

UN Human Rights Committee 103rd Session (October 2011)

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SUMMARIES OF DECISIONS on admissibility and merits taken by the UN Human Rights Committee during its 103rd session in October 2011. 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. CCPR/C/103/D/[communication number]

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Admissibility Decisions

SL v Czech Republic

26 October 2011, UNHRC, 1850/2008

Inadmissible under Article 3 OP; abuse of right of submission

Applicant's family fled the Czech Republic, and their property was subsequently confiscated and their citizenship revoked. Post-communist law on restitution of property requires that claimants be Czech citizens. Applicant claims discrimination on the basis of citizenship. Although no claim was brought domestically, there was no obligation to exhaust domestic remedies because the highest court had previously ruled on matter in dispute and therefore no prospect of success. However, the delay in submitting claim in this case was so unreasonable and excessive that it did amount to abuse of right of submission: submission to HRC was 15 years after applicants advised there was no domestic remedy; 11 years after HRC's first views on a claim regarding similar situation; and 9 years after decision of Constitutional Court confirming no domestic remedy.

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

VS v Belarus

31 October 2011, UNHRC, 1749/2008

Inadmissible under Articles 1 and 2 OP; victim status; standing; freedom of religion

Written warnings given to church in Belarus regarding violation of laws, which can lead to de-registration if not corrected or violations repeated. Appeals by the church against the warnings were dismissed by Supreme Court. Government also refused permission for persons to visit Belarus to attend church activities until warnings addressed. Applicant is secretary of the church, but does not have standing to bring access to court claim (Art 14(1)) on behalf of church. Although some restrictions on religious organizations may produce adverse effects which directly violate rights of individual believers, the applicant did not explain the concrete consequences in this case so also inadmissible.

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

RADB v Columbia

31 October 2011, UNHRC, 1800/2008

Inadmissible under Article 2 OP; non-substantiation of claims; Articles 14 (fair trial), 22 (freedom of association) and 26 (non-discrimination)

Trade union leader dismissed, and ordered reinstated by labour court; however, the order not enforced. Five years later, this order was overturned by the Superior Court in proceedings the applicant claimed was inapplicable and a result of pressure. Although the HRC complaint was lodged 4.5 years after the Superior Court decision, there was not an abuse of right of submission in this case. However claims that the dismissal was due to his position as trade union official and that proceedings were unfair were not sufficiently substantiated. Mere fact that ruling in his case differed from those in previous cases does not demonstrate discrimination.

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

LOP v Spain

31 October 2011, UNHRC, 1802/2008

Inadmissible under Article 5(2)(b) OP; exhaustion of domestic remedies

Applicant transferred between different prisons and placed under special observation; claims that this was discriminatory and violates private and family life. Did not exhaust domestic remedies but claims that Madrid High Court had rejected similar claims in past and held special observation status constitutional. Mere doubts about effectiveness of remedy do not absolve author from obligation to attempt to exhaust, and domestic case law here does not show any application would be ineffective.

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

AA v Canada

31 October 2011, 1819/2008

Inadmissible under Articles 2 and 3 OP; non-substantiation of claims; incompatible with Covenant

Applicant fled Iran, claiming risk of cruel treatment due to extramarital affair and threats of forced marriage. Sought asylum in Austria and then Canada, where she became active in local Iranian Womens' Association. Asylum claims rejected due to lack of credibility and corroboration. Although domestic remedies were exhausted, communication is inadmissible. Claim under the Convention on Elimination of Discrimination against Women incompatible with provisions of Covenant. Other claims (including discrimination, lack of impartial and fair process in assessing her asylum claim, and risk of torture if returned) not sufficiently substantiated.

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

Decisions on the Merits

Gyrb v Belarus

26 October 2011, UNHRC, 1316/2004

Violation of Articles 19 (freedom of opinion and expression) and 21 (freedom of assembly); discrimination

Refusal to issue new law licence, which the applicant claimed was aimed at punishing his opposition to the regime (he was a former Chair of the Belarusian Supreme Soviet). The refusal to issue the new licence was formally based on the applicant's conviction for attending an unauthorized street rally, a restriction on freedom of expression and assembly. Given that the Government provided no explanation of why the non-issuance was justified or necessary in a democratic society or for the other reasons in Articles 19 and 21, these Articles were violated.

