

UN Human Rights Committee 105th Session (July 2012)

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SUMMARIES OF DECISIONS on admissibility and merits taken by the UN Human Rights Committee during its 105th session in July 2012. 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.

All decisions are UN Doc. CCPR/C/105/D/[communication number]

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Admissibility Decisions

D.A. v. Russian Federation

23 July 2012, UNHRC, 1526/2006

Inadmissible under Article 5(2) OP; failure to exhaust local remedies

The applicant, a Russian citizen, claimed that Russia violated the ICCPR when it refused to grant his son Russian citizenship. Over the course of 14 years the applicant repeatedly applied for Russian citizenship on behalf of his son and was repeatedly denied. Though the Russian government ultimately granted his son citizenship, the applicant claims that government should be liable for damages for denying his son's application for nearly 14 years. Russia argues that applications were denied because of insufficiency of documents accompanying applications. The Committee ruled that the claims were inadmissible under Article 5(2) of the Optional Protocol because the applicant failed to exhaust available domestic remedies.

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

J.B.R. et al. v. Colombia

23 July 2012, UNHRC, 1822-1826/2008

Inadmissible under Article 5(2) OP; failure to exhaust local remedies

The applicants are civil servants who claim the Colombian government violated the ICCPR's guarantee of freedom of association and right to fair and impartial hearings. The applicants sought to form a union to protest a law allowing the government to fire civil servants who had guaranteed tenure. Formation of the union was denied and the applicants were removed from their positions. The applicants claim that formation of the union was denied for arbitrary reasons and that several judicial rulings against them amounted to a denial of justice. The State claims the applicants did not exhaust all domestic remedies after the High Courts of Bogotá and Pasto dismissed their claims, and argues the applicants could have initiated injunction or *amparo* proceedings. The applicants did not contest the suitability or efficiency of the domestic proceedings and the Committee thus found the applicants' claims inadmissible under Article 5 of the Optional Protocol for failure to exhaust available domestic remedies.

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

S.V. et al. v. Canada

23 July 2012, UNHRC, 1827/2008

Inadmissible under Article 2 OP; non-substantiation of claims

The applicant claims Canada violated the Universal Declaration of Human Rights when it denied him refugee status and deported him to Romania. The applicant, a citizen of Moldova, claimed this was a violation because he was likely to be deported from Romania to Moldova and ultimately tortured. The Canadian government believed that he might be tortured if he returned to Moldova,

but did not find it credible that the applicant would be deported from Romania to Moldova. Canada argued that the applicant did not provide any indication that he was wanted or might be wanted on any criminal charges in the Republic of Moldova, which is a requirement for re-deportation under Romanian law. The Committee agreed with the Canadian government and ruled that the claims of the applicant were insufficiently substantiated, and were thus inadmissible under Article 2 of the Optional Protocol.

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

A.P. v. Ukraine

23 July 2012, UNHRC, 1834/2008

Inadmissible under Article 2 and Article 5(2) OP; non-substantiation of claims & failure to exhaust local remedies

The applicant claims that Ukraine violated the ICCPR by torturing him to obtain a false confession, subjecting him to inhuman conditions once imprisoned, and denying him a lawyer of his choice. The Committee found that because the applicant never contested the findings or the effectiveness of Ukraine's two investigations into his prison conditions, his claim was inadmissible for failure to exhaust domestic remedies. The Committee also found that the applicant failed to sufficiently substantiate his torture claim because he changed his position on whether a forensic medical examination, which revealed no injuries, had occurred, and because domestic courts had found the torture allegations groundless. Likewise, the Committee found the applicant's claims regarding the effectiveness of his State-appointed lawyer inadmissible because he never complained of the adequacy of his legal representation during the domestic proceedings.

