

UN Human Rights Committee 101st Session (March 2011)

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SUMMARIES OF DECISIONS on admissibility and merits taken by the UN Human Rights Committee during its 101st session in March 2011. 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.

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Admissibility Decisions

I. S. v. Belarus

25 March 2011, HRC, 1994/2010

Inadmissible under Art 2 (not substantiated) and Art 3 (incompatible) of OP; forced labor; retroactive legislation

Applicant's education was funded by State, and law requires he work for two years in area mandated by the State, otherwise he would be obliged to reimburse funds. Domestic court ordered applicant to pay back tuition after he was dismissed for not working. Applicant claimed that requirement to pay expenses for his state funded education or to work in a specific enterprise in specific location for two years constituted compulsory labor in violation of Article 8(3), and that the judicial proceedings were manifestly arbitrary or amounted to denial of justice. These claims were insufficiently substantiated and thus inadmissible under Article 2 of OP. Claim that the law at issue was retroactively applied is incompatible with provisions of the Covenant, as Article 14(1) does not contain prohibition of retroactive application of laws regulating civil matters and Article 15(1) only prohibits retroactive application of laws in criminal law matters.

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

N. Z. v. Ukraine

2 March 2011, HRC, 1404/2005

Inadmissible under Art 2 of OP (not substantiated); torture; fair trial

Applicant serving life sentence for murder, claims he did not kill the victims but only helped bury their bodies under coercion. Due to conflicting information before Committee, claims relating to Articles 7 and 14(3)(g) that he was subjected to ill-treatment by police officers to force him to confess were insufficiently substantiated. Claims relating to Article 14(1), (3)(e), and (5) were inadmissible because applicant failed to show that the conduct of the courts was clearly arbitrary or amounted to denial of justice. Despite Committee's inquiry with applicant, no documentary evidence provided to support claims relating to that he was not provided with legal assistance for 10 days, and that media stated he was guilty (Articles 14(2) and (3)(b)), thus inadmissible for insufficient substantiation. Article 2 can only be invoked in conjunction with a substantive right and only if violations sufficiently well founded, thus also inadmissible.

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

Y.D. v. Russian Federation

25 March 2011, HRC, 1521/2006

Inadmissible under Art 3 (incompatibility) and Art 2 OP (not substantiated)

Applicant claims grounds for his dismissal from job at Ministry of Internal Affairs was not one of the permitted grounds under regulations regarding his position. Claim that rights under Article 5 were violated because of unlawful restriction on right to work inadmissible under Article 3 of OP because right to work is not protected under the Covenant. Other claims under Articles 2, 14, 17 and 26 (violation of right to a fair and public hearing, that he was prevented from obtaining employment because record reflected grounds for dismissal, that dismissal violated right to equal protection, and that he could not obtain effective remedy) insufficiently substantiated, thus inadmissible under Article 2 of OP.

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

Decisions on the Merits

González v. Argentina

17 March 2011, UNHRC, 1458/2006

Violation of Arts 2(3) (effective remedy), 6(1) (right to life); failure to adequately investigate

Applicant submits communication on own behalf, and on behalf of deceased son. Same day son disappeared, personal effects and van he owned found burned, and a dead body inside that was not identified positively, but is suspected to have been the son. Although brought to court, case was eventually closed and there were a number of irregularities at trial (e.g. evidence not protected, preliminary investigation suggested police officers were involved, officer appointed for investigation later identified as key suspect by police witnesses, judge decided not to pursue investigation and closed case). Committee noted that while judicial proceedings failed to explain where or how her son died or to identify those responsible, the State party did not refute the version of facts submitted by applicant, notably with respect to State responsibility. Committee found neither son nor mother had access to effective and enforceable remedies, and thus violated Article 6(1) with respect to applicant's son, and violated Article 2(3), read in conjunction with Article 6(1), in respect to Applicant and her son. Other claims (violations of Articles 3, 7, 9, 14(1), and 26) were insufficiently substantiated.

