

UN Committee against Torture 47th Session (November 2011)

MAY 2012

SUMMARIES OF DECISIONS on admissibility and merits taken by the UN Human Rights Committee during its 47th session in November 2011. Produced by lawyers at the Open Society Justice Initiative, with the assistance of the Pro Bono Program at University of Virginia School of Law, in order to bring the decisions of global human rights tribunals to the widest possible audience.

All decisions are UN Doc. CAT/C/47/D/[communication number]

Admissibility Decisions

[S. K. and R. K. v. Sweden](#) (Communication no. 365/2008)

Afghani nationals failed to appeal Migration Board's decision and failed to submit a second asylum application, rendering the case inadmissible.

[Abdussamatov et al. v. Kazakhstan](#) (Communication no 444/2010)

29 Muslim Uzbek and Tajik nationals claimed that extradition to Uzbekistan would violate Article 3. 19 were extradited despite the Committee having issued an interim request that Kazakhstan not extradite the complainants while it considered their complaints. The Committee found the case admissible and that Kazakhstan violated its obligations to cooperate in good faith with the Committee under Article 22 by breaching the interim request not to extradite the complainants..

Decisions on the Merits

[Boily v. Canada](#) (Communication no. 327/2007)

Extradition of complainant to Mexico violated Article 3 because state failed to consider all circumstances, accepted diplomatic assurances that were inadequate to prevent torture, and failed to monitor his whereabouts and well-being in first days of detention.

[N. B.-M. v. Switzerland](#) (Communication no. 347/2008)

Congolese national who allegedly made anti-regime statements and was politically active in Switzerland failed to provide sufficient evidence of risk of torture if returned to Congo, resulting in no violation of Article 3.

[Slyusar v. Ukraine](#) (Communication no. 353/2008)

Ukraine violated Articles 2, 12, 13, and 14 for failure to prevent, investigate, and provide redress for torture of Ukrainian national while under arrest.

[E. L. v. Switzerland](#) (Communication no. 351/2008)

Congolese national who claims she faces retaliation for revealing secret information to Rwandan rebels failed to provide sufficient evidence of risk of torture if returned to Congo, resulting in no violation of Article 3.

[S. M., H. M., and A. M. v. Sweden](#) (Communication no. 374/2009)

Return to Azerbaijan, where there was a risk of torture and sexual assault on account of husband's Armenian origin, constituted a violation of Article 3.

[Faragollah et al. v. Switzerland](#) (Communication no. 381/2009)

Iranian national who fears torture because of his participation in opposition movement, including as cantonal leader, provided sufficient evidence of risk of torture if returned by Switzerland to Iran.

Eftekha v. Norway (Communication no. 312/2007)

Iranian national whose activities as a journalist in Iran and Norway put him at risk of persecution provided sufficient evidence of risk of torture if returned to Iran.

Kalinichenko v. Morocco (Communication no. 428/2010)

Russian national who was extradited by Morocco to Russia provided sufficient evidence of risk of torture upon return to Russia.

Sonko v. Spain (Communication no. 368/2010)

Senegalese national died after being apprehended by guards in Spanish waters and forced to remain in the water without flotation device despite not knowing how to swim. Failure to conduct a prompt and impartial investigation and provide redress to family violated Articles 12 and 16.

Admissibility Decisions

S. K. and R. K. v. Sweden

21 November 2011, UNCAT, 365/2008

Inadmissible under Art. 22(5)(b) (exhaustion of domestic remedies)

Facts. The complainants, two brothers from Afghanistan facing deportation in Sweden, claimed that their return to Afghanistan would violate Article 3 of the Convention against Torture. S. K. left Afghanistan when he was six months old and R. K. was born in Iran, where they were refugees. They moved to Pakistan after their father's death, where they were allegedly detained and tortured in Iran and removed to Afghanistan for working illegally. The brothers again fled to Iran and sought family reunification with their mother and sisters in Sweden. Sweden denied the request because they were not minors. R. K. was once again arrested and returned to Afghanistan where he was brutally beaten for having documents from the Swedish embassy. He fled and joined his brother in Iran. Both entered Sweden with false papers and immediately applied for asylum under their true identities. They received residence permits for one year but did not receive an extension. R.K. worked as a translator at Swedish integration unit during that time and allegedly received threats from Afghanistan for assisting Afghani asylum seekers by providing translation services.

