

UN Human Rights Committee 100th Session (October 2010)

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SUMMARIES OF DECISIONS on admissibility and merits taken by the UN Human Rights Committee during its 100th session in October 2010. Produced by lawyers at the Open Society Justice Initiative, with the assistance of the Human Rights Clinic at Columbia Law School, New York, in order to bring the decisions of global human rights tribunals to the widest possible audience.

All decisions are UN Doc. CCPR/C/100/D/[communication number]

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Admissibility Decisions

Korolko v. Russian Federation

25 October 2010, UNHRC, 1344/2005

Inadmissible under Art. 2 OP – exhaustion

Facts. On 17 January 2000, the author was found guilty of planning to escape from detention, and was sentenced to 8 years' imprisonment. The author claims that he was attempting to escape due to death threats from the prison chief, who allegedly tried to extort bribes from him. He asserts that he was not able to complain about death threats at the first instance court, because until conviction for escape he was held at the mercy of the same prison chief. After prison officials moved the author to a different facility, he immediately complained about the unlawful activities of the previous prison administration, but the Regional Court and the Supreme Court dismissed the complaints because he had not raised the issue before this issue in the lower court. It was argued that the failure to investigate the allegations was due to the social status of the author, and was thus discriminatory.

Decision. The Committee found the claims to be contradictory and lacking in sufficient information. The Committee does not review the evaluation of facts and evidence by national courts unless the challenged evaluation was clearly arbitrary or amounted to denial of justice. The author did not provide sufficient evidence to demonstrate that national proceedings suffered from such defects, and did not corroborate his claim that the reason for his escape was not reviewed by higher instance courts. Thus the claims inadmissible as they were not sufficiently proven for the purposes of article 2 of the Optional Protocol.

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

Pingault-Parkinson v. France

21 October 2010, UNHRC, 1768/2008

Inadmissible under Art. 2 and Art. 5(2)(b) OP – exhaustion – procedural error

Facts. The author was taken for a psychiatric evaluation against her will, and then committed to a hospital at the request of her father and husband, without any explanation of her diagnosis. During the author's involuntary 11-day hospitalization, she was compelled to take tranquilizers and locked in a room, where staff did not provide her with any information regarding how to challenge her committal or gain access to her medical file. After her release, the author challenged her involuntary committal and the hospital staff's procedural violations in administrative court. The court declined jurisdiction, stating that the case was in the jurisdiction of the ordinary courts; the administrative court of appeals also found the case inadmissible.

Decision. The Committee initially found the claims admissible; however, the State subsequently submitted additional information which led the Committee to reconsider. According to the State's clarification—which was not countered by the author—the administrative court denied jurisdiction due to a procedural error by the author and her counsel, for which they bore responsibility. Due to this error, the author could not effectively challenge the legality of the administrative decisions, with retroactive effect, and obtain compensation. The author had also failed to challenge the legality of her involuntary commitment before the ordinary court, which had the authority to examine her claims of mistreatment. The Committee concluded that although the author had an opportunity to challenge her involuntary commitment before domestic courts, she failed to properly do so. Thus, the author's claims were inadmissible for non-exhaustion of domestic remedies.

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

Onoufriou v. Republic of Cyprus

25 October 2010, UNHRC, 1636/2007

Inadmissible under Art. 2 & Art. 5(2)(b) OP – exhaustion

Facts. The author is a Cypriot national, who was found guilty of the attempted murder of a judge and his daughter, which resulted in an 18 year prison sentence. During trial, the author declined the offer of two lawyers to represent him and decided to defend himself. He asked for release on bail to prepare his defense, which was refused by the court. The author claims that his trial suffered number of defects: there were pages missing in the minutes of the first instance court; his conviction was allegedly based on the testimony of one witness; his girlfriend was not summoned as witness; and he was not allowed to visit the scene of crime and examine the car of the victim.