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

Yevdokimov and Rezanov v. Russian Federation

21 March 2011, UNHRC, 1410/2005

Violation of Arts 2(3) (effective remedy), 25 (right to vote)

Applicants are criminal convicts in Russia, claiming violation of their right to vote, discrimination, and lack of effective remedy. Right to vote and be elected is not absolute; restrictions may be imposed on it if not discriminatory or unreasonable. However, the legislation imposes a blanket deprivation of right to vote on anyone sentenced to a term of imprisonment, and State party did not provide any arguments as to how the restrictions in this case would meet criterion of "reasonableness". The ban thus violated Article 25, alone and in conjunction with Article 2(3). Committee did not address a separate claim regarding violation of Article 2(1). Two concurring members would have clarified that decision turned on fact that State party denied right without identifying any reasonable basis for its action, and Committee was not taking a position on whether the Applicants should have been permitted to vote. One concurring member suggested that the Committee revise General Comment 25 (on the right to vote). Two dissenting members would have found no violation of Article 25 or 2(3) because restriction on their right to vote for the period of their prison sentence was not unreasonable, nor disproportionate.

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

Aouabdia v. Algeria

22 March 2011, UNHRC, 1780/2008

Violation of Arts 2(3) (effective remedy), 6 (life), 7(torture), 9(1)-(4) (liberty), 10(1)(dignity), 16 (protection of law; recognition as person before the law); admissibility; enforced disappearance, detention conditions

Applicant's submission is on behalf of herself, her six children, and her husband who was arrested and detained incommunicado and of whom they have heard no news for almost 17 years. Although allegedly sentenced to death in absentia, applicant was never able to confirm that. Examination of husband's case by the Working Group on Enforced or Involuntary Disappearances does not render communication inadmissible. Incommunicado detention of husband since 1994 and fact that he was prevented from communicating with his family and outside world violated his rights under Article 7. Suffering and distress caused to wife and children by his disappearance and inability to ever confirm whether he is alive or dead violated their rights under Article 7 alone and together with Article 2(3). His arrest without a warrant, detention without access to counsel and without being informed of grounds for arrest or charges, alleged conviction in absentia, and inability for judicial review of lawfulness of detention, violated his rights under Article 9. In absence of any information from the State on the treatment of husband during detention, Committee finds violation of Article 10(1). Enforced disappearance for nearly 17 years denied him protection of the law and deprived him of his right to recognition as a person before the law, thus violating Article 16. Husband did not have access to effective remedy in that State party failed in its obligation to protect his life, thus violating of Article 6, read in conjunction with Article 2(3). One member (partially dissenting) would have found a violation of 2(3), read in conjunction with Article 6, rather than direct violation of Article 6, because in cases of enforced disappearances where there is no conclusive evidence regarding death of victim, cannot necessarily conclude there has been a direct violation of this right. Another member (partially dissenting) would have found State party violated Article 6, without needing to refer to Article 2.

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

Akwanga v. Cameroon

22 March 2011, UNHRC, 1813/2008

Violation of Arts 7 (torture); 9 (2-4) (reasons for arrest, brought before a judge, challenge detention), 10 (1 and 2) (detention conditions), 14 (fair trial); admissibility; examination by other international court; military trial of civilian

Applicant is a Cameroon national and political activist, who was arrested and detained by Cameroon police officers, repeatedly tortured, interrogated, kept in unsanitary detention conditions that made him sick, held incommunicado for over 18 months, forced to sign confession papers written in a language he could not understand, and ultimately sentenced to 20 years imprisonment by military, rather than civilian, court. He managed to escape and was granted refugee status in US. Though unrelated third party presented the matter to the African Commission on Human and Peoples' Rights, the third party did so without knowledge and consent of alleged victim; thus cannot preclude the victim from accessing the HRC under 5(2)(a) of OP. Domestic remedies were de facto not available to the Applicant; thus communication not precluded. Concludes State party violated Article 7 based on Applicant's detailed allegations of torture and the impact on his health shown by three medical certificates. Conditions of detention did not meet Standard Minimum Rules for Treatment of Prisoners, and violated his rights to be treated with humanity and respect for inherent dignity under Article 10(1), and detention with convicted prisoners during his pretrial detention violated Article 10(2). Applicant was not informed of reasons for his arrest, was not brought before judicial officer, nor afforded opportunity to challenge lawfulness of his arrest or detention, thus Article 9(2), (3) and (4) were violated. State did not show why recourse to a military court was required to try applicant instead of ordinary civilian courts, thus need not examine whether military court afforded the full guarantees of Article 14, because trial and sentencing of Applicant (a civilian) by military court resulted in violation of

Article 14. One member would have declared that trial of civilians by military courts is incompatible with Article 14.