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

X.J. v. Netherlands

23 July 2012, UNHRC, 1840/2008

Inadmissible under Article 5 OP; failure to exhaust local remedies

The applicant is a Chinese national brought to the Netherlands in 1999 at age 13. In 2001 she applied for asylum and a residence permit as an unaccompanied minor. Her application for asylum was denied in 2002 and her application for a residence permit denied in 2008. She claims that in denying her application after the amount of time spent adjusting to Dutch culture, the Netherlands violated Article 17 of the ICCPR by denying her right to private and family life. Furthermore, the applicant argues that the Netherlands violated the Convention on the Rights of the Child. The Committee found the applicant's claims inadmissible under Article 5 of the Optional Protocol because she did not apply for a regular residence permit on special grounds and therefore did not exhaust available domestic remedies.

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

B.K. v. Czech Republic

23 July 2012, UNHRC, 1844/2008

Inadmissible under Article 3; unreasonable delay

The applicant is a naturalized American citizen who previously lived with her mother in the Czech Republic. Both departed in 1950, at which point the Czech government confiscated mother's property. The applicant's mother died in 1973, leaving the applicant as her heir. In 1991, after the applicant had lost her Czech citizenship, a Czech law came into effect which allowed Czech citizens to be compensated for government seizures of property. Because of her lack of citizenship, Czech courts denied the applicant's 1999 claim for compensation as heir to her mother's property. The applicant contends that government violated Article 26 by requiring Czech citizenship for the payment of compensation. The Committee found that the applicant did not need to exhaust domestic remedies because such remedies were futile. However, the Committee notes that there was an obligation on applicants to diligently pursue their cases, and that the applicant here had provided no reasons for delaying almost nine years between the Czech court decision and submitting her claim to the Committee. It therefore found that the applicant abused the right of submission under Article 3 by unreasonably delaying submission of the case.

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

D.V. and H.V. v. Czech Republic

23 July 2012, UNHRC, 1848/2008

Inadmissible under Article 3; unreasonable delay

The applicants are two naturalized American citizens, originally from the Czech Republic. When the applicants left the Czech Republic in 1964, the government confiscated their property without paying just compensation and sentenced them to prison in absentia. In 1970 the applicants were naturalized and lost their Czech citizenship. In 1990, a Czech law annulled the applicants' sentences, upon which they reapplied for citizenship and were granted it in 2001. In 2006, the applicants tried to obtain restitution for the confiscation under a 1991 Czech law. The government refused to pay compensation because they were not Czech citizens at the time the 1991 law was passed. The applicants argued they did not have any available domestic remedies and submitted the issue to the Committee. The Committee found that domestic remedies were futile. However, the Committee also found the applicants abused the right of submission under Article 3 by unreasonably delaying submission of case: they did not submit the case until 15 years after contested law had entered into force and there was no sufficient justification for the delay.

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

Decisions on the Merits

Katsaris v. Greece

18 July 2012, UNHRC, 1558/2007

Violation of Article 2(1) (respect for all without distinction based on race); Article 2(3) effective remedy; Article 7(ill-treatment); Article 26 (discrimination); ill-treatment; non-discrimination; effective investigation

The applicant is a Greek national of Roma ethnicity who claims he was pulled over by police officers who suspected him and his family of stealing cars. Police officers pointed guns at the applicant and his family, physically and verbally abused them including racial insults, and took them to the police station where the applicant and his father were detained overnight without access to a lawyer. The applicant claims that the state's investigation was deficient, and that various investigations failed to resolve inconsistencies. The Committee held that the unexplained and serious shortcomings of the preliminary investigations, including discrepancies with regard to the arresting officers and use of discriminatory language by the investigating officers, cast doubts on the thoroughness and impartiality of the investigations. The Committee found a violation of Article 2(3), read in conjunction with Article 7; and Articles 2(1) and 26 of the Covenant.