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

Torobekov v Kyrgyzstan

27 October 2011, UNHRC, 1547/2007

Violation of Article 9(3) (detainee brought before judge); Claims under Art 14(3)(b), (c) and (d) and Art 17 inadmissible under Art 2 OP (insufficiently substantiated)

Applicant was arrested, interrogated, charged and placed in custody in absence of his lawyer, who had been hired by the applicant. Part of the absence was due to the lawyer himself (who was in hospital); the applicant was later questioned by a new investigator with the lawyer present; and applicant does not explain how restrictions on meeting with lawyer impacted determination of charges, so these claims were inadmissible as insufficiently substantiated. The applicant also did not explain why a delay of 10.5 months in determining claim was excessive and claim that search of apartment violated right to privacy and home life was too vague, so these were also inadmissible as insufficiently substantiated. However, the applicant's detention was authorized by a prosecutor, who cannot be considered independent, which violated Article 9(3).

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

Junglingova v Czech Republic

24 October 2011, UNHRC, 1563/2007

Violation of Article 26 (non-discrimination); exhaustion of domestic remedies; abuse of right of submission; continuing violation; discrimination

Applicant's family fled Czech Republic, and their property was subsequently confiscated and their citizenship revoked. Post-communist law on restitution of property requires that claimants be Czech citizens. Applicant claims discrimination on the basis of citizenship. Although domestic decision not appealed, no obligation to exhaust domestic remedies because highest court had previously ruled on matter in dispute and therefore no prospect of success. In this case, delay of 6 years from domestic proceedings to HRC claim was not abuse of right of submission. Requirement of citizenship as prerequisite for compensation arbitrary and unreasonable in this case.

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

Albareda et al v Uruguay

24 October 2011, UNHRC, 1637/2007, 1757/2008 and 1758/2008

Violation of Articles 26 (discrimination) and 2 (equality before law); age discrimination; no justification for difference in treatment

Civil servants removed from post at age 60, in conformity with domestic law, under which certain positions must retire at 60 and others must retire at 70. Although compulsory retirement age for certain professions do not necessarily constitute age discrimination, the state provided no justification for the distinction between the categories of civil servants who were forced to retire at different ages. Therefore violation of Article 26 read in conjunction with Article 2.

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

Traore v Cote d'Ivoire

31 October 2011, UNHRC, 1759/2008

Violation of Articles 6 (life), 7 (torture), 9 (security), 10(1) (ill-treatment), and 2(3) (effective remedy); exhaustion of domestic remedies; enforced disappearance; torture; investigation

Applicant and cousins were detained after a clash between armed factions and government forces, questioned, and severely mistreated (beatings, electric shocks, severing toes). His cousins were taken away and have not been seen since. The judge refused to open an investigation when the applicant complained of his torture or answer questions about his cousins' location. Detention conditions were poor (kept naked, not permitted visitors, little or no medical attention). Although he did not file a complaint with the prosecutor, he complained to judge and was forced to later flee the country after threats from security forces, so no further exhaustion required. Mistreatment and secret detention of the applicant and cousins violates Article 7. Three week delay bringing the applicant before a judge violates Article 9, and conditions of detention violate Article 10(1). State also failed to investigate these violations, violating Article 2(3). Disappearance of the cousins further violated Articles 6(1), 7, 9, and 2(3).

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

Djebrouni v Algeria

31 October 2011, UNHRC, 1781/2008

Violation of Articles 6 (life), 7 (torture), 9 (security), 10(1) (ill-treatment), 16 (person before law), and 2(3) (effective remedy); Article 5(2)(a) OP; other international complaint; exhaustion of domestic remedies; enforced disappearance; incommunicado detention; burden of proof; investigation

Applicant's son was taken away by soldiers in uniform and wearing hoods, and never returned home. The family initially told to wait for 12 days (custody period under anti-terrorist laws), then approached courts and National Human Rights Observatory for information and complained to gendarmerie with no results. Although Amnesty International submitted the case to the UN Working Group on Enforced Disappearances, this does not constitute "international procedure of investigation or settlement" under Article 5(2)(a) OP and case is admissible. Civil suit also not required given seriousness of violations. State referred to broader socio-political and security context at the time (1993-1998) and reconciliation, but reconciliation charter appears to promote impunity so not compatible with ICCPR and State did not address merits of individual case. State failed to guarantee right to life (Article 6), and indefinite incommunicado detention violates Article 7. Also violations of Articles 9, 10, 16 and 2(3). Two members of the HRC would not have found a direct violation of Article 6, but only a violation in conjunction with Article 2(3).