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

J. O. v. France

23 March 2011, UNHRC, 1620/2007

Violation of Arts 14 (2) (presumption of innocence) and (5) (appeal); no violation of Arts 14(3)(a) and (b) (inform of charges, preparation of defense); fair trial (criminal)

British national in France convicted of making false statement in order to obtain unemployment benefits, because did not declare that he was a manager of a company during time that he was receiving unemployment benefits, although applicant's role was unpaid and involved only one hour of work per month. Applicant claimed that summons was confusing, but Committee found that it was not, thus no violation of Article 14(3)(a) despite a factual error. Factual error in summons was noticed and amended by criminal court four months prior to hearing on merits, thus no violation of Article 14(3)(b); if applicant was not given appropriate defense, responsibility rests with counsel, who did not use time available to prepare a defense. Committee concludes applicant was given limited opportunity for defense: not given proper defense owing to lawyer's lack of due diligence and, at hearing where charges were explained, he was represented not by own counsel, but by another not authorized to do so. At the hearing the criminal court simply stated that applicant had failed to prove that he had not violated relevant laws, without offering any evidence in support of this accusation. Thus, Committee concludes that given this limited opportunity for defense available to the applicant, State party's courts placed disproportionate burden of proof on applicant and did not prove beyond a reasonable doubt that he was guilty, thus was violation of Article 14(2). Failure to notify applicant of the ruling in the first instance, when he had not been represented by authorized counsel, denied him his right of appeal, and thus violated Article 14(5). No violation of Article 15(1) because act Applicant was convicted of (namely fraud) constituted criminal offence under French Criminal Code at time act was committed. Claim of discrimination based on nationality not sufficiently substantiated.

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

Min-Kyu Jeong et al. v. Republic of Korea

24 March 2011, UNHRC, 1642-1741/2007

Violation of Art 18(1) (freedom of religion, conscience); freedom of religion, conscientious objection to military service

Applicants are Jehovah's Witnesses sentenced to one and a half years imprisonment for refusing military draft based on religious belief, who claim compulsory military service under pain of criminal prosecution and imprisonment, without alternative, breaches their rights under Article 18(1). Committee held that right to conscientious objection to military service inheres in right to freedom of thought, conscience and religion. Refusal to be drafted for compulsory military service derived from their genuinely held religious beliefs, and applicants' subsequent conviction and sentence, was infringement of their freedom of conscience and thus violated rights under Article 18(1). Three concurring members would have used reasoning from previous jurisprudence that absence of alternative amounted to a restriction on ability to manifest their religion or belief and infringement of their freedom of conscience, and State party had not demonstrated that such restrictions were necessary within meaning of Article 18(3).

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

Giri v. Nepal

24 March 2011, UNHRC, 1761/2008

Violation of Arts 2(3) (effective remedy), 7 (torture), 9 (liberty), 10(1) (dignity); conditions of detention; torture; disappearance; arbitrary detention; derogations

Applicant, a farmer in Nepal, was arrested on suspicion of membership in communist party, detained incommunicado for almost 13 months, tortured, and forced to sign a confession, after which a preventive detention order was issued by the Administrative Office. Release eventually ordered on procedural grounds after more than four months in jail. The Committee held that torture and ill-treatment to which Applicant was exposed, his incommunicado detention, and his conditions of detention violated Article 7. Anguish and distress caused to applicant's family by his disappearance, and that they never obtained official confirmation of his detention, violated Article 7, read in conjunction with Article 2(3), with regard to wife and children. Applicant's rights under Article 9 were violated because he was violently arrested without warrant by soldiers of army, detained incommunicado without being informed of reasons for arrest or charges, was never brought before a judge, and could not challenge legality of detention. Applicant's detention conditions violated his right to be treated with humanity and respect under Article 10(1), which is not subject to derogation and not dependent on material resources available in State party. Applicant did not have access to an effective remedy, thus a violation of Article 2(3) read in conjunction with 7, 9, and 10(1).