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

Guezout et al. v. Algeria

19 July 2012, UNHRC, 1753/2008

Violation of Articles 2(3) (effective remedy), 6(1) (right to life), 7 (torture), 9 (right to liberty and security), 10(1) (humane treatment), and 16 (recognition as a person before the law); illegal arrest and detention; enforced disappearance; torture

The applicants are the mother and brothers of Kamel Rakik who was arrested in 1996 by the Algerian police and was last seen 35 days later in a police detention facility. The applicants still do not know the whereabouts of Rakik despite efforts to initiate an investigation and legal proceedings. The applicants claimed Rakik was subject to illegal arrest and detention, torture, and enforced disappearance. The Committee found that Algeria's Charter for Peace and National Reconciliation did not render the case inadmissible. The Committee concluded that the State's refusal to acknowledge the detention or whereabouts of Rakik is a violation of Article 6(1) of the ICCPR, and that his warrantless arrest by non-uniformed police and the prosecutor's failure to file criminal charges or acknowledge the arrest for five years violates Article 9. It further concluded that Rakik's incommunicado detention violated his rights under Article 10(1) and constituted torture with respect to both him and the applicants, in violation of Article 7. Furthermore, the Committee concludes that the State's impeding of judicial remedies violated Article 16. The Committee read the above violations in conjunction with a violation of Article 2(3) with respect to both the victim and the applicants.

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

Maharjan v. Nepal

19 July 2012, UNHRC, 1863/2009

Violation of Articles 2(3) (effective remedy), 7 (torture), 9 (right to liberty and security) and 10(1) (humane treatment); illegal arrest and detention; enforced disappearance; torture

The applicant was arrested by Nepalese soldiers in 2003 and held incommunicado for eight months and under preventative detention for an additional year and a half. The applicant claimed he was subject to degrading conditions and abusive treatment throughout his detention, and that he was beaten, partially asphyxiated and doused in cold water for four consecutive nights to extract information regarding Maoist activities. He further claimed the State failed to investigate and hold authorities accountable for his ill treatment. The Committee concluded that refusing the applicant contact with his family and the outside world, subjecting him to acts of torture and ill treatment while under interrogation and his conditions of detention each amounted to a violation of Article 7. The applicant's warrantless arrest, the lack of charges, and the lack of an opportunity to legally challenge his detention violated Article 9. The Committee also found the conditions of detention violated Article 10(1). The Committee found the above violations read alone and in conjunction with Article 2(3). With regard to his wife and parents, the Committee concluded the applicant's detention and disappearance caused sufficient anguish and distress to constitute a violation of Article 7, read in conjunction with Article 2(3), especially as his wife was 8 month pregnant at the time.

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

Levinov v. Belarus

19 July 2012, UNHRC, 1867/2009, 1936/2010, 1975/2010, 1977-1981/2010 and 2010/2010

Violation of Article 19 (2,3) (freedom of expression); freedom of assembly; freedom of association; right to a fair hearing; exhaustion of domestic remedies; freedom of religious expression

The applicant filed nine requests with the Town Committee for permission to picket alone on a variety of issues. He was denied each time pursuant to regulations restricting public gatherings to a few specified locations, and unsuccessfully appealed each decision. The applicant claimed Belarus failed to give effect to the rights of freedom of assembly and association and gave precedence to its national legislation in violation of Article 2 of the ICCPR. He further claimed his freedom of expression was arbitrarily restricted in violation of Article 19, as was his right to peaceful assembly under Article 21. He cited the lack of independence of judges as evidence of a violation of his right to a fair hearing under Article 14. He claimed the authorities' decision limited his freedom of assembly and association in violation of Article 5 and was the result of discrimination against him for political purposes in violation of Article 26. He argued that his inability to congratulate fellow citizens on Orthodox Christmas, the subject of a proposed picket, violated his right to freedom of religious expression under Article 18. The Committee found that Article 2 merely creates a general obligation for State parties, and cannot itself give rise to a claim in under the Optional Protocol and that Article 5 also does not create any separate individual right. The applicant's claims under both articles were thus inadmissible under Article 3 of the Optional Protocol. The Committee found his claims under Article 14, 18, 21 and 26 were unsubstantiated,

partially because the right to freedom of association is not triggered by solitary activities. However, it concluded that the restrictions on the applicant's right to picket were a de facto violation of Article 19, not justified by either respect for the rights or reputations of others or the need for public order.