Decision. Communication is inadmissible because complainants failed to appeal Migration Board's decision to Migration Court and failed to submit a second application for asylum alleging torture. Belief that a remedy will not be effective is not grounds for failing to exhaust domestic remedies.

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

Abdussamatov et al. v. Kazakhstan

15 November 2011, UNCAT, 444/2010

Admissibility; Interim measures; Non-refoulement; Violation of Article 22 (duty to cooperate with Committee)

Facts. The complainants, 29 Muslim Uzbek and Tajik citizens, had fled Uzbekistan for fear of persecution for practicing their religion; some had already been detained and some fled after being accused of religious extremism, and all believed they would be mistreated if extradited. They claimed that extradition to Uzbekistan would violate Article 3 of the Convention. The Rapporteur on new complaints and interim measures requested Kazakhstan not to extradite the complainants to Uzbekistan while their complaints were under the Committee's consideration. However, Kazakhstan extradited 19 of the complainants to Uzbekistan, after Uzbek authorities guaranteed to respect the rights and freedoms of the complainants and that no torture or cruel, inhuman or degrading treatment would come to them.

Decision. As Kazakhstan had asked the Committee to review admissibility separately from the merits of the case, this decision is primarily on admissibility, and the Committee found the case admissible insofar as it raises issues with respect to Article 3 of the Convention. Additionally, the Committee held that Kazakhstan had breached the Committee's request for interim measures under rule 114 of its rules procedure, thereby failing to fulfill its obligations to cooperate in a good faith manner under Article 22 of the Convention. The Committee requested, *inter alia*, that

Kazakhstan provide additional observations on the merits, in particular updated information on the present situation of the complainants.

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

Decisions on the Merits

Boily v. Canada

14 November 2011, UNCAT, 327/2007

Violation of Art. 3 (non-refoulement); Torture; Diplomatic Assurances; Non-refoulement; Redress

Facts. The complainant, a Canadian national, claimed that his extradition to Mexico would violate Article 3 of the Convention against Torture. Complainant had been arrested in Mexico for having more than 50kg of marijuana in his car and signed a confession after being tortured. The guards threatened to kill him if he revealed the torture. Complainant subsequently escaped from jail, and a prison guard was killed in the process. Mexico seeks extradition for him to complete his sentence and face a charge of homicide for the prison guard's death. Complainant initially remained in Canada pending consideration of his complaint pursuant to an interim measure. Rapporteur withdrew the interim request about a month later, after receiving diplomatic assurances from the Mexican government, and the complainant was extradited to Mexico the following month. In Mexico, he was tortured and denied access to a Canadian lawyer and embassy in the first three days of detention.

Decision. Committee found a violation of Article 3 because Canada did not take into account all the circumstances in evaluating the risk of torture before extraditing. Complainant was sent to the same prison where he was accused of killing a guard, diplomatic assurances were not designed carefully enough to prevent torture, and Canada failed to verify complainant's safety in first few days of detention—the days when he ran the highest risk of torture. Canada must provide redress and determine complainant's whereabouts and well-being.

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

N. B.-M. v. Switzerland

14 November 2011, UNCAT, 347/2008

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

Facts. The complainant, a Congolese national facing deportation from Switzerland, claimed that her deportation to Congo would violate Article 3 of the Convention against Torture. She believed she would be tortured because she disseminated information suggesting that the Congolese president was in fact Rwandan and that the former president was assassinated as part of a scheme to install a Rwandan as the Congolese president and because of her political activities in Switzerland. Complainant also alleged that security services had been looking for her and that she was raped by two guards who helped her flee from Ndijili airport.