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

Pillai et al. v. Canada

25 March 2011, UNHRC, 1763/2008

Violation of Art 7 (torture); non-refoulement; credibility of fear of torture

Applicants, a married couple from Sri Lanka and their children, applied for political asylum in Canada but were rejected and ordered removed. Applicants claimed they were subjected to threats and extortion by the LTTE Tamil Tigers, that they were twice arrested by police on suspicion of lending support to Tigers, and that they were tortured during each period of detention. Applicant husband was diagnosed with PTSD as a result. Court held that insufficient weight was given to applicants' allegations of torture and the real risk they might face if deported, in light of documented prevalence of torture in Sri Lanka, and further analysis should have been carried out, thus removal order would violate Article 7 if enforced. Committee concludes unnecessary to further examine their claims under Arts 23(1) and 24(1) (family and discrimination). Other claims (that expulsion to Sri Lanka would expose them to real risk of violation of right to life and serious violation of Article 9) insufficiently substantiated. One dissenting member would have found all claims insufficiently substantiated and communication inadmissible under Article 2 OP for failure to show domestic proceedings were clearly arbitrary or amounted to a denial of justice. Another dissenting member expressed same view, and also stressed that the Committee needs to clarify its test concerning the consequences of deportation. Five concurring members would have described the proper inquiry as whether the necessary and foreseeable consequence of deportation would be a real risk of the killing or torture of the authors, rather than the actual occurrence of the torture or killing.

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

Akhadov v. Kyrgyzstan

25 March 2011, UNHRC, 1503/2006

Violation of Arts 6 (life), 7 (torture), 9 (arbitrary detention), 14(1) (fair trial), 14(3)(g) (compelled confession); failure to investigate, death penalty

Applicant was arrested on suspicion murder and terrorism. He was detained for two weeks after arrest before being brought before court and given chance to challenge lawfulness, which violated right to liberty and security of person, specifically right not to be arbitrarily detained and imprisoned under Article 9. During detention he was tortured repeatedly, forced to take psychotropic substances, and made false confession under torture. Committee held that State failed to demonstrate that authorities addressed torture allegations expeditiously and adequately, thus violating Articles 7 and 14(3)(g). This failure of the courts to properly address complaints of ill-treatment by police and irregularities in the criminal procedures cast doubts on fairness of trial as a whole, and thus violated his rights under Article 14(1). Death sentence following a trial held in violation of fair trial guarantees violated Article 6, read in conjunction with Article 14. Other claims (lack of adequate time and facilities to prepare defense, prevented from communicating with counsel of own choice) insufficiently substantiated. One member would have found that because the death sentence was commuted following abolition of death penalty, there was a violation of Article 14, read in conjunction with Article 6, rather than direct violation of Article 6.

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

Ismailov v. Uzbekistan

25 March 2011, UNHRC, 1769/2008

Violation of Arts 9 (2) (reasons for arrest, charges), 9(3) (detainee brought before judge), 14 (3)(b) (preparation of defense and communication with counsel of choice), 14(3)(d) (choice of counsel), 14(3)(e) (attendance and examinations of witnesses), 14(3)(g) (compelled confession); access to lawyer, fair trial

Application submitted on behalf of author's husband, Uzbek national and former head of the Central Intelligence Department of Joint Staff of Armed Forces of Uzbekistan, who is now serving sentence for treason. When detained, he was not informed of reasons for arrest and any charges against him, in violation of Article 9(2). Applicant's detention was authorized by a prosecutor, who cannot be considered independent or an "officer authorized to exercise judicial power", in violation of Article 9(3). Applicant was not permitted to see a lawyer of his choice until the trial stage, which violated Article 14(3)(b) and (3)(d). In the absence of any reasons from State party, refusal to allow the presence and examination of defense witnesses violated his right under Article 14(3)(e). Claim that court's judgment was based solely on a confession made under psychological pressure, despite retraction during court proceedings, constituted a violation of Article 14(3)(g).

