

UN Human Rights Committee 106th Session (October 2012)

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SUMMARIES OF DECISIONS on admissibility and merits taken by the UN Human Rights Committee during its 106th session in October 2012. Produced by lawyers at the Open Society Justice Initiative, with the assistance of the RightsLink program at Columbia Law School, in order to bring the decisions of global human rights tribunals to the widest possible audience.

All decisions are UN Doc. CCPR/C/106/D/[communication number]

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Admissibility Decisions

J.J.U.B. v. Spain

29 October 2012, UNHRC, 1892/2009

Inadmissible under Article 2 OP; insufficient substantiation of claims.

The applicant was convicted of criminal embezzlement, fined, and sentenced to two years' imprisonment. The opinion of the first instance court did not lay out the reasons for his conviction. After his conviction, the applicant had access only to a cassation appeal in the Supreme Court, which is restricted in scope because it cannot review the entire proceedings. On appeal, the Supreme Court reviewed the evidence against the applicant, affirmed his conviction and provided a detailed opinion justifying the conviction. The applicant then sought to appeal to the Constitutional Court, but it denied his application for not raising any new questions of constitutional law. The applicant alleged that, because the cassation appeal is limited in scope, the State party violated his right, under Article 14(5) of the ICCPR, to have his conviction and sentence reviewed by a higher tribunal. The State argued that applicant had failed to exhaust domestic remedies for failure to properly frame his appeal to the Constitutional Court. The Committee dismissed the State's argument, saying that exhaustion of domestic remedies is only necessary when there is a reasonable prospect of success. However, the Committee noted that even though a cassation appeal is technically limited in scope, the Supreme Court had provided the applicant with a thorough review of his conviction, including the evidence against him, and legitimately upheld it. The Committee therefore concluded that the applicant's claim was insufficiently substantiated, and thus inadmissible under Article 2 of the Optional Protocol.

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

M.B. v. Czech Republic

29 October 2012, UNHRC, 1849/2008

Inadmissible under Article 3 OP; unreasonable delay amounting to abuse of the right of submission.

The applicant is a naturalized American citizen, original from the Czech Republic. She fled the Czech Republic for political reasons in 1976 at which point a judgment was rendered against her in Czech courts and her property confiscated. She obtained her American citizenship in 1987 and lost her Czech citizenship. At an unspecified time, pursuant to a 1990 Czech law, the applicant was rehabilitated and the judgment that confiscated her property was abrogated. In 1991, the applicant sought compensation for her seized property and learned of the 1991 law that provided a limited time window for such compensation, but only to Czech citizens who permanently reside in the country. In 2002 the applicant regained Czech citizenship and again sought compensation, despite the fact that the window had closed in 1995. The applicant claimed that she was the victim of discrimination and that the requirement of citizenship for restitution of property under Czech legislation violated Article 26 of the ICCPR. The applicant contended that because the Constitutional Court upheld the citizenship requirement that she had no domestic remedies to

exhaust. The Committee agreed with applicant regarding domestic remedies, but ruled that because an exceptional amount of time had passed after the contested Act entered into force (15 years) and then expired (11 years), that the delay was so unreasonable as to amount to an abuse of the right of submission. The complaint was therefore found inadmissible under Article 3 of the Optional Protocol.

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

M.N. et al. v. Tajikistan

29 October 2012, UNHRC, 1500/2006

Inadmissible under Article 2 OP; insufficient substantiation of claims.

The applicants are members of the Socialist Party of Tajikistan. They claim they have been victims of constant persecution by Tajikistani authorities on political grounds, including death threats, the murder of a colleague in a “terrorist attack,” ballot fraud, and the ineffectiveness of recourse to the courts. The applicants complained that their right to be recognized as persons before the law had been violated, that State authorities openly interfered in their private lives by publishing articles damaging to their reputations, and that they had been discriminated against on the basis of political opinion. They further claimed that arbitrary revocation of their membership in their political party of choice violated their freedom of association and prevented them from taking part in elections. Regarding all but the revocation of political party membership, the Committee found that the evidence submitted was very general in nature and so the claims were insufficiently substantiated and inadmissible under Article 2 of the Optional Protocol. Regarding the arbitrary revocation of membership from a political party, the Committee noted that the dispute is largely between two organizations and that the applicants were not deprived of the ability to start a new party with a different name. The Committee found that the State’s consideration of the dispute between the two parties was not arbitrary and that therefore the claim was inadmissible under Article 2 of the Optional Protocol for insufficient substantiation.

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

S.K. v. Belarus

31 October 2012, UNHRC, 2169/2012

Inadmissible under Article 2 OP; insufficient substantiation of claims.

