alleged victims, arguing that they were unable to submit a complaint directly or provide express authorization due to their ongoing detention.

Decision. The Committee found that the complainant was “not competent” to represent the alleged victims in proceedings before the Committee because he did not receive express authorization from them. Although the victims were detained at the time of the application, they were visited by UNHCR representatives and had expressly authorized a Spanish NGO to represent them in domestic proceedings related to the same events. Thus, it was possible for the complainant to obtain their consent. The Committee also noted that the complainant’s limited financial resources to travel to the alleged victims did not exempt him from the requirement to obtain express authorization before submitting a petition on their behalf.

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

Decisions on the Merits

Keremedchiev v. Bulgaria

21 November 2008, UNCAT, 257/2004

Violations of Article 16(1) (cruel, inhuman or degrading treatment or punishment) and Article 12 (failure to investigate) - Degrading treatment - Failure to Investigate

Facts. On 3 February 2003 the complainant was arrested by police officers in the lobby of a hotel while he was waiting for transportation to his place of work. Police officers forced him out of the building and beat him with a truncheon until he fainted. The complainant regained consciousness in a detention cell at the regional police department, where he was denied medical assistance for his injuries. After he threatened to take legal action against the police, the complainant was charged with hooliganism. Following his release two days later, the complainant underwent three independent medical examinations which corroborated his account of the beatings. On 4 April 2003, he filed a complaint with the prosecutor's office, which concluded that although the complainant sustained "slight physical injuries," the police officers had acted lawfully.

Decision. The Committee disagreed with the domestic court's assessment of the medical evidence and considered the complainant's injuries—bruising to his kidneys and blood in his urine—to constitute "cruel, inhuman or degrading treatment or punishment" under the Convention. Bulgarian authorities' failure to conduct a prompt and effective investigation into the mistreatment—including instructing a doctor not to provide a medical examination and failure to summon a key witness in the case—also constituted a violation of the duty to investigate under article 12 of the Convention.

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

A.A. et al. v. Switzerland

21 November 2008, UNCAT, 285/2006

No violation of Article 3 (extradition) - Non-refoulement/Extradition

Facts. The complainant is an Algerian citizen of Palestinian origin who sought to prevent his and his family's deportation to Algeria. He alleged that in 2000-2001 he was threatened by his former employer, a retired Algerian army general, and that in 2002, he was arrested, held incommunicado for one week and ill-treated. He claimed that subsequently, he was summoned by the police on three occasions. The State claimed that the complainant's account of his arrest and alleged detention lacked credibility, that he had been unable to describe the interrogations to which he was subjected, that his explanations of the grounds for his arrest had remained vague, and that there was a lack of evidence of a link between his current state of health and the ill-treatment he claimed to have suffered.

Decision. The Committee found that the account submitted by the complainant did not provide enough detail of the complainant's previous detention or the reasons for which he was allegedly sought by police at the present, several years after his departure from Algeria. Although the Committee took note of the complainant's precarious mental state, this did not prove that he faced torture upon extradition. The complainant failed to demonstrate that he would face a foreseeable, real and personal risk of torture if deported.

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

Ali v. Tunisia

26 November 2008, UNCAT, 291/2006

Violations of Article 1 (torture); Article 12 (failure to investigate); Article 13 (right of investigation); and Article 14 (redress and compensation) - Torture - Failure to Investigate - Effective Remedy

Facts. On 22 July 2004, the complainant, a French-Tunisian dual national residing in France, accompanied her brother to a court in Tunisia to obtain a travel document. Following a verbal altercation with an official at the counter, the official asked to see the complainant's papers, took her to a back office, questioned her, and then asked her to sign an Arabic document. When she refused, plainclothes policeman forced her into a basement and—along with several other guards—ripped off her scarf and dress, and beat her until she lost consciousness. On 27 July 2004, she returned to France and received several medical examinations that corroborated her account of the beatings. The abuse and ill-treatment caused her severe physical and emotional trauma. On 30 July 2004, the complainant petitioned the prosecutor to open a criminal investigation; this complaint was not registered. Under the French criminal code, the prosecutor's failure to make a decision barred the complainant from initiating a private prosecution or pursuing civil remedies.

Decision. The treatment of the complainant violated the prohibition against torture under Article 1 of the Convention. The State also breached its Article 12 and Article 13 obligations to provide a proper complaint mechanism and conduct an effective investigation. The Committee noted that the prosecutor never informed the complainant whether an inquiry was conducted into her July 2004 complaint, and although the state claimed that it took up the case as soon as it was notified of the complainant's communication to the Committee, the delay of 23 months before initiating an investigation into torture allegations was excessive. The State was also found in breach of article 14 (redress and compensation), considering the length of time that had elapsed since the complainant attempted to initiate proceedings at the domestic level, and the lack of information from the State party concerning the completion of the investigation.

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

E.J. et al. v. Sweden

21 November 2008, UNCAT, 306/3006

No violation of Article 3 (extradition) – Torture - Non-refoulement/Extradition - Participation in Government

Facts. The complainant is an Azerbaijani citizen seeking to prevent his and his family's deportation from Sweden to Azerbaijan. From 2001 to 2004, the complainant was a member of an opposition party, and was twice arrested and subjected to physical violence in detention. According to the complainant, his family was subjected to persistent threats that adversely affected the health of his pregnant wife and lead her to give birth to a child with disabilities. The complainant's application for asylum was rejected in 2005, and his application for permanent residence permit on humanitarian grounds was denied in 2006. The State asserted that its subsequent investigation, conducted in 2007 with the assistance of the Swedish Embassy in Ankara and a human rights lawyer in Baku, uncovered that the complainant's claims were fake, and the documents presented by him inauthentic.