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

Toktakunov v. Kyrgyzstan

28 March 2011, UNHRC, 1470/2006

Violation of Art 19(2) and (3); access to information

Applicant, a legal consultant for a human rights group, sought State-held information on the number of individuals sentenced to death, but was denied access. State party had an obligation either to provide applicant with the requested information or to justify any restrictions on the right to receive State-held information under Article 19(3). General public has legitimate interest in having access to information on the use of the death penalty, and in the absence of any pertinent explanations from State party, restrictions

on exercise of applicant's right to access this information cannot be deemed necessary for any of the reasons in 19(3), and thus was a violation of Article 19(2). Concurring opinion explained source of right of access to information held by government differently, as arising from interpretation of Article 19 in light of right to political participation guaranteed in Article 25 and other rights in Covenant, rather than from "right to ... receive information" in Article 19(2).

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

Rastorguev v. Poland

28 March 2011, UNHRC, 1517/2006

No violation of Art 9 (liberty) and Art 14(3)(b) (fair trial); exhaustion of domestic remedies

Application submitted on behalf of nephew, Belarus national serving prison sentence in Poland. Question of exhaustion of domestic remedies was closely linked to effective legal aid and should be examined on the merits. Rights under Articles 9 and 14(3)(b) not violated, because he had access to effective legal aid. Conduct of legal aid lawyer (no contact with applicant before filing appeal against decision of first instance court) was not contrary to interests of justice. Although it is incumbent on State to provide effective legal aid representation, it is not for Committee to determine how this should have been ensured, unless apparent there has been miscarriage of justice. As to the lawyer he retained for subsequent stage of proceedings, State cannot be held responsible for conduct of privately retained lawyers (applicant claimed lawyer did not meet with him prior to submission of cassation appeal and did not discuss issues he wished to raise). Arguments that he had no possibility to lodge complaints, appeals or other motions relating to proceedings and alleged violations because of language barriers were unconvincing, given he did address himself to authorities on other issues. Other claims (violation of Articles 7, 14(1), and 26) insufficiently substantiated.

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

Zaleskaya v. Belarus

28 March 2011, UNHRC, 1604/2007

Violation of Art 19(2) and (3) (freedom of information) and Art 21 (right of peaceful assembly); freedom of assembly; freedom to impart information; derogation

Applicant arrested and subsequently fined after distributing informative leaflets and copies of officially registered newspapers, an activity for which applicant possessed written authorization. Formal charge was violation of procedure for organizing and conducting street marches, and court qualified applicant's activity as participation in an unauthorized street march. Applicant claims arrest and fine for distributing newspaper and leaflets violated her freedom to impart information, and that the court failed to establish that she organized and conducted a street march because it was only three people handing out legally authorized material. In response to applicant's argument that the law "On Mass Events" in Belarus is ambiguous and lacks clarity, State acknowledged this fact and submitted that question of qualification of event as a "mass" event shall be decided each time by competent state organs. Given that State failed to invoke any specific grounds on which the restrictions placed on author's activity would be necessary within meaning of Article 19(3), the fine imposed on applicant was not justified under any of the criteria in Article 19(3) and therefore applicant's rights under Article 19(2) were violated. Given the State's failure to demonstrate that restrictions were necessary, applicant's rights under Article 21 were also violated.