Reasoning. The Committee noted that the author did not raise his claims on appeal before the Supreme Court. The author also failed to challenge the effectiveness of the remedies available to him at the domestic level. Therefore the author's claims with respect to obtaining legal counsel, having his girlfriend testify on his behalf, and refusal of release on bail, were inadmissible because domestic remedies were not exhausted. The Committee also found that the author's claims relating to incomplete court minutes and witness testimony were not substantiated, as the author failed to demonstrate that national courts were arbitrary in their evaluation of evidence. Finally, the Committee emphasized that while criminal defendants are entitled to access all evidentiary materials which the prosecution plans to offer against them, here, the State's charges against the author were based not on the victim's car, as material evidence, but on the parts of the explosive device and other samples, to which the author did not seek access. Accordingly, the author's claim was not substantiated for the purposes of article 2 of the Optional Protocol.

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

Bergauer et al. v. Czech Republic

28 October 2010, UN HRC, 1748/2008.

Inadmissible – temporal Jurisdiction – appropriation in 1945 – not continuing violation

Facts. The authors are Sudeten Germans who were expelled from their homes in the former Czechoslovakia at the end of the Second World War. They claimed that their property was confiscated without compensation, and that they were expelled without trial on the basis of their ethnicity. On 13 December 2005, the European Court of Human Rights (ECtHR) dismissed the authors' application as inadmissible because they had no "existing possessions" within the meaning of Article 1 of the Protocol at the time of the entry into force of the European Convention on Human Rights, or when they filed their application. The authors claimed that the State continued to violate Article 26 of the Convention by maintaining the discriminatory laws of 1945 to 1948.

Decision. The Committee noted that certain aspects of this case had been considered by the ECtHR, which declared the authors' application inadmissible on 13 December 2005. The Committee reiterated the State party's argument that the communication should be declared inadmissible *ratione temporis*, because the events occurred a long time prior to the entry into force of the Covenant and the Optional Protocol and confiscation had been a discrete event with instantaneous effect. As the property was confiscated in 1945, it was an instantaneous act without continuing effects and thus did not constitute a continuing violation. Pursuant to Article 1 of the Optional Protocol, the Committee was precluded from examining the alleged violations.

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

Jahelka v. Czech Republic

25 October 2010, UNHRC, 1583/2007

Inadmissible under Art. 3 OP – abuse of right of submission –9 year delay in submission – no justification

Facts. In 1975, the authors purchased a family home in the Czech Republic. In August 1983, the authors escaped from the country. In 1989, they obtained U.S. citizenship and lost their Czech citizenship, which they regained in 2005. After the authors left the Czech Republic, their property was confiscated and was held by the municipality. On March 27, 1996, the District Court rejected their application for property restitution on the ground that at that time they were not Czech citizens. In May 1997, the Supreme Court rejected their appeal on the grounds that they were not citizens. Subsequently, the Constitutional Court affirmed the district court's decision that the authors' rights to property and fair proceedings were not violated as they were not citizens.

Reasoning. The Committee considered whether it had jurisdiction *ratione temporis* (temporal jurisdiction) to examine the claims. Although the confiscations took place before the entry into force of the Covenant and the Optional Protocol for the Czech Republic, the legislation excluding applicants who are not Czech citizens from claiming restitution remained in force, and thus did not preclude the committee from considering the communication. Nevertheless, the State argued that the submission was an abuse of the right of submission under article 3 of the Optional Protocol. The Committee noted that that a period of nine years and ten days passed before the authors submitted their communication to the Committee on 22 January 2007 and pointed out that the authors had not provided any reasonable justification for the delay in submitting their communication. Accordingly, the Committee regarded the delay to be so unreasonable and excessive that it amounted to an abuse of the right of submission under article 3 of the Optional Protocol.

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

Decisions on the Merits

Koreba v. Belarus

25 October 2010, UNHRC, 1390/2005

Violation of Art. 7 – Violation of Art. 14(2), 14(3)(g) and 14(4) – Fair Trial – Torture

Facts. On May 24, 2001, a body was found with numerous stab wounds in the courtyard of a secondary school. The author, who was 17 years old at the time of this incident, was accused of the crime. Authorities informed his mother (the author) that her son would be transferred to a temporary detention ward (IVS). Instead, he was kept in the emergency unit and interrogated without a lawyer or social worker. He was subjected to threats, including of reprisal against his mother, and beaten by police officers to extract a confession. He was also detained a cell with adults who had committed more serious crimes. The victim continued to be beaten and tortured until 24 September 2001, when he signed a confession. This confession was written by a police officer, and the victim signed it in the absence of a lawyer and while under the influence of alcohol. In April 2002, the Judicial Chamber for Criminal Cases of the Gomel Regional Court convicted the victim. On August 9, 2002, the Judicial Chamber of the Supreme Court upheld the conviction and concluded that the use of unlawful methods of investigation was not established.

