

# UN Human Rights Committee 102<sup>nd</sup> Session (July 2011)

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SUMMARIES OF DECISIONS on admissibility and merits taken by the UN Human Rights Committee during its 102<sup>nd</sup> session in July 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/102/D/[communication number]*

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# Admissibility Decisions

## L.G.M. v Spain

26 July 2011, UNHRC, 1617/2007

*Inadmissible under Article 2 OP; non-substantiation of claims; Article 14(5) (appeal)*

Applicant, an Iranian citizen, was sentenced in Spanish High Court to 20 years and 7 months' imprisonment for offences against public health, money laundering and forgery. He claimed to be a victim of a violation of Article 14(5) on the basis that cassation proceedings in the Supreme Court did not allow evidence leading to conviction to be re-examined. Ruling of Supreme Court replied to 14 grounds for cassation put forward. Unnecessary to have exhausted remedy of *amparo* in cases concerning review of judgments brought against Spain. Supreme Court examined all grounds for cassation put forward. Article 14(5) complaint insufficiently substantiated for purposes of admissibility.

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

## L.D.L.P v Spain

26 July 2011, UNHRC, 1622/2007

*Inadmissible under Article 2 OP; non-substantiation of claims; Article 2(3)(a) (effective remedy)*

Applicant, a Spanish citizen, was a career military officer who was subjected to repetitive harassment by his commanding colonel. He filed complaints and requested Ministry of Defence to take disciplinary action, but was subsequently removed from office. Unsuccessful appeals of the removal decision were made to the National High Court and the Constitutional Court. He claimed to be a victim of a violation of Articles 2(3)(a) and 14 because the remedies to which he had recourse were ineffective, there was insufficient evidence to support judicial decisions, merits of case were not examined and right to defend himself was not respected. However, judicial decisions did not support conclusion that court proceedings suffered from such defects. Incumbent upon courts of states parties to evaluate facts and evidence, unless that was arbitrary or amounted to manifest error.

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

## P.L. v Belarus

26 July 2011, UNHRC, 1814/2008

*Inadmissible under Article 2 OP; non-substantiation of claims; Article 19(2) (freedom of expression)*

Applicant subscribed to a private newspaper through a state owned company. The company subsequently excluded all private newspapers from its catalogue. He alleged discriminatory interference with his right to receive information as part of freedom of expression. He appealed the company's refusal to include the newspaper in its catalogue to the Supreme Court. Claim that refusal violated his right to freedom of expression under Article 19(2), in particular his right to receive information from private media. However, company was an autonomous entity entitled to decide which publications to include in its catalogue. Neither national law nor the ICCPR impose an obligation on states to ensure obligatory distribution of media material, and applicant could

have obtained it by other means. Applicant had not provided sufficient information that would permit an evaluation of the extent of the interference or whether the denial of access was discriminatory.

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

## V.H. v Czech Republic

19 July 2011, UNHRC, 1546/2007

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

Applicant's mother was forced to donate property to the Czech communist regime, and applicant subsequently fled the Czech Republic and his citizenship was revoked. Post-communist law on restitution of property requires that claimants be Czech citizens. Applicant sought restitution of his mother's property (his mother had died and he was sole heir), but was rejected by the Czech courts. Applicant claims discrimination on the basis of citizenship. Applicant failed to raise claims of discrimination before the Czech courts, and therefore had not exhausted domestic remedies.

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

# Decisions on the Merits

## Lange v Czech Republic

13 July 2011, UNHRC, 1586/2007

*Violation of Article 26 (non-discrimination); abuse of right of submission; continuing violation; discrimination; right to property*

Applicant fled Czech Republic, and his citizenship was revoked and property confiscated. Post-communist law on restitution of property requires that claimants be Czech citizens. Applicant's Czech citizenship was not reinstated until after his restitution applications had been rejected. Applicant claims discrimination on the basis of citizenship. In this case, delay of 4.5 years after rejection of ECHR complaint before lodging HRC claim was not abuse of right of submission. As found in numerous prior cases regarding property restitution in the Czech Republic, requirement of citizenship as prerequisite for compensation arbitrary and unreasonable in this case.