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

Khoroshenko v. Russian Federation

29 March 2011, UNHRC, 1304/2004

Violation of Art 6 (life), 7 (torture), 9(1-4) (liberty), 14(1, 3a, b, d, g) (fair trial); failure to investigate torture claims, conditions of detention, fair trial

Applicant was arrested on suspicion of membership in a criminal gang, convicted of multiple murders, and sentenced to death which was commuted to life imprisonment. Applicant was not informed of rights upon arrest, of initial charges for 25 days and additional charges much later, detention was sanctioned by a prosecutor who was not a judicial officer, and the applicant did not have opportunity to challenge lawfulness of arrest. As a result, Articles 9(2), (3), (4) and 14(3)(a) were violated. Applicant's deprivation of liberty was also not in accordance with relevant national laws, in violation of Article 9(1). The applicant claimed he was beaten during his initial detention and throughout the investigation, and his complaints about these beatings were ignored. The government failed to demonstrate that the authorities addressed these torture allegations expeditiously and adequately, violating Articles 7 and 14(3)(g). Applicant not provided adequate time and facilities to prepare defense (not provided transcript, documents, only limited paper) or communicate with lawyer, which violated Article 14(3)(b), and was not informed of rights to have legal assistance and to remain silent, which violated Article 14(3)(d) and (g). Given that State provided no justification for exclusion of public and relatives from main trial, Article 14(1) was violated. Death sentence following trial held in violation of fair trial guarantees violated applicant's rights under Article 6, read in conjunction with Article 14. However, there was insufficient material to find violation of Article 14(3)(e) (attendance of witnesses) or 2(3)(a) (delay in review of proceedings). Concurring opinion found that because applicant was not subjected to death penalty, there was a violation of Article 14 read together with Article 6, instead of a direct violation of Article 6 read together with Article 14.

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

Krasnov v. Kyrgyzstan

29 March 2011, UNHRC, 1402/2005

Violation of Arts 7 (torture), 9(2) (reasons for arrest), 14(1) (fair trial), 14(3)(b) (preparation of defense), 14(3)(c) (trial without undue delay); access to lawyer, children's rights, fair trial, undue delay

Applicant submits on behalf of her son, who was arrested and convicted when he was 14 in connection with death of another minor. Neither mother nor son told of reasons for arrest, and mother not allowed to see son. Son interrogated and claims he beaten on his head, denied food, and held overnight with adult detainee. Failure to inform son or mother of reasons for arrest at time of arrest violated Article 9(2). Although son complained of beatings at trial, government provided no information about whether inquiries undertaken into detailed complaints by son, therefore Article 7 violated. During subsequent detention, investigative steps (seizure of evidence, confrontations) conducted in absence of lawyer. Given son's particularly vulnerable situation as a minor, this violated his rights under Article 14(3)(b). Right to a fair hearing was violated, given that State party's authorities conceded that court decisions were numerous and contradictory. State provided no explanation for delay of almost five years between formal charging and final conviction by Supreme Court, during which son was acquitted three times and found guilty three times on basis of the same evidence (witness statements and testimonies of the co-accused), thus Article 14(3)(c) also violated. Other claims (allegations under Articles 9(3), 10(1), 14(4), 17) insufficiently substantiated, and unclear whether allegations were raised before domestic courts.

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

Sedljar and Lavrov v. Estonia

29 March 2011, UNHRC, 1532/2006

No violation of Arts 14(1) and (3)(e) (fair trial)

Applicants worked as hospital attendants in psychiatric ward until a patient was discovered dead. Both were arrested and charged with causing his death. At trial, the court rejected their motions to call the experts who conducted the psychiatric expertise of the main prosecution witness and the autopsy of the victim, and they did not have an opportunity to question the main prosecution witness. Article 14(3)(e) does not provide an unlimited right to obtain attendance of any witness requested, and the evaluation of facts and evidence is primarily a matter for domestic courts unless that evaluation is manifestly arbitrary or a denial of justice. Applicants did not show sufficient grounds to support claims that court's decision to reject request to question particular witnesses was arbitrary or that decisions resulted in denial of justice, thus no violation of Articles 14(1) and (3)(e). Other claims inadmissible because not raised in domestic courts.