Decision. The Committee found that the State had an obligation to provide the author with an effective remedy, including a proper investigation and the pursuit of criminal proceedings to establish responsibility for his ill-treatment. Based on the information on file, it did not appear that the State gave due consideration to the victim's complaints of ill-treatment made both during the pre-trial investigation and in court. In cases of forced confession, the burden is on the state to prove that a statement by an accused was given by free will. In this case, the confessions were not given freely because of the methods used by the authorities to obtain the confession. In addition, accused juveniles are supposed to be separated from adults and enjoy the same protection as adults. Here, he was placed in an adult cell. Moreover, the victim was not given the opportunity to question one of the two main prosecution witnesses in court. The Committee also found that the victim did not benefit from the presumption of innocence.

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

Sudalenko v. Belarus

19 October 2010, UNHRC, 1354/2005

Violation of Art. 2(1) and Art. 25 (Political Participation) – Registration of Election Candidate

Facts. In August 2004, the author—an opponent of the political regime in Belarus—applied to be a candidate in the parliamentary elections. On 9 August 2004, the District Electoral Commission registered a group to support the author's nomination. On 16 September 2004, the Electoral Commission refused to register the author as a candidate, claiming that he had provided false information about his place of work (the author had not included work for which he received no compensation). The Supreme Court upheld the Electoral Commission's decision, despite a 2003 precedent which established that individuals need not list work positions for which they received no compensation on electoral applications.

Decision. The Committee noted that exercise of a person's right to participate in government under Article 25 may not be restricted except on grounds which are established by law, for an objective purpose, and which are reasonable. Because the Electoral Commission's reasons for refusing to register the author directly contradicted previous grounds for rejecting a different individual's candidacy, the Electoral Commission had unreasonably restricted the author's rights under the Covenant. The Committee

recommended compensation and instructed the State to consider any future electoral application submitted by the applicant vis-à-vis the rights guaranteed under the Covenant.

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

Katsora, Sudalenko and Nemkovich v Belarus

25 October 2010, UNHRC, 1383/2005

Violation of Art. 22 (association) – Registration of Civil Organisation

Facts. The authors attempted to establish a regional public association called “Civil Alternative.” The Ministry of Justice rejected their registration application, citing non-compliance with certain requirements, including the discrepancy that the organization was described as “humanitarian” in the application. The authors appealed the denial of registration to the regional court, arguing that the application had been unfairly denied because none of the requirements imposed for its registration were justified under the State’s Constitution. Their appeals were rejected.

Decision. The Committee emphasized that any restriction on the right to freedom of association must be provided for by law, for one of the purposes set out in paragraph 2, and must be necessary in a democratic society. Although the State had provided reasons for refusing to permit the registration it failed to explain why those reasons were necessary in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others. The Committee concluded that the State’s refusal to grant registration restricted the authors’ right to freedom of association. The authors were entitled to adequate compensation and reconsideration of their application. In addition, the State must take steps to prevent similar violations in the future.

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

Novaković v. Serbia

21 October 2010, UNHRC, 1556/2007

Violation of Art. 6 (right to life) – Medical negligence – Failure to investigate

Facts. On 20 March 2003, the victim died in a state hospital, at the age of 25. The authors submitted facts indicating that the victim’s death was caused by medical malpractice. On 2 October 2003, after successfully initiating an administrative review with the Ministry of Health, the authors submitted a complaint to the Prosecutor’s office, which initiated an investigation against unknown perpetrators. This investigation did not issue medical findings until 23 August 2005, almost two years later, and did not commence a criminal investigation until 3 April 2006, and then took two three months to interrogate the first suspect. Three and a half years after the initial complaint, criminal proceedings were still pending.