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

## L.N.P. v Argentina

18 July 2011, UNHRC, 1610/2007

*Violation of Articles 2(3) (effective remedy), 3 (equality), 7 (inhumane treatment), 14(1) (equal access to courts), 17 (privacy), 24 (rights of children), and 26 (non-discrimination); no violation of Article 14(5) (appeal); sexual assault; victims' rights; privacy; discrimination.*

Applicant, a 15 year old indigenous girl, raped. Kept waiting at police station and at hospital, where intrusively and insensitively examined. Perpetrators tried, but acquitted: while they admitted to the anal penetration, not proven that it was without consent. Applicant's sexual history explored in detail in investigation and trial, witnesses repeatedly asked if she was a prostitute or had a boyfriend, prior loss of virginity given weight, and not provided interpreter at trial. Family also not notified of right as plaintiffs in the case, or of judgment. Therefore, could not appeal acquittal. Treatment at police station, hospital and trial constituted discrimination based on ethnicity and gender in violation of Article 26, and violated obligation to protect minors under Article 24. This treatment, including revictimization and vulnerable status at trial, caused sufficient mental suffering to violate Article 7. Repeated inquiries into morality and sexual history are not relevant to rape case, and were arbitrary interference with private life and honour and reputation in violation of Article 17. Failure to inform Applicant of rights as plaintiff and to provide interpretation violated right of equal access to court under Article 14(1). Complaint under Article 14(5) regarding rights in appeal inapplicable as only applies to appeals against conviction.

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

## Nystrom v Australia

18 July 2011, UNHRC, 1557/2007

*Violation of Articles 12(4) (enter own country), 17 (privacy and family life) and 23(1) (family); no violation of Articles 9 (arbitrary detention) or 14(7) (ne bis in idem); deportation; arbitrary detention; own country; family life.*

Applicant's family originally from Sweden but migrated to Australia. Applicant born in Sweden during family visit, but has lived in Australia since 27 days old and does not speak Swedish. Although he never obtained Australian citizenship, he thought he was an Australian. Applicant has extensive criminal record in Australia, his residence visa was cancelled, and he was detained for nine months and then deported to Sweden. His father, mother and sister remained in Australia. Detention after visa cancelled, pending deportation, was proportionate in this case so no violation of Article 9. Non-criminal sanction of deportation does not amount to second punishment for same offence under Article 14(7). "Own country" under Article 12(4) is broader than citizenship, and strength of Applicant's ties to Australia qualify. Given lack of explanation for lapse of time between offences and cancelling visa, during which rehabilitation had started, deportation was arbitrary interference. Also disproportionate interference with family life, violating Articles 17 and 23(1), given particular circumstances here. Two members dissented on the interpretation of Article 12(4) and the finding of violations of Articles 17 and 23(1); and another three members expressed reservations about how far the Committee went in its interpretation of Article 12(4), which appeared unnecessary in this case.

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

### Butovenko v Ukraine

19 July 2011, UNHRC, 1412/2005

*Violation of Articles 2(3) (effective remedy), 7 (torture), 9(1) (unlawful detention), 10(1) (conditions of detention), and 14 (1), (3)(b) (d) (e) and (g) (fair trial); torture; forced confession; access to lawyer*

Applicant detained in connection with murder, and held in poor conditions without adequate heat, light or bedding. He was denied a lawyer for the first three days, interrogated and repeatedly beaten, prevented from sleeping, and his family threatened. After three days, given a state-appointed lawyer who advised him to confess or the beatings would continue. Eventually, he signed a confession, though at trial once he had an independent lawyer he recanted. Court relied on the prior confession and sentenced applicant to life imprisonment. Beatings and forced confession violate Articles 7 and 14(3)(g). Failure by state to investigate the claims that confession extracted by torture also violates Article 2(3) in conjunction with Article 7. Domestic law requires lawyer within 24 hours of arrest – failure to provide lawyer for three days and questioning during this period means detention was unlawful in violation of Article 9(1). Conditions of detention also violate Article 10(1). The ineffective nature of the state appointed lawyer, which the Applicant complain to the authorities about, violated Article 14(3)(b) and (d). Although evaluation of evidence primarily for the state's courts, here the violations of fair trial guarantees are reflected in the way the court evaluated the evidence, and violated Article 14(1) and (3)(e).

