

UN Committee against Torture 43rd Session (November 2009) and 44th Session (May 2010)

FEBRUARY 2012

SUMMARIES OF DECISIONS on admissibility and merits taken by the UN Human Rights Committee during its 43rd and 44th sessions in November 2009 and May 2010. 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/43/D/[communication number] or CAT/C/44/D/[communication number], depending on the session at which the decision was delivered.

Admissibility Decisions

[E.Y. v. Canada](#) (Communication no. 307/2006)

Failure to apply for judicial review of the decisions on humanitarian and compassionate application and a pre-removal risk assessment, and failure to challenge the effectiveness of the judicial review remedy, rendered case inadmissible.

Decisions on the Merits

[A.M. v France](#) (Communication no. 302/2006)

Congolese national failed to produce sufficient evidence to corroborate his claim that he would risk being subjected to torture upon return to the Democratic Republic of the Congo.

[Njamba and Balikosa v Sweden](#) (Communication no. 322/2007)

Two Congolese nationals risked subjection to torture if deported to the Democratic Republic of the Congo based on several UN reports of sexual violence against women.

[M.M. v Canada](#) (Communication no. 331/2007)

Burundian national failed to produce evidence that mere membership in a political organization gave rise to a risk of torture if deported.

[F.A.B. v Switzerland](#) (Communication no. 348/2008)

Deportation of the complainant to Cote d'Ivoire did not risk torture as he was not politically active, had never been tortured, and there was no current pattern of violence in the country.

[C.M. v Switzerland](#) (Communication no. 355/2008)

Congolese national presented insubstantial evidence of risk of torture if deported. Peace agreements and amnesty laws sufficiently mitigated any risks of reprisal against the complainant.

[N.S. v Switzerland](#) (Communication no. 356/2008)

Turkish national failed to show risk of torture if deported. The attack witnessed by the complainant had occurred long ago, he had lived in Turkey for several years after and presence of current psychological problems insufficient.

Admissibility Decisions

E.Y. v. Canada

4 November 2009, UNCAT, 307/2006

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

Facts. The complainant, an Iraqi national facing deportation in Canada, claimed that his return to Iraq would violate article 3 of the Convention Against Torture. He believed he would be tortured for being a Sunni Muslim and a member of the Republican Guards. The Immigration and Refugee Board in Canada held he was excluded from refugee protection under Article 1F of the Refugee Convention because there were serious reasons for considering that he had committed a crime against humanity. The complainant's subsequent application for permanent residence on the basis of humanitarian and compassionate grounds was dismissed. He then filed an application for a pre-removal risk assessment (PRRA) which was also rejected. The complainant did not request leave to apply to the Federal Court for judicial review of either decision. A removal order was issued against the complainant and his request for deferral was denied.

Decision. An appeal against a negative decision on a humanitarian and compassionate application is not a remedy that needs to be exhausted. However, to diligently exhaust remedies, the complainant should have applied to judicially review the PRRA and humanitarian and compassionate decisions. Errors made by a privately retained lawyer, who advised the complainant that domestic remedies had been exhausted, could not be attributed to the State party. The communication was therefore inadmissible.

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

Decisions on the Merits

A.M. v France

5 May 2010, UNCAT, 302/2006

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

Facts. The complainant, a national of the Democratic Republic of the Congo (the Congo) facing deportation from France, claimed that his return to the Congo would constitute a violation of article 3 of the Convention Against Torture. He claimed that state authorities had launched an intensive search for him because of his role in the Mobutu regime and his alleged work for the Mouvement de Libération du Congo. French immigration authorities rejected the complainant's application for asylum at first instance and on appeal, partly due to concerns about the authenticity of "wanted notices", which indicated that the complainant was wanted for subversion and for endangering internal security.

Decision. The communication was sufficiently substantiated for the purposes of admissibility. However, the complainant failed to rebut the State party's conclusions on his credibility and was not able to validate the authenticity of documents including medical certificates and wanted notices. Accordingly the complainant had not substantiated his claim that he would personally face a foreseeable, real and personal risk of being subjected to torture upon his return to the Congo. The Committee concluded that the complainant's removal to the Congo would not constitute a violation of article 3 of the Convention.

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

Njamba and Balikosa v Sweden

14 May 2010, UNCAT, 322/2007

Violation of Art. 3 (non-refoulement) and Art. 16 (cruel, inhuman or degrading treatment) ; Torture; Non-refoulement; Degrading treatment

Facts. The complainants, two nationals of the Democratic Republic of the Congo (the Congo), were the subject of an order for deportation from Sweden. If deported, they feared they would be subjected to torture or death by the security services and family. Ms Njamba, confirmed as HIV-positive, further claimed that she would face a "painful death" from the disease upon return to the Congo.