The applicant was arrested for placing a historic version of the national flag of Belarus atop a public Christmas tree on the day that Orthodox Christians celebrate Christmas. He argued that he was expressing a political opinion and that he did not break any laws. The criminal court refused to let him call witnesses and convicted him of carrying out acts dangerous to the general public and imposed a fine. The Regional Court and the Supreme Court rejected his appeals. He claimed that his treatment violated to freedom of expression and freedom from discrimination under Articles 19 and 26 of the ICCPR; and that the State party violated his right to equality before the courts under Article 14(1) by not allowing him to summon witnesses in his defense. The Committee ruled that the applicant’s complaint under Article 14(1) would more properly fall under Article 14(3), but after reviewing the transcripts of the trial court it did not find evidence of bias or partiality, and noted that it is up to the domestic courts to evaluate evidence. The applicant this failed to substantiate this claim. The Committee also found that the applicant failed to

substantiate his claims under Articles 19 and 26: the applicant failed to demonstrate how Article 19 had been violated; Article 19 allows for curtailing of expression in the interest of public order; and the applicant had not distinguished his Article 26 claim from his Article 19 claim. Both were found to be unsubstantiated and therefore inadmissible under Article 2 of the Optional Protocol.

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

J.A.B.G. v. Spain

29 October 2012, UNHRC, 1891/2009

Inadmissible under Article 2 OP; insufficient substantiation of claims.

The applicant was convicted on several drug charges. He claimed that his rights to appeal and review by a higher tribunal were violated because he only had access to the remedy of cassation before the Supreme Court, which in practice implied a denial of the right to appeal against the National High Court's conviction. When he appealed his conviction and sentence to the Supreme Court it affirmed his conviction and increased his sentence, stating that the lighter sentence imposed by the first instance court was due to a miscalculation. The applicant also claimed that the length of his trial—nearly 10 years—violated his right to a trial without undue delay. Regarding his right to appeal and review, the Committee found that the Supreme Court considered his case sufficiently and provided clear reasoning for increasing his sentence. Regarding the length of the trial, the Committee noted that the applicant did not dispute the complexity of the case, as described by the State party. Accordingly, the Committee found that neither claim was sufficiently substantiated and that both claims were inadmissible under Article 2 of the Optional Protocol.

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

Decisions on the Merits

Khwildy v. Libya

1 November 2012, UNHRC, 1804/2008

Violations of Articles 2 (remedy), 7 (torture), 9 (liberty and security), 10 (dignity and humanity), 14 (fair trial), and 16 (recognition before the law); torture, fair trial, enforced disappearance; no interference with privacy

The applicant brought claims on behalf of himself and his brother who was arrested and detained for a total of 12 years after the applicant fled Libya for political reasons. After the applicant left Libya his family's home was ransacked and members of his family arrested; one was summarily executed, and all were mistreated until his brother shouldered full responsibility for the applicant's escape. The brother was informed by security officers that they knew he had done nothing but were going to keep him for five years anyway. Five years later, the brother was released, but was arrested again and held in pre-trial detention for two years until he was summarily convicted and sentenced to two years imprisonment. He was not released for five more years, and was kept incommunicado and with no possibility of appeal during that time. At no point did the brother have access to a lawyer. The applicant claimed violations of Article 2(3) and Article 7 of the Covenant for his own stress and anguish in connection with his brother's disappearance, and violations of Articles 2(3), 6(1), 7, 9(1-4), 10(1), 14, 16, and 17(1-2) on behalf of his brother. Noting that the State Party had not been cooperative, the Committee found violations of Articles 2, 7, 9, 10, 14, and 16 with regard to the brother's arbitrary detention and forced disappearances. It also found that the forced disappearances caused anguish for the applicant in violation of Article 7, and the lack of an effective remedy was a violation Article 2. However, despite the State's lack of cooperation, the burden of proof could not fall entirely upon it – the Committee thus ruled that the Article 17 claim of arbitrary and unlawful interference with privacy for the ransacking of the house were insufficiently substantiated and inadmissible under Article 2 of the Optional Protocol.

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

Kim et al. v. Republic of Korea

25 October 2012, UNHRC, 1786/2008

Violation of Article 18 (freedom of religion); compulsory military service; conscientious objection

The applicants are Jehovah's Witnesses sentenced to 18 months of imprisonment each for failing to perform compulsory military service due to their religious beliefs. They claimed that the absence of an alternative to compulsory military service violated their rights to freedom of religion under Article 18 of the Covenant. The Committee concluded that the policy of compulsory military service with lack of an alternative violated Article 18. The Committee ruled that the State Party is under an obligation to provide an effective remedy, including expunging the applicants' criminal records and compensating them, and under an obligation to avoid similar violations of the Covenant in the future.