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

### Litvin v Ukraine

19 July 2011, UNHRC, 1535/2006

*Violation of Articles 7 (torture) and 14 (1), (3)(e) and (g) (fair trial); torture; forced confession; access to lawyer*

The applicant's son (Mr. Shchetka) was detained in connection with death of wife's sister, humiliated (denied water, toilet, sleep) and tortured (beaten, suffocated). He wrote a confession

dictated by the police, and only afterwards was his detention and questioning registered. He retracted the confession during formal interrogation the next day, and was again beaten as a result. No lawyer was allowed to see him for seven days. The son again complained of torture at trial, but court ignored these complaints, declined to call potential alibi witnesses, and convicted him based in part on his confession. The torture of the son and his forced confession violated Article 7 and 14(3)(g). The refusal of requests to call potentially important witnesses who had testified during the preliminary examination, and the failure of the state to provide any reasons for this, violate Article 14(3)(e). Although evaluation of evidence primarily for the state's courts, here the state has not addressed the multiple claims by the applicant, and based on the case file and the violations of Articles 7 and 14(3)(e) and (g), the courts also did not provide a minimum fair hearing in violation of Article 14(1). However, Article 14(5) does not provide right to review of conviction based on new evidence, therefore claim under this provision inadmissible.

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

### Moidunov v Kyrgyzstan

19 July 2011, UNHRC, 1756/2008

*Violation of Articles 2(3) (effective remedy), 6(1) (right to life) and 7 (torture); death in custody; effective investigation*

After a dispute on the street, the Applicant was taken to a police station. An hour later he was dead. An ambulance doctor who examined him found finger marks around his neck and asked if he had been strangled. The police said that the Applicant had a heart attack, and then changed their story to say he hung himself. Despite the evidence, there was no proper investigation into his death: the investigative order stated the Applicant had killed himself, preventing the investigation of the allegation that he had been killed, and the authorities failed to get a detailed description of the crime scene, did not carry out a reconstruction, did not establish the exact sequence of events, did not request medical records, and did not carry out a scientific examination of the sport trousers allegedly used to hang himself. Given that the Applicant died in state custody, in the absence of arguments from the state rebutting the allegation that he had been killed in custody, the state was responsible for the arbitrary killing in violation of Article 6(1). Evidence also demonstrated that he had received injuries while in custody, and the state was therefore also responsible for violation of Article 7. The failure to investigate these allegations properly violated Article 2(3) taken with Articles 6(1) and 7.

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

### Zyuskin v Russia

19 July 2011, UNHRC, 1605/2007

*Violation of Articles 2(3) (effective remedy) and 7 (torture); effective investigation*

Applicant was arrested and claims that he was beaten and suffocated during the investigation to obtain a confession. He made complaints about this to the prosecutor, and during his trial. While the state investigation confirmed that he received injuries, it denied police responsibility. The court also did not investigate or specifically address his claims of mistreatment during the investigation. This violated the obligation to promptly and impartially investigate claims of torture, under Article 7 in conjunction with Article 2(3). However, the Applicant did not sufficiently substantiate his claims of violations of his rights to fair trial under Article 14.

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

### Kungurov v Uzbekistan

20 July 2011, UNHRC, 1478/2006

*Violation of Articles 19(2) (freedom of expression) and 22(1) (freedom of association); registration*

The Applicant attempted on a number of occasions to register a human rights NGO, but each application was returned “without consideration” (an option not provided for in the relevant law) on the basis of alleged technical defects; and because the application allegedly had to demonstrate that the organization would not engage in any human rights activities that a state body was engaged in, and that it had a presence in every region in Uzbekistan. In the absence of registration, members faced imprisonment for conducting their human rights activities. The lack of specificity of the conditions (e.g. which state bodies conflicted with the proposed activities of the NGO) and the severe consequences of non-registration meant these restrictions did not meet the requirements of Article 22(2). These restrictions also de facto restrict the Applicant’s rights to freely seek, receive and impart information under Article 19(2).