Decision. The Committee declared the communication admissible as there was no effective procedure for filing an administrative complaint at the national level. Although the criminal proceeding was technically still pending, the Committee found that the case had been unreasonably prolonged by domestic authorities. The Committee concluded that the State violated the procedural arm of the right to life by failing to investigate the victim’s death or taking appropriate action against those responsible. The Committee emphasized that Serbian law criminalizes medical malpractice and pointed out the 40 month delay between the victim’s death and the state’s first interrogation of a suspect, as well as other long delays in undertaking forensic procedures, issuing indictments, and initiating the trial. The Committee held that Serbia has an obligation to provide the authors with an effective remedy by ensuring that the criminal proceedings are

speedily concluded, punishing the convicted offenders, and providing the authors with the appropriate compensation.

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

Bozbey v. Turkmenistan

3 November 2010, UNHRC, 1530/2006

Violation of Art. 10(1) (dignity) and Art.14 (fair trial) – conditions of detention – trial without interpretation

Facts. The author is a Turkish national and the owner and president of the Bozbey Company. The company had a construction contract in Turkmenistan, which exempted the company from taxes and customs duties. After the author refused to build a heliport for a senior government official at the company's expense, his company was ordered to pay taxes. When the author refused to pay, authorities brought criminal charges, detained him, and sentenced him to 14 years' imprisonment. The author alleged that trial proceedings were conducted in a language he did not understand and without an interpreter. He also complained of degrading and humiliating conditions in prison.

Decision. The Committee held that the State's failure to provide the author with an interpreter, when he could not understand and speak the language used in court, constituted a violation of the right to a fair trial under the Covenant. Further, the author's harsh conditions of detention violated his right to be treated with humanity and respect under Article 10 of the Covenant. The Committee ordered the State to institute criminal proceedings for the prosecution and punishment of the persons responsible for the author's treatment, and provide the author with appropriate reparation, including compensation. The State party is also under an obligation to take steps to prevent similar violations occurring in the future.

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

Umarova v. Uzbekistan

19 October 2010, UNHRC, 1449/2006

Violation of Art. 7 (torture), Art.9 (liberty), Art.10 (dignity), Art.19 (expression), and Art.26 (equality) – detention of opposition leader – political prosecution

Facts. The author is the wife of an Uzbek businessman who established the Sunshine Coalition of Uzbekistan, a political opposition party. Shortly after the party's registration, Umarov's office was raided by the Tashkent police, and he was taken into custody and charged with embezzlement and grand larceny. From 25 October 2005 to 6 March 2006, authorities detained Umarov in harsh conditions. Prison officials ignored his deteriorating health and denied him medical treatment, despite repeated requests by his lawyer. He was subjected to a range of other ill treatment while in detention, including the possible administration of psychotropic drugs, deprivation of basic items of personal hygiene, and denial of access to his family or the ability to select legal counsel of his choice. Uzbek authorities subsequently found Umarov guilty of the charged offenses and sentenced him to 14.5 years' imprisonment.

Decision. The Committee declared the author's claims admissible because his lawyer had repeatedly complained to the Uzbek government, and Uzbekistan did not refute the author's claims. The Committee found that the police authorities' mistreatment of Umarov violated the prohibition of torture under the Covenant, while Umarov's prolonged detention in inhumane conditions violated his right to dignity. Uzbek authorities severely constrained Umarov's ability to communicate with his lawyer and failed to provide adequate opportunities to challenge his pre-trial detention. Further, the Committee cast doubt on the legitimacy of the charges against Umarov, holding that his prosecution amounted to a denial of his right to

express his political views. The Committee ordered Uzbekistan to provide Umarov with an effective remedy—meaning the prosecution of those responsible for his mistreatment—as well as adequate compensation.

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

Avadanov v. Azerbaijan

2 November 2010, UNHRC, 1633/2007

Violation of Art.7 (torture) – Jurisdiction Ratione Temporis – retaliation for filing complaint with ECHR

Facts. The author’s nephew demolished part of the author’s home and slightly injured his wife. Following these incidents, the author’s wife sought criminal charges against the nephew, but subsequently dropped the case. The author filed a complaint with the ECtHR, after which the authorities retaliated by allegedly subjecting him to electric shocks and raping his wife in his presence by four policemen. The author and his wife fled to Europe and were eventually granted refugee status in Greece. Following their relocation, the ECtHR found the claim to be inadmissible because the original events took place prior to the entry into force of the European Convention on Human Rights for Azerbaijan. The author then filed a complaint with the UN Human Rights Committee based on both the original incident and the retaliatory mistreatment.