Decision. The Committee determined that it would not give weight to the State's investigation because the investigation took place in 2007, after the 2006 termination of domestic proceedings, and left the complainant no opportunity to contest its findings or challenge the human rights lawyer who served as investigator and whose name was not revealed. However, the Committee rejected the complainant's claim, because the complainant failed to provide evidence either of his torture in Azerbaijan or his importance to Azerbaijani authorities if returned. The Committee also cited recent presidential pardons that resulted in the

release of several political prisoners. The complainant's removal to Azerbaijan by the State party would not constitute a breach of article 3 of the Convention.

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

L.J.R. v. Australia

26 November 2008, UNCAT, 316/2007

No violation of Art. 3 (extradition), Art.16 (prevention of torture in state's jurisdiction) - Death Penalty - Degrading Treatment - Non-refoulement/Extradition - Racial Discrimination

Facts. The complainant, an American citizen charged with murder in California, was arrested in Australia on 19 September 2002. The USA requested his extradition and indicated that it would not seek the death penalty, as set out in the extradition treaty. An Australian magistrate ordered the extradition, which was upheld by the courts. The complainant claimed that he was subjected to torture while imprisoned in Australia, and was likely to face torture in an American prison. In particular, he alleged discrimination and bad conditions, the possibility of an unfair trial given that he is a Hispanic Muslim, and the threat of the death penalty.

Decision. The Committee found that the complainant's allegations of an unfair trial in the USA and the threat of the death penalty were inadmissible as falling outside the scope of the Convention. The complainant's claim of torture in Australian prisons was unfounded under rule 113(b) of the Committee's rules of procedure, because it lacked precision. The Article 3 claim of risk of torture following extradition was too general and failed to demonstrate that the complainant was at risk. The Committee noted that the existence of a consistent pattern of violations of human rights in a country does not constitute sufficient grounds for finding a person at risk of torture. Such a risk must not only be "highly probable," but also "personal and present." Since the complainant failed to demonstrate a foreseeable, real and personal risk of being subjected to torture, the Committee deemed his claim unfounded.

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

Osmani v. Serbia

8 May 2009, UNCAT, 261/2005

Violations of Article 16 (cruel, inhuman or degrading treatment or punishment); Article 12 (failure to investigate); and Article 13 (right of petition) - Racial Discrimination - Degrading Treatment - Compensation - Failure to Investigate - Impunity

Facts. The complainant was one of 107 inhabitants of the "Antena" Roma settlement in New Belgrade. On 6 June 2000, the municipality decided to demolish the settlement and ordered Roma residents to vacate by the following evening; many were unable to leave due to the short notice and lack of means. On 8 June 2000, municipal representatives and around 10 policemen arrived to begin the evictions. Shortly after the bulldozers began demolition, a group of 5-6 plainclothes policemen arrived in a van and beat a number of the Roma while the uniformed policemen abused them with racist language. After a plainclothes officer beat the complainant in the head and kidneys, the complainant fled and sought medical treatment. The eviction left the complainant, his wife, and their three children homeless. The complaint to the prosecutor was rejected, and subsequent attempts to begin a "private prosecution" were terminated by the investigating judge because the authorities failed to submit information on the investigation, including the names of the suspected perpetrators.

Decision. The Committee found that the treatment of the complainant amounted to cruel, inhuman or degrading treatment or punishment, due to the combination of physical and mental suffering aggravated by

the complainant's particular vulnerability as a Roma. Regardless of whether the actual perpetrators were public officials, State authorities witnessed the events and by failing to intervene they "consented and acquiesced" within the meaning of article 16. The Committee found that the investigation did not satisfy the requirements of article 12 because the State failed to resolve the factual circumstances despite a plethora of witnesses, and effectively prevented the complainant from assuming "private prosecution." The Committee also found that the State violated its article 13 duty to ensure that the complainant had the right to complain and to have his case investigated by the competent authorities. Although not expressly provided for in the Convention for victims of ill-treatment other than torture, the Committee found that the State's positive obligations under article 16 included a duty to provide the complainant with fair and adequate compensation.

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

X. v. Australia

5 May 2009, UNCAT, 324/2007

No violation of Art. 3 (extradition) - Non-refoulement/Extradition

Facts. The complainant, a Palestinian born in Lebanon, contended that if deported to Lebanon, he would be tortured on account of his past activities as a member of the Lebanese armed forces / Christian Democrats (Phalangists) militia, his participation in the 1982 Sabra and Chatila massacre, the theft of money belonging to the Lebanese armed forces, and his pro-Israel opinions. The State refuted these allegations and alleged that the Lebanese authorities were not looking for the complainant.

Decision. The Committee held that the complainant had not presented enough evidence to substantiate his allegations. There was no indication that Lebanese authorities were currently searching for him, and not enough evidence to show that the complainant's pro-Israeli opinions would lead to persecution or torture by Palestinian groups. The complainant failed to demonstrate that he would face a foreseeable, real and personal risk of being subjected to torture in Lebanon.

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

**E-mail: info@justiceinitiative.org
www.justiceinitiative.org**



The Open Society Justice Initiative uses law to protect and empower people around the world. Through litigation, advocacy, research, and technical assistance, the Justice Initiative promotes human rights and builds legal capacity for open societies. Our staff is based in Abuja, Amsterdam, Bishkek, Brussels, Budapest, Freetown, The Hague, London, Mexico City, New York, Paris, Phnom Penh, Santo Domingo, and Washington, D.C.