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

### Warsame v Canada

21 July 2011, UNHRC, 1959/2010

*Violation of Articles 6(1) (right to life), 7 (torture), 12(4) (right to enter own country), 17(1) and 23(1) (interference with family life); Non-refoulement*

Applicant was a Somali national awaiting deportation from Canada for “serious criminality”. If deported, he contended he would face a risk of being arbitrarily deprived of his life and of being subjected to torture. For admissibility purposes, Applicant did not need to have made an application on humanitarian grounds. On the merits, the Committee concluded that Applicant, who had never lived in Somalia, did not speak the language and had limited or no clan support, would face a real risk of harm if deported, in violation of Articles 6(1) and 7. Given that Canada was his own country under Article 12(4), and because deportation would render his return to Canada *de facto* impossible, deportation would constitute a violation of that Article. Interference with the Applicant’s family life as a result of deportation would be disproportionate to the legitimate aim of preventing the commission of further crimes, in violation of Articles 17 and 23(1).

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

### X.H.L. v Netherlands

22 July 2011, UNHRC, 1564/2007

*Violations of Articles 7 (inhumane treatment) and 24 (best interests of child); claim under Article 17 (interference with family life) inadmissible; unaccompanied minor; exhaustion of domestic remedies*

Applicant, a Chinese national, entered the Netherlands as an unaccompanied minor. Minister of Immigration rejected application for asylum because Applicant had not provided reasonable grounds for fear of persecution. Applicant claims that decision to return him to China would violate Article 7 because he would be subjected to inhumane treatment. As he was only 12 when



he left China, he had no identification materials to access social assistance in China. By returning the Applicant to China without a thorough examination of the potential treatment that the Applicant may have been subjected to as a child with no identified relatives and no confirmed registration, the Committee considered that the Netherlands failed to provide him with necessary measures of protection as a minor at that time. The Netherlands' decision to return the Applicant to China did not take into account the best interests of the child, and violated his rights under Article 24, in conjunction with Article 7. A separate claim that return would breach his right of family life under Article 17, as his Dutch guardian is his only family, was inadmissible for failure to exhaust domestic remedies because Applicant failed to apply for a regular residence permit on grounds of exceptional personal circumstances.

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

### Singh v France

22 July 2011, UNHRC, 1876/2009

*Violation of Article 18 (non-discrimination); claim under Article 12 (freedom of movement) inadmissible; freedom of religion; non-discrimination; liberty of movement.*

Applicant, an Indian citizen, applied to renew French residence permit and provided two photographs showing him wearing a turban. Authorities decided that photographs failed to meet requirements that individual appear full faced and bareheaded. He appealed the refusal to renew his residence card to the Council of State. Applicant claimed to be a victim of indirect discrimination in violation of Article 18(2) because requirements take no account of fact that Sikhs are bound by religious beliefs to cover their heads in public. Without a permit, Applicant's social benefits were withdrawn. Applicant claimed that repeated humiliation of showing him bareheaded was not a proportionate measure for purposes of identification under Article 18(3). Committee concluded that regulation requiring persons to appear bareheaded in the identity photographs used on their residence permits is a limitation that infringes the Applicant's freedom of religion and in this case constitutes a violation of Article 18. Having concluded that a violation of Article 18 occurred, the Committee did not examine the separate Article 26 non-discrimination claim.