Decision. The Committee found that the original incident involving the author’s home and the injuries to his wife took place prior to Azerbaijan’s joining the Optional Protocol and were therefore inadmissible. The retaliatory mistreatment was admissible. The author’s failure to exhaust domestic remedies was justified due to his fear of persecution for himself and his family, as a result of which he had obtained refugee status in Greece. On the merits of the torture and mistreatment claims, the State had failed to provide any response to the author’s detailed allegations. Accordingly, the Committee found the State responsible for violating the prohibition against torture and failing to conduct an effective investigation. The State had an obligation to provide an effective remedy in the form of an impartial investigation into the author’s claims of mistreatment, prosecution of those responsible, and appropriate compensation.

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

Crochet v. France

25 October 2010, UNHRC, 1777/2008

No violation of Art.14 (fair trial) – tax fraud – no victim status for companies – claims not substantiated

Facts. The author was suspected of engaging in tax fraud with respect to his company’s operations. On 12 October 1994, tax officers searched the premises of a discotheque operated by the company. The search uncovered duplicate sets of admission tickets, which, if sold, would allow the company to understate the number of tickets sold and its corresponding income. On 17 October 2002, following several interlocutory appeals, the author and his company were held jointly and severally liable to pay various fines. On 1 December 2004, the author’s appeal to the Court of Cassation was dismissed. Appealing to the Committee, the author contended that he had been inappropriately made to bear the burden of proof, and that Court’s valuation of the tickets for the purposes of calculating the fine was erroneous. The French government responded that the decision had been rendered by competent courts in accordance with established rules of evidence and that the calculation of the fine was correct. It also disputed the Committee’s jurisdiction, arguing that commercial enterprises are not “individuals” subject to the Optional Protocol and that the author had not exhausted his domestic remedies because a proceeding before the administrative courts was still pending against the company.

Decision. With respect to its jurisdiction, the Committee agreed that the author's company was not entitled to submit a communication to the Human Rights Committee. However, because ongoing administrative proceedings did not concern the author, the Committee declared the author's allegations admissible as there were no other domestic remedies to exhaust. Turning to the merits, the Committee noted that Article 14 of the Covenant guarantees only procedural equality and fairness, and national courts have deference in their approach to reviewing facts and evidence, unless such an evaluation is clearly arbitrary or amounts to a manifest error or denial of justice. In the present case, the Committee did not find sufficient evidence indicating that the lower court proceedings suffered from such defects, and thus the author's allegations did not disclose a violation of article 14(1) of the Covenant.

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

Cochet v. France

21 October 2010, UNHRC, 1760/2008

Violation of Art. 15 (retroactive penalty) – Retroactive Criminal Law

Facts. The author was director of a company that mis-labelled products imported from other EU countries in order to benefit from a special tariff, and was charged with the criminal offense of making false customs statements. A new law abrogating this offense came into effect after the date of the offences but 18 months before authorities instituted criminal proceedings. Thus, national courts had to address whether to apply the new law in the author's case. Ultimately, the Criminal Court of Cassation decided that new law did not affect the existence of the crime or severity of any resulting penalty, as the new law dealt largely with compliance monitoring procedures; accordingly, the Court declined to apply the new law. The author asserted that under Article 15 of the Covenant, the less severe law should be applied retroactively.

Decision. The Committee emphasized that the criminal law under which the author was originally charged was not applicable for a year and a half before authorities instituted criminal proceedings. Moreover, the new law's abrogation of the criminal offense (making false customs statements) and corresponding penalties, constituted more than a mere change to compliance monitoring procedures. The Committee found that the principle of retroactively applying the lighter penalty applied in the author's case; by failing to recognize this principle in criminal proceedings against the author, the State had violated Article 15(1). The Committee declared that the State must provide the author with an effective remedy, including appropriate compensation.