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

L.M.R. v. Argentina

29 March 2011, UNHRC, 1608/2007

Violation of Arts 2 (effective remedy), 3 (equal rights), 7 (torture) and 17 (privacy); family life, right to privacy, degrading treatment

Applicant submits on behalf of daughter, who has permanent mental impairment and became pregnant following rape. Although Criminal Code gives female rape victims with mental disability the right to terminate a pregnancy, injunction was issued against the hospital which was prepared to conduct the procedure and juvenile court ruled that termination should be prohibited. This decision was affirmed on appeal by Civil Court. The Supreme Court overturned the decision and ruled that termination could proceed, but the hospital came under pressure from various sources and refused to terminate on grounds that pregnancy was by that time too advanced (between 20 and 22 weeks). No other hospitals would perform termination, and the family finally resorted to an illegal termination. State party's omission in failing to guarantee the daughter's right to terminate pregnancy caused her physical and mental suffering, constituting a violation of Article 7, that was made especially serious by the victim's status as a young girl with a disability. Although Supreme Court ultimately resolved the issue of judicial remedy favorably, she had to appear before three separate courts to achieve this, prolonging the pregnancy by several weeks which resulted in resort to illegal abortion. Thus she did not have access to an effective remedy, in violation of Article 2(3) in relation to Articles 3, 7, and 17.

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

Jessop v. New Zealand

29 March 2011, UNHRC, 1758/2008

No violation of Art 14(1), (3)(c) and (e) and (5) (fair trial); evidence

Applicant, an immigrant to New Zealand, sentenced to four years in prison for aggravated robbery at age of 15. Her cousin admitted to having committed the crime, and stated at trial that Applicant was not present when offense committed. The Committee examined the sequence of proceedings in detail, and held that the delays in the re-hearing and appeals did not amount to violation of Articles 14(2)(c), (4) or (5), as the most extensive delay was largely a result of applicant's attorney and herself. 89 year old victim did not attend the trial as too ill, so applicant could not question her. Although evidence important and contradictions in

earlier statements of victim, no violation of Article 14(3)(e): reading of victim's statement to jury could have fallen short of requirement under Article 14(3)(e); however, applicant was convicted based on own confession and without victim's statement having been read to the jury. Supreme Court proceedings that did not include oral argument did not violate Article 14(1) because disposition of appeal does not necessarily require an oral hearing. A series of other claims were rejected as inadmissible because they had already been remedied by domestic courts (regarding failure to enter formal plea and defective sentencing); were insufficiently substantiated (Articles 26, 9(3) and 10(2)(b), 16, 14(3)(d), 14(4) and 24, and claims relating to evaluation of facts and evidence by State party's courts); or were inadmissible *ratione materiae* as she was not detained or charged at the time (Articles 9(1), 10(1), 14(3)(b), (3)(g) and (4))

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

Iskandarov v. Tajikistan

30 March 2011, UNHRC, 1499/2006

Violation of Arts 7 (torture), 9(1) (liberty), 9(3) (detainee brought before judge), 14(1, 3b, d, e, g) (fair trial); extradition, forcible repatriation, conditions of detention, fair trial, access to lawyer

Author submits on behalf of brother, leader of Democratic Party of Tajikistan, who was accused of attack and charged in absentia for crimes such as terrorism. Brother was in Russia, and after a formal Tajik request for extradition was rejected, he was unlawfully apprehended by unknown individuals in Moscow and unlawfully transferred to Tajikistan by plane. Not enough information to allow Committee to assess extent to which Tajik authorities were involved in apprehension and transfer, but he was subsequently detained in isolation at State detention center for 10 days, provided insufficient food, contracted a skin disease and was refused medical treatment, which violated his rights under Article 7. Detention for 10 days in absence of lawyer also violated Article 9(1), and decision to have him arrested and placed in custody by prosecutor, who cannot be considered independent, violated Article 9(3). Violation of rights under Articles 14(1), (3)(e) and (g) because several of lawyers requests' were not given due consideration, court failed to ensure presence and questioning of important witnesses, he was kept unlawfully isolated and confessed guilt under threats of physical reprisals and in absence of a lawyer, and his complaints regarding this mistreatment were disregarded. By denying him access to legal counsel of his choice for 13 days, and by conducting investigative acts with his participation during this period, including interrogating him as a person accused of very serious crimes, State party also violated his rights under Articles 14(3)(b) and (d).

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

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



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