Decision. Complainant failed to provide sufficient evidence that she did in fact disseminate anti-regime information and was persecuted as a result. She is probably not a wanted person given that the alleged events occurred 11 years earlier. She did not provide sufficient evidence of political activities in Switzerland to demonstrate a risk of torture if returned to Congo. Accordingly there had been no violation of Article 3.

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

Slyusar v. Ukraine

14 November 2011, UNCAT, 353/2008

Violation of Arts. 2 (obligation to prevent torture), 12 (ex officio investigation), 13 (right to complain), and 14 (adequate remedy); Torture; Investigation; Redress

Facts. The complainant, a Ukrainian national, was arrested after his father disappeared, two days after the father allegedly wrote a will leaving all his property to the father's brother. Complainant and his mother reported the father's disappearance; authorities failed to investigate the disappearance and opened a criminal case regarding the father's murder instead. He alleges that his father's brother gave false statements to police and encouraged others to give false statements that implicated the complainant and his mother. While detained complainant alleges that he was tortured and urged to sign a confession for his father's murder. Authorities threatened to harm complainant's mother and wife if he failed to confess. He claimed that Ukraine violated Articles 2(1) and 12 of the Convention against Torture.

Decision. Committee found a violation of Article 2 based on medical certificates detailing injuries sustained while in detention, constituting evidence that the State did not explain away (it merely suggested that there was no causal link between evidence and the possible use of torture). Ukraine also violated: Article 12, for failing to respond to allegations of torture, as the complainant's appeal against Prosecutor's Office had been pending for years and had not refuted complainant's statements in this respect; Article 13, because the State failed to conduct a prompt and impartial investigation; and Article 14 for failure to provide redress and compensation.

E. L. v. Switzerland

15 November 2011, UNCAT, 351/2008

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

Facts. The complainant, a Congolese national facing deportation from Switzerland, claimed that her removal to Congo would violate Article 3 of the Convention against Torture. She believed she would be tortured because she provided sensitive military information to her brother, a member of rebel forces in Rwanda. She obtained this information through her employment as a receptionist in the office of the Rapporteur of the Congolese National Assembly in Kinshasa, but was unable to recount to Swiss authorities the nature of the information passed on to her brother. Complainant allegedly fled to Switzerland after the Rapporteur announced that the Intelligence Agency was conducting an investigation and that the informer would be found. After leaving the Congo, the complainant was featured in a twice-weekly Congolese newspaper accusing her of "information trafficking and spying."

Decision. The Committee found no violation of Article 3: the newspaper articles appeared to be forged, and the complainant's credibility was questionable as to nature of sensitive information revealed to Rwandan forces, warnings from Intelligence Agency (rather than simply arresting her), and her claim that her brothers arranged for her departure from Congo in one day with a single phone call.

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

S. M., H. M., and A. M. v. Sweden

21 November 2011, UNCAT, 374/2009

Violation of Art. 3 (non-refoulement); Torture

Facts. Husband, wife and daughter, Azeri nationals from the Nagorno-Karabakh region, faced deportation from Sweden. They claim that removal to Azerbaijan, where they had suffered beatings by neighbors because of the husband's Armenian origin, would violate Article 3 of the Convention against Torture. Sweden denied their first petition for asylum and they were returned to Azerbaijan, where they were detained at the airport upon arrival. S. M. was tortured, his wife H. M. was sexually assaulted while under arrest, and their daughter suffered psychological trauma after witnessing the mother's assault. The family spent 10 days at a hospital following this detention. Swedish medical reports support the family's allegations of abuse. The family returned to Sweden approximately 2 years later and applied for asylum a second time.

Decision. Committee discontinues part of communication relating to daughter because Sweden issued a resident permit for her. Committee found the other complainant's accounts credible, and that a decision to return them from Sweden to Azerbaijan would violate Article 3.