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

Salem Saad Ali Bashasha v. Libyan Arab Jamahiriya

20 October 2010, UNHRC, 1776/2008

Violation of Art.6 (life), Art.7 (torture), Art.9 (liberty) and Art.10 (dignity) – Enforced Disappearance – Death in Custody – violations

Facts. The author is a Libyan citizen residing in Switzerland. He acts on his own behalf and that of his deceased cousin, Milhoud Ahmed Hussein Bashasha, also a Libyan citizen. In October 1989, Bashasha was detained by Libyan plain-clothes internal security agents. The author was not informed of his location, but through informal channels, he learned of his detention at the Abu Salim prison. According to a death certificate issued to author, Bashasha died of unknown causes in Tripoli on 18 June 1996.

Decision. The Committee held that the author's ongoing petition before the U.N. Working Group on Enforced or Involuntary Disappearances did not render his allegations inadmissible. The Committee

refused to enforce the requirement of exhaustion of domestic remedies because the Libyan government provided no arguments for dismissal, despite receiving three reminders. Turning to the merits, the Committee deemed the author's allegations substantiated, noting that the allegations were corroborated by credible evidence and were not challenged. The Committee held that Libya violated the right to life because it failed to provide information about Bashasha's cause or place of death. Considering his prolonged detention in harsh conditions, the Committee held the State responsible for violating the prohibition against torture and inhumane treatment. As the State denied Bashasha access to counsel and failed to provide him with information regarding the charges against him or the opportunity to appear before a judge, the Committee held that Libya had also violated the right to liberty and security, as well as fair trial guarantees under the Covenant. The Committee urged Libya to investigate and disclose the circumstance of Bashasha's disappearance and death, prosecute those responsible, compensate his family, and prevent similar violations of the Covenant in the future.

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

Aboussedra v. Libyan Arab Jamahiriya

25 October 2010, UNHRC, 1751/2008

Violation of Art.6 (life), Art.7 (torture), Art.9 (liberty), Art.10 (dignity), Art.14 (fair trial) and Art.16 (person before the law) – 20 years unlawful detention

Facts. The author submitted the communication on behalf of his brother, Dr. Mohamed Hassan Aboussedra (the victim). On 19 January 1989, the victim and his four brothers were arrested by the internal security forces without a warrant or any explanation. Until 1992, authorities did not inform the detainees' families regarding their whereabouts and denied family visits. In 1995, authorities released the victim's four brothers but continued to detain him without judicial process, without access to legal counsel, and with no opportunity to challenge the lawfulness of his detention. In 2004, the victim was brought before the court for the first time; he was sentenced to life imprisonment, but on appeal the court reversed this sentence and ordered the victim's immediate release. Instead, authorities moved the victim to another prison facility, where he was held incommunicado and tortured systematically. His family was allowed to see him only twice in 2009, the same year authorities released him, after 20 years of imprisonment.

Decision. The Committee noted that the state had failed to provide relevant evidence, and so the burden of proof should not rest on the author. On the basis of the information provided by the victim, the Committee found a violation of a range of rights under the Covenant, including the right to life, prohibition against torture, and the right to an effective remedy. The Committee also found a violation of the right to a fair trial. Finally, the Committee held that the State's intentional removal of the victim from the protection of the law for a prolonged period of time violated the victim's right to recognition as a person before the law. The State was under an obligation to provide an effective remedy, which included conducting a thorough and effective investigation into the disappearance of the victim and providing results of the inquiry and adequate compensation to victim and his family.

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

McCallum v. South Africa

25 October 2010, UNHRC, 1818/2008

Violation of Art.7 (torture) and Art.10 (dignity) – prison violence – failure to investigate

Facts. The author is detained in a correctional facility. In July 2005, prison authorities ordered the author to leave his cell, stripped and beat him, dislocated his jaw and damaged his teeth. Along with 60-70 other inmates, the author was forced to lie naked in the corridor, severely beaten with batons, and verbally insulted. The author was raped with a baton. During the incident, inmates urinated, defecated, and bled in the corridor. Following the incident, the correctional facility was locked down and the author was unable to contact his family or counsel for a month. The author was unable to obtain any medical treatment until September 2005, when authorities treated his dislocated jaw; and his request for an HIV test was ignored. Despite numerous complaints about this incident, there has been no investigation.