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

### Gunan v Kyrgyzstan

25 July 2011, UNHRC, 1545/2007

*Violation of Articles 6 (right to life), 7 (torture), and 14 (fair trial); death penalty; torture; fair trial*

Applicant, a Turkish national, was detained on death row in Bishkek. He submitted that he had been sentenced to the death penalty after an unfair trial. He claimed that he was innocent and his arrest and detention amounted to a violation of his right to liberty and security, and that he had been denied a fair trial in the determination of criminal charges against him. Specifically, he had not been informed about his rights at the time of arrest and he had not been provided with legal assistance from the moment of arrest. Kyrgyzstan had failed to provide any information with regard to the admissibility or substance of authors' claims. Committee held that Kyrgyz authorities had failed to give consideration to the Applicant's complaints of torture made during domestic criminal proceedings, violating Articles 7 and 14(3)(g). Applicant's interrogation in the absence of a lawyer and inability to access prosecutorial documents violated Article 14(3)(b) and (d).

Evaluation of evidence against the Applicant by national courts revealed failure to comply with fair trial guarantees, in violation of Article 14(1). Imposition of death sentence in the absence of a fair trial constituted a violation of Art 6.

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

### Bonilla Lerma v Colombia

26 July 2011, UNHRC, 1611/2007

*Violation of Article 14 (fair trial); fair trial; enforcement of judgment; effective remedy; non-substantiation of claims*

Applicant was sued for failing to meet a financial obligation. His motorboat was seized and placed in the custody of a court official pending outcome of proceedings; court official began using the motorboat and making undisclosed profits. Court official subsequently ignored lifting of the seizure order. Court granted injunction to return boat and ordered settlement procedures to enforce payment of damages to Applicant. A secretary of the Court filed a note withdrawing from the damages proceedings. Administrative Court refused to enforce judgment on the basis of request for withdrawal. Committee concluded that domestic courts' refusal to enforce payment of damages to Applicant constituted a violation of Article 14(1). Referral to Administrative Court was carried out in error, which was not attributable to Applicant. No evidence that Applicant intended to renounce his rights. The Applicant also claimed breaches of Articles 2, 3, 5, 16, 26 and 27; however, these claims were set out in a general manner, rendering them inadmissible for lack of substantiation.

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

### Levinov v Belarus

26 July 2011, UNHRC, 1812/2008

*No violation of Article 14 (fair trial); non-substantiation of claims.*

Applicant was the representative of an association engaged in independent local election monitoring, who decided to carry out a campaign against lack of choice in the election. Applicant placed in temporary detention facilities and was later found guilty of minor hooliganism. Applicant claimed a violation of Articles 7 and 10 because the police refused to permit hospitalization and access to adequate medication during detention. He contends his arrest and subsequent detention were unlawful and arbitrary and he should have been released on bail, in violation of Article 9(3). Applicant also claimed several breaches of fair trial rights under Article 14, freedom of expression under Article 19 and discrimination under Article 26. After consideration of trial materials which revealed that Applicant's guilt was duly established and his sentence grounded, Committee considered that Applicant's claims under Articles 7, 9, 10, 19 and 26 were insufficiently substantiated for purposes of admissibility. Applicant's claimed violations of Article 14 were refuted by the content of the trial transcript.

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

### Cunillera Arias v Spain

26 July 2011, UNHRC, 1531/2006

*No violation of Art 14(1) or (3)( b) and (d) (fair trial); fair trial (civil); legal representation; non-substantiation of claims.*

Applicant filed a complaint alleging negligence on the part of court-appointed lawyer and *procurador* in a civil suit in which he was plaintiff. These proceedings were stayed and the Applicant filed various applications for review, although these applications were not lodged by a *procurador*. Applicant instituted *amparo* proceedings before the Constitutional Court, requesting annulment of previous decisions which prevented him from appearing on his own behalf. Applicant could not rely on Articles 14(3)(b) and (d), as they recognize rights applicable only to persons accused of a criminal offence. Given that there may be objective and reasonable grounds for the requirement of representation, Committee concluded that requirement that Applicant be represented by a lawyer and a *procurador* in proceedings in which he is the complainant did not contravene Article 14(1). Additional claims of violations of Articles 2, 16 and 26, on the basis that Spanish law denies citizens the right to appear on their own behalf and requires them to have a legal representative, were not sufficiently substantiated.

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

**E-mail: [info@justiceinitiative.org](mailto:info@justiceinitiative.org)  
[www.justiceinitiative.org](http://www.justiceinitiative.org)**



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