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

Faragollah et al. v. Switzerland

21 November 2011, UNCAT, 381/2009

Violation of Art. 3 (non-refoulement); Torture

Facts. The complainants, a husband, wife, and son (Armin) from the Islamic Republic of Iran facing deportation from Switzerland, claimed that removal to Iran would violate Article 3 of the Convention against Torture. The husband claimed they would be tortured for his active participation in the Democratic Association for Refugees and as representative for the Canton of Obwald. Complainant's other son Arash had been granted refugee status in Sweden for activities similar to those conducted by the father.

Decision. Committee found that return to Iran would violate Article 3 because of the husband's active role in an opposition group, coupled with the extremely worrisome situation in Iran, and on account of his son's receipt of refugee status for similar activities.

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

Eftekha v. Norway

25 November 2011, UNCAT, 312/2007

Violation of Art. 3 (non-refoulement); Torture

Facts. The complainant, a national of the Islamic Republic of Iran facing deportation from Norway, claimed that removal to Iran would violate Article 3 of the Convention against Torture and Rule 114 of the Committee's Rules of Procedure. He claimed he would be imprisoned and tortured for his work as a journalist for 14 years in Iran and for his continued journalistic activities in Norway: he was twice summoned to appear in the Revolutionary Court (he failed to do so) and authorities shut down both blogs that he maintained from Norway. He fled Iran after being released from detention, during which he was interrogated for 14 hours.

Decision. Committee found that return to Iran would violate Article 3 because of the extremely worrisome situation in Iran: there was evidence of Iranian authorities persecuting journalists for their activities, the fact that the complainant failed to appear at two summons by the Revolutionary Court, and the fact that complainant's blogs had been shut down.

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

Kalinichenko v. Morocco

25 November 2011, UNCAT, 428/2010

Violation of Art. 3 (non-refoulement); Torture

Facts. The complainant, a Russian national facing extradition from Morocco, claimed that extradition to Russia would violate Article 3 of the Convention against Torture. He claimed he would be tortured or killed for having reported organized crime to authorities and for uploading evidence of their activities to a website. His three business partners died or disappeared after reporting facts of the same criminal activity to authorities. He was arrested in Italy pursuant to an international arrest warrant, which he claims is based on information that the mob fabricated to frame him. He fled to Morocco while awaiting Italian Supreme Court's decision. Morocco detained complainant, and extradited him to Russia on diplomatic assurances in May 2011.

Decision. Committee found that extradition to Russia violated Article 3 because of the current situation in Russia, where all complainant's business partners died or disappeared after reporting crime, and fact that complainant received death threats prior to leaving Russia. Complainant is entitled to redress by Morocco, which shall monitor complainant's conditions of detention.

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

Sonko v. Spain

25 November 2011, UNCAT, 368/2008

Violation of Arts 12 (investigation) and 16 (inhuman or degrading treatment); Investigation; Redress

Facts. The complainant, a Senegalese national submitting the communication on behalf of her brother Lauding Sonko, alleges that Spain's treatment of her brother violated Articles 1 and 16 of the Convention against Torture. Mr. Sonko was apprehended by the Spanish Civil Guard, along with two other men and one woman, while trying to swim onto Spanish territory. Each immigrant had a floating device when the Spanish guards apprehended them. They were then put aboard the guards' boat and taken to a beach on Moroccan territory, where they were forced to get back in the water. The water was too deep for the detainees to stand. The guards had popped the floating devices of the three men and ignored Mr. Sonko's pleas for help and claims that he did not know how to swim. One of the guards eventually pulled Mr. Sonko out of the water, but he died shortly thereafter. He was buried in a cemetery in Spain without any marking/identification.

Decision. Committee found that Spain violated Article 12 because it did not inform Mr. Sonko's relatives of the investigation until 16 months after the inquiry had begun, at which point the investigation was shelved. Spain also violated Article 16, due to the puncturing of Mr. Sonko's floating device and by forcing him back into the water despite his claims that he could not swim. Separate opinion concurred in decision but dissented on rationale: while the majority of Committee claimed that it should not weigh evidence or assess authorities' credibility regarding

the puncturing of the floating devices, separate opinion stated that the Committee has the right to weigh the evidence and did in fact determine that the State's version of events was not credible.

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

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