Decision. The Committee found that the author's claims required an independent investigation. Given that the State had not conducted such an investigation and failed to respond to the communication, the Committee held that the State had violated its obligation to provide an effective remedy. The State was also responsible for violations arising out of the author's incommunicado detention for one month following the incident, and failure to provide an HIV test, due to the prevalence of HIV in South African prisons. Finally, the Committee ruled that the two month delay between the author's request for a medical examination and the prison authorities' response constituted a violation of detainees' rights under Article 10 of the Covenant. The Committee ordered the State to conduct an investigation into the author's claims of mistreatment, identify and prosecute those responsible, and provide adequate reparations to the author, including compensation.

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

Drda v. Czech Republic

27 October 2010, UNHRC, 1581/2007

Violation of Art.26 (non-discrimination) – restitution of confiscated property – claim prohibited as not citizen

Facts. The author is an American national. He is a former citizen of Czechoslovakia and currently resides there. The author owned an apartment building and parcels of land in Prague-Vinohrady that he was forced to cede to the state on 28 November 1961. In 1990, Czechoslovakia passed a law pronouncing null and void all forced donations of land to the State. The author sought restitution of the apartment and lands based on this law. His claim was ultimately denied on the grounds that as an American citizen he was not entitled to restitution. The State argued that the Committee should not consider the author's complaints since it had been over six years since exhaustion of domestic remedies and over four years since the decision of another international tribunal.

Decision. The Committee noted that Article 26 allows differentiation in treatment based on objective and reasonable grounds. However, because the author's original entitlement to the land was not predicated on citizenship, the Committee held that a citizenship requirement for restitution was unreasonable. The Committee further observed that requiring citizenship as a necessary condition for the return of property confiscated by the State is an arbitrary and discriminatory distinction between those who are equally victims of State actions. The Committee held that the author's delay was not an abuse of process as the Optional Protocol does not establish time limits within which a communication should be submitted. The Committee recommended compensation, if a return of property is not available, as well as a review of the State's legislation to ensure that all persons enjoy equality before and equal protection of the law.

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

Raihman v. Latvia

28 October 2010, UNHRC, 1621/2007

Violation of Art.17 (privacy) – forced name change

Facts. The author is a Latvian national, and a member of the Jewish and Russian speaking minorities. He was born with the name “Leonid Raihman” in 1959 and his name was registered as such by the Soviet Union public authorities. In January 1998, the Latvian authorities changed his name and surname, without his consent, to the non-Russian, non-Jewish form of “Leonids Raihmans.” The author tried to change his name back, without success. The State argued that the author did not exhaust all of his domestic remedies, as three of the State regulations the author challenged in Latvian courts were held to be unconstitutional, and the author has not yet challenged the constitutionality of the replacement regulations.

Decision. The Committee expressed the view that a person’s surname constitutes an important component of one’s identity, and that arbitrary or unlawful interference with one’s right to choose and change one’s own name interferes with one’s privacy. While the author’s name change was done in compliance with a valid State law, the State’s unilateral modification of the author’s name was unreasonable, and therefore an arbitrary interference with the author’s privacy. The Committee found the State’s justifications for these name modifications not proportionate to the objectives sought.

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

Tofanyuk v. Ukraine

20 October 2010, UNHRC, 1346/2005

No violation of Art.14 (fair trial) and Art.15 (retroactive penalty) – abolition of death penalty – life sentence instead of 15 years – no violation

Facts. On 10 April 1998 the author, a Ukraine national, was found guilty of premeditated murder and sentenced to death. On 29 December 1999, the Ukraine Constitutional Court declared that capital punishment was unconstitutional and ordered a reversion to the prior criminal sentencing law, which had a maximum sentence of 15 or 20 years. However, on 4 April 2000, new legislation went into effect which commuted death penalties to life imprisonment. The author claimed he was entitled to the 15 year sentence rather than life imprisonment. Additionally, the author claims that there were factual mistakes in his indictment and judgment, that the judges were not impartial, that the imposition of a new penalty amounted to him being convicted twice for the same crime, and that he was subjected to ill-treatment during police interrogations.