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

Korneeko v. Belarus

20 July 2012, UNHRC, 1226/2003

Violation of Articles 19 (2,3) (freedom of expression), 22(1,2) (freedom of association) and 25(a) (political participation); equality before the courts; non-discrimination; insufficient substantiation

The offices of Civil Initiatives in Belarus were searched and their computers seized in connection with an investigation concerning political slogans that had been painted on buildings. The authorities claimed to have uncovered evidence from the computers suggesting that the organization was using the equipment, received as untied foreign aid, to monitor elections and publish political material in violation of Belarusian law. The applicant, as the Chairman of the organization, was fined 1 million roubles and five computers were confiscated. The applicant claimed that the evidence obtained from the computers was inadmissible due to a procedural violation when they were seized, that he was denied equality before the courts in violation of Article 14 of the ICCPR, and that he was discriminated against on the basis of his political opinion in violation of Article 26. The Committee concluded that although technically an administrative case, it was within the ambit of Article 14 because the purpose of the underlying law is to have a deterrent and punitive effect. However, it concluded that the claim was insufficiently substantiated. It also concluded that the discrimination claim was insufficiently substantiated. The Committee further raised sua sponte the possibility that the Belarusian law underlying the case violated the freedom of expression, association and political participation under Articles 19, 22 and 25, and found that the fine and confiscation on the grounds of monitoring elections violated Article 22, read in conjunction with Articles 19 and 25.

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

Pavlyuchenkov v. Russian Federation

20 July 2012, UNHRC, 1628/2007

Violation of Article 10(1) (condition of detention); exhaustion of domestic remedies, non-substantiation of claims: torture, right to a fair hearing, right to adequate time and facilities, right to legal assistance

The applicant was arrested at 1am on suspicion of murder and questioned, even though he had not slept in 48 hours and repeatedly asked to sleep. Police informed him that a relative of the victim worked in the force and was planning on avenging her death. The applicant confessed to the crime after he was told that he had already been implicated by another suspect and after being repeatedly denied an attorney and sleep. The applicant was threatened with sexual assault, was kept in a cell with up to 8 other prisoners, many of whom had hepatitis or tuberculosis, and was cut off from natural light and access to the outdoors. He was also physically assaulted by the relative of the victim, a state employee. He was subsequently convicted of murder. The applicant complained

about the conditions of his detention, claimed that he confessed to the crime due to threats of physical assault, that he was unable to properly prepare his defense because of the poor conditions of his detention, and complained about ineffective counsel because his attorney failed to raise the fact that he had been assaulted by the relative of the victim. The Committee found that the bulk of the applicant's claims were inadmissible, as he had failed to exhaust domestic remedies with regard to his claims of ill-treatment, torture, and legal assistance; and that he had failed to adequately substantiate his remaining fair trial claims regarding the preparation and presentation of his defence. However, the Committee concluded that the conditions of the detention facility, which include the absence of a functioning ventilation system, adequate food, proper hygiene, and outdoor space, violated Article 10.

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

Schumilin v. Belarus

23 July 2012, UNHRC, 1784/2008

Violation of Article 19 (2,3) (freedom of expression)

The applicant was arrested and fined pursuant to a Law on Mass Events for distributing leaflets containing information about a meeting with a former presidential candidate. The law prohibits the dissemination of materials concerning unauthorized assemblies, meetings, demonstrations, street rallies, and pickets. The decision was upheld by a Regional Court on appeal. The applicant claimed that because the restriction on his freedom of expression was not necessary within the meaning of Article 19 of the ICCPR, his rights were violated. The Committee recalled its General Comment No. 34, which states that any restrictions on freedom of expression must conform to the strict tests of proportionality and necessity, and concluded that the domestic courts failed to consider this test. In the absence of any pertinent showing by the State of why the restriction was necessary, the Committee found that Article 19 was violated.