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

Chihoub v Algeria

31 October 2011, UNHRC, 1811/2008

Violation of Articles 6 (life), 7 (torture), 9 (security), 10(1) (ill-treatment), 16 (person before law), 24 (children's rights) and 2(3) (effective remedy); Article 5(2)(a) OP; other international complaint; exhaustion of domestic remedies; enforced disappearance; incommunicado detention; investigation

Two sons of the applicants were detained by soldiers to force their eldest son (who had left home) to give himself up. They made repeated inquiries to find them, with no results: they were repeatedly interviewed, but provided no information other than being informed that there was no arrest warrant against their sons. They also complained to the UN Working Group on Enforced Disappearances, but this does not constitute “international procedure of investigation or settlement” under Article 5(2)(a) OP, and given extensive domestic efforts case is admissible. As in case above, state referred to broader socio-political and security context and did not address merits of individual case. Circumstances of detention and 15 years without any information allows finding of violation of duty to guarantee right to life (Article 6). Incommunicado detention is violation of Article 7 for detainees, and anguish from sons’ disappearance and lack of investigation amounts to violation for the parents as well. Detention also violated Articles 9, 10(1), 16 and 2(3). One son was 16 years old when detained, which also violates duty of special protection of children (Article 24). Two members of the HRC would not have found a direct violation of Article 6, but only a violation in conjunction with Article 2(3). Two other members would have found an additional violation of Article 2(2) regarding persistent failure to amend legislation and duty to ensure non-repetition.

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

Adonis v. The Philippines

26 October 2011, UNHRC, 1815/2008

Violation of Articles 14(3)(d) (fair trial), 19 (2) and (3) (expression); freedom of expression; public interest

A radio broadcaster was prosecuted for libel as a result of broadcasts alleging a congressman’s illicit relationship with a married TV personality. Prior to trial he was transferred to a new town, stopped reporting for work due to depression, and as a result was not represented at trial and was convicted in absentia. The court did not allow a defence of truth (only option in very limited circumstances). Trial in absentia may be justified in limited circumstances and only after timely steps to summon and inform accused person. No evidence of such steps here so violation of Article 14(3)(d). Any restriction on freedom of expression must confirm to strict tests of necessity and proportionality, which sanction of imprisonment in this cases did not, violating Article 19. One member of the HRC would have found an additional violation of Article 2(2) as the legislation on criminal defamation was incompatible with the ICCPR.

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

X v Sweden

1 November 2011, UNHRC, 1833/2008

Violation of Articles 6 (life) and 7 (torture); discrimination; non-refoulement

Applicant claims that he would be at risk of mistreatment or death if returned to Afghanistan due to sexual orientation. Claim rejected by national authorities. Deported shortly after decision of Migration Court de facto deprived applicant of ability to appeal decision (formally had three weeks), so no failure to exhaust domestic remedies. Homosexual crimes are punishable by death, and rejection of claims by state authorities

mainly based on inconsistencies regarding specific facts and late submission of this aspect of claim. Insufficient weight given to real risk he faced in Afghanistan due to sexual orientation.

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

Tulzhenkova v Belarus

26 October 2011, UNHRC, 1838/2008

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

Applicant was arrested for distributing leaflets about upcoming gathering, prior to the gathering being authorized, and convicted of administrative offence. Any restriction on freedom of expression can only be for protecting rights and reputation of others, national security, or public order and morals (Article 19(3)). No information of the danger created by early distribution of information on the proposed gathering, so violation of Article 19(2). One member of the HRC would have found an additional violation of Article 2(2) as the underlying legislation on mass events was incompatible with the ICCPR.

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

Klain v Czech Republic

1 November 2011, UNHRC, 1847/2008

Violation of Article 26 (non-discrimination); exhaustion of domestic remedies; abuse of right of submission; continuing violation; discrimination

Applicant's family fled the Czech Republic, and their property was subsequently confiscated and their citizenship revoked. Post-communist law on restitution of property requires that claimants be Czech citizens. Applicant claims discrimination on the basis of citizenship. Although no claim brought domestically, no obligation to exhaust domestic remedies because highest court had previously ruled on matter in dispute and therefore no prospect of success. Although claim brought to HRC 11 years after the Constitutional Court ruled on the law, it was just over one year after they reacquired Czech citizenship which they thought was prerequisite for compensation, so no abuse of right of submission. Requirement of citizenship as prerequisite for compensation arbitrary in this case.

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

Israil v Kazakhstan

31 October 2011, UNHRC, 2024/2011

Violation of Articles 6 (life), 7 (torture) and 9 (liberty); extradition; failure to respect interim measures

Chinese Uighur who provided information to foreign journalists regarding demonstrations and killings in 2009 flees to Kazakhstan and seeks refuge from UNHCR. Attempts to travel to European state for resettlement but arrested. China requests extradition for terrorist activities. HRC requests interim measures of protection, but Kazakhstan extradites to China. This breached obligations under the Optional Protocol. Detention pending extradition violated Article 9, and extradition violated Articles 6 and 7. There was a real risk of torture and death penalty based on what State knew or should have known. Principle of non-refoulement not subject to balancing based on alleged conduct of applicant or threat to security.

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

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



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