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

Singh v. France

1 November 2012, UNHRC, 1852/2008

Violation of Article 18 (freedom of religion); discrimination; right to privacy

The applicant is a member of the Sikh faith, which mandates that male members wear head coverings to shield their uncut hair. The applicant, a lycée student, went to school wearing a keski after the enactment of a French Act which prohibited wearing conspicuous religious symbols or clothing in public schools. The school refused to let the applicant enter his classroom, kept him separate from other students without instruction, and ultimately expelled him. The applicant's family was aware of the law, and had settled upon the keski as a discreet, compromise head covering for a boy of his age. The applicant noted that even if he had removed his keski his uncut hair would remain a visible symbol of his faith. The applicant alleged that he was subjected to discriminatory treatment on account of his religion and/or ethnic origin, that his expulsion constituted an infringement of his right to freedom of religion, and that he had been deprived of his right to privacy. The Committee found that the applicant had not exhausted domestic remedies regarding his right to privacy claim because the applicant had only raised that issue on appeal. However, the Committee found that France had violated the Article 18 right of freedom to manifest religion. It found that the State had not presented compelling evidence that by wearing his keski, the applicant posed a threat to the rights and freedoms of other students, and that the applicant's permanent expulsion was disproportionate, based solely on his membership in a religious group, and led to serious effects on his right to education. The Committee chose not to address the Article 26 claim of discrimination, citing the fact that it had already found an Article 18 violation.

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

Kovaleva and Kozyar v. Belarus

29 October 2012, UNHRC, 2120/2011

Violations of Articles 6 (right to life), 7 (Torture), 9 (prompt trial), and 14 (presumption of innocence, time to prepare defense); death penalty, torture, fair trial

The applicants submitted their complaint on behalf of themselves and Vadislav Kovalev, their son and brother respectively. Kovalev was convicted of charges related to an April 2011 terrorist attack at a Minsk subway station. He was sentenced to death and executed in March 2012. His family was not informed of the date of his execution until after it occurred. Kovalev was kept in custody for four months before trial, during which time he was only allowed one, non-confidential meeting with his attorney and the government extracted confessions from him through the use of force. Kovalev was kept in a metal cage when he appeared at court and photos of him thus were circulated in newspapers throughout his trial. The applicants claimed violations of Articles 6, 7, 9, and 14 of the Covenant with respect to Kovalev. They further claimed that the stress caused by the secrecy surrounding his execution caused them mental suffering and stress in violation of Article 7, and that the refusal to hand over Kovalev's body for Orthodox funeral rights violated their freedom of religion under Article 18. The Committee found that a four month delay violated Kovalev's right to a prompt trial (Article 9). It also found that his trial was unfair because the government violated his right to be presumed innocent by keeping him in a cage and publicly presenting him as a criminal, and that his lack of confidential access to his attorney meant that he

did not have time to adequately prepare a defense (Article 14). The Committee further found that the State violated his right to life by executing him after an unfair trial (Article 6). Regarding the applicants' Article 7 claims of torture, the Committee found that Kovalev's forced confessions amounted to torture but did not reach the applicants' claim that Kovalev's mental anguish leading up to execution constituted torture because it had already found an Article 6 violation. The Committee found that the secrecy surrounding Kovalev's execution violated the applicants' Article 7 rights but did not make a finding on the separate allegations under Article 18.

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

Naidenova et al. v. Bulgaria

30 October 2012, UNHRC, 2073/2011

Violation of Article 17 (interference with home); Claims under Article 2 (equal protection) and 26 (non-discrimination) not adequately substantiated; discrimination; housing rights

The applicants are Bulgarian nationals of Roma ethnicity belonging to the Dobri Jeliakov community. Bulgaria issued them an eviction order on the basis that their homes were constructed unlawfully on municipal land. The community consists of impoverished Roma who had lived in the location for over seventy years. During that time, they were de facto recognized by public authorities through police registration of their addresses. The applicants claimed that the forced evictions would subject them to an unlawful and arbitrary interference with their homes in a racially discriminatory manner, in violation of Articles 2, 17 and 26 of the Covenant. The Committee found the discrimination and equal protection components of their claim – those based on Articles 2 and 26 – to be insufficiently substantiated. Regarding the Article 17 claim, the Committee found the eviction order lawful because a domestic law allowed for eviction of individuals and demolition of buildings constructed on municipal land without proper permits, thus satisfying the first prong of Article 17. However, taking into consideration the long history of the applicants' residence and the dire consequences, such as homelessness, of eviction, the Committee found the order was arbitrary, thus failing the second prong of Article 17. The State had neither identified any urgent reason for forcibly evicting the community nor provided them with satisfactory, immediately available, alternative housing. The applicants were protected at the time of the decision by interim measures staying the eviction order. Accordingly, Committee found that the State could only enforce the eviction order if it ensured the immediate availability of satisfactory replacement housing.