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

Chiti v. Zambia

26 July 2012, UNHRC, 1303/2004

Violation of Articles 2(3) (effective remedy), 6 (right to life), 7 (torture), 14 (3)(g) (self incrimination), 17 (interference with privacy), and 23(1)(right to family)

The applicant filed complaint on behalf of herself, her husband and her five children. Her husband was a military officer arrested as a suspect in an attempted coup d'état and charged with treason. The applicant claimed her husband was deprived of food, severely beaten and suspended by a rope each night for nine days by state security agents. As a result, he suffered an eardrum perforation. During that time, he was also forced to sign a confession. Two days after the arrest, state security agents broke into the applicant's home, removed all her belongings and barred her and her family from the apartment. Subsequently, she claimed security agents forcibly evicted her and her children from six homes in which they attempted to live. A State-commissioned inquiry concluded that the applicant should be compensated for torture, but the State party refused to comply. The applicant's husband was convicted, sentenced to death, and eventually pardoned. Despite having HIV and prostate cancer, he was denied medical treatment and subjected to inhuman conditions.

He was released from prison on humanitarian grounds two months before he died. The Committee concluded that, given his poor health, the conditions of detention and treatment of her husband violated Article 6 of the ICCPR. The inhuman conditions, anguish preceding his pardon, and absence of an independent investigation of the facts violated Article 7, alone and read in conjunction with Article 2(3). The also Committee found a violation of Article 7 with respect to the applicant and her family. It further concluded that the confession the applicant's husband signed violated Article 14(3)(g). Finally, it concluded that the destruction of the family's personal belongings and the applicant's illegal eviction violated Article 17 and 23, alone and read in conjunction with Article 2(3).

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

Govsha, Syritya & Mezyak v. Belarus

27 July 2012, UNHRC, 1790/2008

Violation of Articles 19 (freedom of expression) and 21 (freedom of assembly)

The applicants filed a request with the authorities to hold a meeting on the subject of “the free, independent, and prosperous Belarus” pursuant to the Law on Mass Events in the Republic of Belarus. The request was denied on the grounds that a meeting on the same subject was held five months earlier. On appeal, the court upheld the decision, but on the grounds that the request failed to comply with the law. The applicants' request for a supervisory review of the decision was denied. The Committee noted that the right to freedom of expression and assembly may be restricted only for legitimate purposes, including the protection of public safety and order and protection of the rights and reputations of others. However, it concluded that the denial of the applicants' request, even if in compliance with Belarus domestic law, violated Articles 19 and 21 of the ICCPR because, despite ample opportunity, the State had failed to demonstrate that the restriction met any of the necessary criteria of Article 19 and 21. .

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

Narrain et al. v. Mauritius

16 July 2012, UNHRC, 1744/2007

Violation of 25(b) (right to political participation)

The First Schedule of the Mauritian Constitution requires that every political candidate declare their affiliation with one of four communities: Hindu; Muslim; Sino-Mauritian; or General Population, for those who do not appear, from their way of life, to belong to one of the other three communities. The Constitution further provides for the allocation of eight seats of the National Assembly on the basis of this categorization. The applicants are members of a registered political party called Rezistans ek Alternativ (Resistance and Alternative). They presented themselves as candidates in the general election of the National Assembly held in 2005, but their nomination was denied because they did not declare any community. The applicants claimed they were unable to determine which community they belonged to because they were unaware of the “way of life” criteria. The Supreme Court declared the law repugnant to the constitution and a democratic society and ordered the applicants to be listed as candidates. No applicant succeeded in the ensuing election. The Electoral Supervisory Committee petitioned the Supreme Court for direction

on how to apply the regulation in the future, but Supreme Court held that it is legally obligated to declare nomination papers that failed to declare a community as invalid. The Committee noted the State's claim that General Population is a residual category, encompassing all people not belonging to the three other groups. However, it concluded that since community affiliation has not been the subject of a census since 1972, the continued maintenance of the requirement of mandatory classification of a political candidate is arbitrary, and therefore is in violation of Article 25(b) of the ICCPR. In light of its decision regarding Article 25, it decided not to examine the communication under Article 26. The Committee held the applicants' claim under Article 18 inadmissible due to failure to exhaust domestic remedies.

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

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