Decision. The aggravation of Ms Njamba's health which might occur following deportation was insufficient to substantiate that claim, which was deemed inadmissible. While some factual issues of the case were disputed, recent UN reports concluded that violence against women in the Congo remained a serious concern. The Committee considered that the conflict situation in the Congo made it impossible for the Committee to identify particular areas of the country which could be considered safe for the complainants. Thus substantial grounds existed for believing that the complainants were in danger of being subjected to torture if returned. Thus the deportation of the complainants would amount to a breach of article 3 of the Convention.

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

M.M. v Canada

5 November 2009, UNCAT, 331/2007

No violation of Art. 3 (non-refoulement); Torture; Non-refoulement; Membership of an organization; Evidence

Facts. The complainant, a national of Burundi facing deportation from Canada, claimed that his return to Burundi would constitute a violation of article 3 of the Convention Against Torture. If deported, he claimed that he would be subjected to torture on account of his membership of PA-Amasekanya, an organization which denounced the impunity enjoyed by those responsible for the Tutsi genocide. Canadian immigration authorities considered that the complainant was excluded from refugee protection because PA-Amasekanya was a violent organization which committed human rights violations.

Decision. The complainant had based his allegation that he risked torture if deported to Burundi purely on his affiliation to PA-Amasekanya. He had not provided evidence that he was wanted by the Burundian authorities. The Committee considered that the complainant had not been able to provide objective evidence of a personal, real and present risk of torture upon return. The evidence received by the Committee did not show that the State party's examination and rejection of the complainant's allegations was flawed. The complainant's removal to Burundi therefore would not breach article 3 of the Convention.

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

F.A.B. v Switzerland

17 November 2009, UNCAT, 348/2008

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

Facts. The complainant, an Ivorian national facing deportation from Switzerland, claimed that his return to Cote d'Ivoire would constitute a violation of article 3 of the Convention Against Torture. If deported, he believed that he would be tortured or subjected to inhuman or degrading treatment by Ivorian soldiers, Liberian rebels or the inhabitants of Para.

Decision. The State party argued that the complainant's account was improbable, that he had not claimed to have been politically active nor to have been subjected to torture, and that it is unlikely that he would be persecuted by the authorities. There had been neither generalized violence nor mass violations of human rights in Cote d'Ivoire since the peace agreement. It considered that the complainant's allegations were merely theories and that the risk posed by Liberian rebels and villagers could not be attributed to the Ivorian authorities. The complainant had not provided sufficient evidence that his return to Cote d'Ivoire would put him at a real risk of being subjected to torture. Accordingly the deportation of the complainant to Cote d'Ivoire would not constitute a breach of article 3 of the Convention.

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

C.M. v Switzerland

14 May 2010, UNCAT, 355/2008

No violation of Art. 3 (non-refoulement); Torture; Non-refoulement; Exhaustion of Domestic Remedies; Evidence

Facts. The complainant, a national of the Democratic Republic of the Congo (the Congo) facing deportation from Switzerland, claimed that his return to the Congo would constitute a violation of article 3 of the Convention Against Torture. This claim was based on the fact that militias had killed his mother in

his place, that he deserted from the army by leaving the country, an offence punishable by death, and that his two brothers were subsequently killed. He maintained that the 2003 amnesty was purely notional and did not protect him from persecution by pro-government militia.

Decision. Because of the complainant's financial hardship, it was unfair to require him to pay the sum of 1,200 Swiss francs in order for his last review application to be admissible before the Swiss asylum tribunals, and domestic remedies were therefore exhausted. However, the complainant had not shown evidence of a real, present and foreseeable risk of torture. The complainant's account of his involvement in secret missions for the Congolese government was inconsistent, and he was unable to put forward any counter-arguments to the fact that the peace agreements and amnesty laws had brought about a new situation which would nullify the complainant's fears. The complainant's allegations that he risked arrest for desertion would not entail a violation of themselves. Thus the deportation of the complainant to the Congo would not constitute a breach of article 3 of the Convention.

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

N.S. v Switzerland

6 May 2010, UNCAT, 356/2008

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

Facts. The complainant, a Turkish national facing deportation from Switzerland, claimed that his return to Turkey would constitute a violation of article 3 of the Convention Against Torture. He had witnessed an attack on the village of Daltepe in 1993. The authorities reacted by arresting the complainant and detaining him for 40 days. After his release, the complainant remained under the control of Turkish security forces. Due to his fear of being caught and tortured, the complainant decided to hide and refused to perform his military service.

Decision. The facts did not indicate that the complainant would be at a real risk of torture if returned to Turkey. The complainant had insufficiently explained the relevance of the 1993 attack to the current situation and had failed to produce a medical certificate in relation to alleged torture. Members of the complainant's family, including the complainant, had lived in Istanbul for many years after the alleged attacks. The fact that the complainant suffered from psychiatric problems did not constitute sufficient grounds to refrain from proceeding with the complainant's removal to Turkey. Therefore the complainant's removal to Turkey would not constitute a breach of article 3 of the Convention.

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

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