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

Fedotova v. Russian Federation

31 October 2012, UNHRC, 1932/2010

Violation of Article 19(2) (freedom of expression), Article 26 (non-discrimination); freedom of expression; equal protection

The applicant is a Russian national who is openly lesbian and an activist in the field of lesbian, gay, bisexual and transgender rights. She was arrested and convicted of an administrative offence under Section 3.10 of the Ryazan Region Law for displaying posters declaring "Homosexuality is normal" and "I am proud of my homosexuality" near a secondary school building. The applicant

claims a violation of her right to freedom of expression under Article 19 of the Covenant and her right to equal protection of law without discrimination under Article 26 of the Covenant. The Committee recognized the right of the State to restrict freedom of expression in accordance with the criteria of Article 19(3) to protect the welfare of minors. However, in this case the Committee found that the State had failed to provide any evidence for the necessity of the restriction and that the language of the restriction in the Ryazan Region Law, prohibiting “[p]ublic actions aimed at propaganda of homosexuality... among minors”, was ambiguous and discriminatory. Accordingly, the Committee held that the applicant’s Article 19(2) rights, read in conjunction with Article 26 were violated.

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

Eligio Cedeño v. Bolivarian Republic of Venezuela

29 October 2012, UNHRC, 1940/2010

Violation of Article 9 (arbitrary detention), Article 14(1) (fair trial), (2) (presumption of innocence); arbitrary detention, fair trial, presumption of innocence

The applicant is a Venezuelan national who worked as the vice-president of finance at Banco Canarias. He claims that he was the victim of retaliation after supporting political opponents of the government. Specifically, he was accused of aiding Consorcio Microstar in circumventing foreign exchange rules for acquiring U.S. dollars. The applicant was charged in November of 2005, formally indicted in March 2007, and held in pretrial detention for 34 months from 8 February 2007 to 10 December 2009. He alleges that the application for pretrial detention did not satisfy legal requirements because it did not include a detailed description of facts or any evidence that he committed an offense. He further alleges judicial bias because the provisional judges were subject to removal at will and notes that the judge who ordered his release was arrested the same day and referred to by the President as a “bandit” on national radio and television. The Committee found a violation of Article 9 because the State party failed to provide sufficient justification for the initial pretrial detention or its subsequent extension. It also found violations of Article 14(1) and (2) based on the influence of the executive branch on the judicial process and the statement by the President.

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

Benali v. Libya

1 November 2012, UNHRC, 1805/2008

Violation of Articles 2(3) (effective remedy), 6(1) (right to life), 7 (torture), 9 (right to liberty and security), 10 (dignity and humanity), and 14 (fair trial); remedy, right to life, torture, fair trial

The applicant is a Libyan national whose brother was arrested in August 1995 by agents of the Internal Security Agency. The brother was held in secret detention until September 2000 when his family was authorized to visit. For two years the Security Agency kept him in an underground cell that he was never allowed to leave, regularly subjected him to vicious beatings, and deprived him of food. He was released in October 2002 without having been charged with a crime but was arrested again in February 2005 and held in secret detention until May 2006 when his family was authorized to visit. Until his disappearance in March 2007, the brother used a hidden cell phone to

report rights violations to a representative of Al-Karama for Human Rights. The Committee noted that the State party failed to refute the allegations and held that the unacknowledged and incommunicado detention violated Articles 2(3), 6(1), 7, 9, 10, and 16.

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

Pivonos v. Belarus

29 October 2012, UNHRC, 1830/2008

Violation of Article 19(2) (freedom of expression)

The applicant was arrested on the 90th anniversary of the Belarus People's Republic. She unrolled a tapestry on which she had embroidered a prayer that she wanted to present to an acquaintance wearing white-and-red flags. She was convicted of an administrative offence under the Law on Mass Events for violating regulations concerning the organization and holding of a picket. The applicant claims a violation of her right to freedom of expression under Article 19(2) of the Covenant and her right to peaceful assembly under Article 21 of the Covenant. The Committee held that the imposition of the fine amounted to a restriction of her freedom of expression under Article 19(2) and that the State party had failed to show that the restriction was justified under Article 19(3) of the Covenant. In light of this conclusion, the Committee declined to separately examine the claimed violation of her right to peaceful assembly under Article 21.