Decision. The Committee noted that according to Article 15 of the Covenant, if subsequent to the commission of an offence a change is made by law which imposes a lighter sentence, the offender benefits from that change. The author’s other claims related to the evaluation of facts and evidence by the State party’s courts; it is generally for the State parties to evaluate this information, unless the material before the Committee amounted to enough information to show that the State evaluation was clearly arbitrary or amounted to a denial of justice. Here, there was not enough evidence to show any arbitrary treatment or a denial of justice. The Committee cannot find that by substituting life imprisonment for capital punishment any person’s rights have been violated; there was also insufficient enough evidence to show any arbitrary treatment or a denial of justice.

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

Panagiotis A. Sechremelis et al. v. Greece

25 October 2010, UNHRC, 1507/2006

No violation of Art.2 (effective remedy) and Art.14 (fair trial) – historical claim against Germany – no consent from Ministry of Justice – not enforced – essence of the right

Facts. The authors are relatives of victims of a massacre perpetrated by German occupation forces in 1944. The authors brought action for damages before the first instance court in Greece, which entered a ruling against Germany. However Germany challenged the execution of the ruling as incompatible with Greek Code of Civil Procedure, which requires authorization of the Ministry of Justice for enforcement of judicial rulings against foreign states. The Ministry did not grant authorization for the enforcement of the ruling against Germany, and authors did not acquire the compensation ordered by the Court. The authors claimed that this requirement was incompatible with Articles 2(3) and 14(1) of the Covenant.

Decision. The Committee noted that making a judicial determination in favour of a victim that is unenforceable by a State party falls within the scope of article 14(1), particularly in view of the obligation in Article 2(3) to ensure effective remedy for any person whose rights are violated. Requiring prior consent by the Minister of Justice for the Greek authorities to enforce a judicial decision imposes a limitation to the right to a fair hearing and to effective remedy, but does not preclude that the remedy could ever be implemented. Due to the development of international law on state immunity, there existed a possibility that the judicial decision could be enforced at a later date if Germany would voluntarily waive international provisions in its favor. Therefore, the requirement that the Minister of Justice approve the remedy did not impair the very essence of the authors' right to an effective judicial protection. Thus, the Ministry's refusing to consent to the enforcement measures did not violate Article 2(3) in conjunction with article 14(1).

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

Bartolomeu v. Portugal

19 October 2010, UNHRC, 1783/2008

No violation Art.26 (non-discrimination) – taxation of the tips of croupiers

Facts. The author is a croupier working in a casino in Portugal, who refused to declare tips from the customers as his taxable income. He argued that tips are charitable donations, and classifying them as taxable income contradicts the principle of equality, legality and justice, and non-discrimination, as only croupiers are taxed on their tips. Thus they have to deduct 12 per cent of their tips for social security, but derive no benefit from that contribution because tips are not included in calculation of their unemployment and sickness benefits.

Decision. The Committee noted that the tips earned by croupiers cannot be compared with those of other professions because of the large sums of money involved, and the tax was introduced as an attempt to ensure that all citizens with an equal income must bear an equal tax burden in order to reduce social inequalities. The Committee concluded that the State's taxation regime was not unreasonable in the light of such considerations as the size of tips, how they are distributed, the fact they are closely related to the employment contract, and the fact that they are not granted on a personal basis. Accordingly, the Committee concluded that the information before it did not show that the author had been victim of discrimination within the meaning of article 26 of the Covenant.

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

Basso v. Uruguay

19 October 2010, UNHRC, 1887/2009

Violation of Art. 14(3)(c) (fair trial) – Pre-trial Detention – undue delay

Facts. The author’s family owned number of businesses in Uruguay, including *Banco de Montevideo*. On September 2008 he was extradited from the USA, charged with bankruptcy fraud, and detained. The authorities have repeatedly denied his requests for release.

Decision. The Committee noted that as the author was previously a fugitive, there were substantial grounds for refusing him conditional release. However, the author’s prolonged pre-trial proceedings—which had been pending since 11 September 2008—exceeded the 120 day limit in the Uruguayan Criminal Procedure Code. Since the State did not provide any explanation for the delay and failed to indicate any expected future date for completion of the proceedings, the State had violated the author’s right to be tried without undue delay under article 14(3)(c) of the Covenant. The Committee recommended that the State grant an effective remedy to the author, take steps to expedite his trial, and prevent similar violations in the future.

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

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