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

Katsora v. Belarus

24 October 2012, UNHRC, 1836/2008

Violation of Article 19(2) (freedom of expression)

The applicant is a Belarusian national and was the deputy chairperson of the Gomel regional branch of the United Civic Party. Under the Law on Mass Events he was convicted of violating a prohibition on preparing and distributing leaflets concerning meetings that have not yet been authorized. The applicant claimed a violation of his right to peaceful assembly under Article 21 and his freedom of expression under Article 19(2). He argued that the restriction does not meet the requirements of Article 19(3), i.e. provided by law and necessary: (a) for respect of the rights and reputation of others; and (b) for the protection of national security or public order, or of public health and morals. The Committee held that the State party failed to show that the restriction “could be deemed necessary for the protection of national security or of public order... or for respect of the rights or reputation of others.” In light of this conclusion, the Committee declined to separately examine the claimed violation of her right to peaceful assembly under Article 21.

Link to [full decision](#)

Weiss v. Austria

24 October 2012, UNHRC, 1821/2008

No violation of Article 7 (inhuman or degrading treatment or punishment)

The applicant is a U.S. citizen who fled to Austria before he was convicted on numerous charges of fraud, racketeering and money laundering and sentenced in absentia to 845 years. Austria arrested and extradited the applicant, based on U.S. assurances that he would be entitled to appeal all of his convictions and his sentence if Austria refused extradition on any one of the charges (which it did for charge 93, “perjury which defendant”). However, the court ruled that the case was distinct from the vast majority of cases applying the rule of specialty to extradition before trial and that he was not entitled to a full appeal. The applicant claims his extradition violated Article 7 because it resulted in a sentence of life imprisonment without the prospect of parole for a property crime, constituting inhuman and degrading treatment and punishment. While the Committee acknowledged that such a punishment may raise an issue under Article 7, in this case it held that Austria did not violate Article 7 because its decision was based on a careful examination of the facts of the case and the applicable law at the time.

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

Bulgakov v. Ukraine

29 October 2012, UNHRC, 1803/2008

Violation of Article 17 (privacy and family)

The applicant was born in 1974 in the former Byelorussian Soviet Socialist Republic and received his first Soviet passport in 1990 in which his name was transcribed as Dmitriy Vladimirovich. He had lived since 1986 in the Autonomous Republic of Crimea and became a Ukrainian citizen in 1991 when it declared independence. He was subsequently issued internal and external Ukrainian passports in 1997 and 1998 in which his name and patronymic were changed against his will to Dmytro Volodymyrovych. The applicant claims that he has been subjected to frequent mockery since the pronunciation sounds ridiculous to Russian speakers and that the unilateral change violates his rights under Articles 17, 26 and 27. The Committee agreed that the unilateral change violated his rights under Article 17 because it amounted to unlawful and arbitrary interference with his privacy and family. In light of its conclusion, the Committee declined to separately examine the claimed violations of Article 26 and 27 of the Covenant.

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

Kholodova v. Russian Federation

1 November 2012, UNHRC, 1548/2007

Violation of Articles 2(3) (reparations) in conjunction with 6(1) (right to life); no violation of Articles 6(1) (right to life) and 19 (freedom of expression); freedom of expression; reparations; military justice

The applicant is a Russian national whose son worked as a newspaper journalist reporting on corruption in the army. Her son was killed upon opening a briefcase containing explosives. Investigators concluded that five military officers and one civilian had provided her son the

briefcase and told him it contained sensitive information. The Moscow Regional Military Court ordered additional expert examinations that reached different conclusions. The suspects were tried twice and acquitted. The applicant claims that the trials suffered from procedural irregularities including a criminal case before a military court, failure to take into account certain testimony and conclusions not supported by the evidence. The Committee noted that the jurisdiction of military courts should be strictly defined and that in all circumstances ordinary courts are the preferred forum for trying human rights violations. In this case the Committee found that there was no reason to try the officers in military court because they were clearly acting outside of the scope of their duties, and that, other than a mere citation to the law, the State party failed to explain why a military court was the appropriate venue. Accordingly, the Committee held that there was a violation of the applicant's right to reparation under Article 2(3)(a) in conjunction with article 6(1). In light of its conclusion, the Committee declined to separately examine the claimed violation of Article 14(1). Because the Committee found that the evidence before it did not allow it to conclude in a definitive manner that the explosion and the son's death could be imputed to the State seeking to prevent him from engaging in journalist activities, the Committee also declined to find violations of Article 2(3), 6(1) and 19.

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

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