



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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Committee against Torture

Communication No. 525/2012

**Decision adopted by the Committee at its fifty-second session, 28 April
to 23 May 2014**

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| <i>Submitted by:</i> | R.A.Y. (represented by counsel, Mr. Yves Levano and Mr. Philippe Ohayon) |
| <i>Alleged victim:</i> | R.A.Y. |
| <i>State party:</i> | Morocco |
| <i>Date of complaint:</i> | 25 October 2012 (initial submission) |
| <i>Date of present decision:</i> | 16 May 2014 |
| <i>Subject matter:</i> | In connection with an extradition procedure to Algeria, the complainant alleges that confessions incriminating him were obtained under torture and that he is at risk of being subjected to torture if extradited |
| <i>Procedural issue:</i> | Exhaustion of domestic remedies |
| <i>Substantive issues:</i> | Risk of being subjected to torture; use of confessions obtained under torture in judicial proceedings |
| <i>Articles of the Convention:</i> | 3 and 15 |



Annex

Decision of the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (fifty-second session)

concerning

Communication No. 525/2012

Submitted by: R.A.Y. (represented by counsel, Mr. Yves Levano and Mr. Philippe Ohayon)

Alleged victim: R.A.Y.

State party: Morocco

Date of complaint: 25 October 2012 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 16 May 2014,

Having concluded its consideration of complaint No. 525/2012, submitted on behalf of R.A.Y. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant, his counsel and the State party,

Adopts the following:

Decision under article 22, paragraph 7, of the Convention against Torture

1.1. The complainant is R.A.Y., born on 1 February 1990, holding dual French and Algerian nationality and ordinarily resident in France. He claims to be a victim of a violation of article 15 of the Convention by the Moroccan authorities, which authorized his extradition to Algeria in a case involving drug trafficking and money-laundering.¹ He adds that, if he was indeed extradited to Algeria, he would also be a victim of a violation of article 3 of the Convention. The complainant is represented by two lawyers, Mr. Yves Levano and Mr. Philippe Ohayon.

1.2 On 31 October 2012, the Committee, through its Special Rapporteur on new communications and interim measures, asked the State party not to extradite the complainant to Algeria while his complaint was under consideration by the Committee. The Committee's request was reiterated to the State party on 15 November 2012 and on 15 May

¹ The extradition was not carried out after the Committee obtained interim measures; the complainant is still being detained on remand in Morocco.

2013, at the complainant's request, because of allegations that the complainant was going to be extradited despite the protection measures granted.

The facts as presented by the complainant

2.1 On 25 January 2012, the investigating judge from Sidi M'Hamed Court (Algeria) issued international arrest warrant No. 09/19 P against the complainant for attempted export of narcotic drugs, sale of prohibited goods as part of an organized group and money-laundering. The complainant was also summoned by the investigating judge in Nantes (France) under an international request for judicial assistance issued by the same Algerian judge. In the course of the preliminary investigation opened following the discovery, on 4 April 2009, of 5,492.6 kilos of narcotic drugs in three refrigerated containers destined for the port of Antwerp (Belgium), a person arrested by the Algerian authorities, A.B., implicated the complainant and his brother in the drug trafficking with which he was charged.

2.2 On 10 February 2012, the complainant appeared before the French investigating judge who, on behalf of the Algerian investigating judge, first notified him of the grounds for charging him in the Algerian proceedings, then took his statement and, lastly, notified him that he had two months to submit additional comments and to advise whether or not he agreed to travel to Algeria for questioning by the Algerian examining magistrate. He was also informed that, if no response was received from him within the two-month period granted by the Algerian judicial authority, he would be deemed a fugitive.²

2.3 On 26 February 2012, the complainant was arrested in Morocco under an Interpol international search warrant.³ An extradition request was then transmitted by the Algerian authorities to the Moroccan Government. The complainant argued before the Moroccan court that his extradition to Algeria would expose him to a risk of torture and endanger his life in violation of article 3 of the Convention against Torture.⁴

2.4 In a judgement dated 25 April 2012, the Court of Cassation issued a favourable opinion on the handing over of the complainant to the Algerian judicial authorities. On 23 July 2012, the complainant filed an application for revocation of this favourable opinion with the Court of Cassation. On 14 September 2012, the extradition order was signed by the competent authorities.⁵ On 25 October 2012, the complainant submitted his case to the Committee against Torture. On 25 November 2012, the Court of Cassation rejected his application for revocation on the merits and upheld its opinion in favour of extradition.

2.5 The complainant has been held in custody since 26 February 2012. His continued detention since this date is intrinsically linked to the ongoing process before the Committee.

² According to the record of the hearing, he was also notified that he was subject to a court supervision order (a prohibition on leaving his region of residence (Loire-Atlantique), except for professional reasons) and that he would have to request permission from the court to leave France to comply with the summons from the Algerian authorities.

³ In his arguments before the Court of Cassation, the complainant contended that he had gone to visit a relative in Agadir and that he was not a fugitive, since the two-month period had not yet expired; he did not mention the court supervision order to which he was subject.

⁴ During these same proceedings, the complainant stated, somewhat inconsistently, "that his intention was not to evade the judicial authorities of his country of origin, but that he hoped to appear before those authorities as a free man, rather than being taken there in handcuffs and shackles".

⁵ Namely the Minister of Justice and the Head of Government (Prime Minister).

The complaint

3.1 The complainant states that he is a victim of a violation of article 15 of the Convention by the State party, since the latter allegedly considered confessions obtained under torture as evidence in authorizing his extradition. The complainant adds that, if he was indeed extradited to Algeria, he would also be a victim of a violation of article 3 of the Convention.

3.2 In support of his allegations of violations, the complainant first refers to the general risk of torture associated with the systematic human rights violations in Algeria, as noted by the Committee, which has stated that it is concerned at the many serious allegations which it has received of cases of torture and abuse inflicted on detainees by law enforcement officers.⁶ The complainant also cites the concluding observations of the Human Rights Committee, in which the Committee notes with concern information regarding cases of torture and cruel, inhuman or degrading treatment in Algeria, for which the Intelligence and Security Department reportedly has responsibility. In its concluding observations, the Human Rights Committee also indicates that it is concerned that confessions obtained under torture are not explicitly prohibited and excluded as evidence under the State party's legislation.⁷

3.3 The complainant then refers to a general problem with extradition procedures in the State party. He cites the Committee against Torture, which has expressed concern at the fact that the State party's existing extradition and refoulement procedures and practices may put some persons at risk of torture. The Committee has also indicated that, in order to determine the applicability of the obligations that it has assumed under article 3 of the Convention, the State party should thoroughly examine the merits of each individual case, including the overall situation with regard to torture in the country concerned.⁸

3.4 More specifically, the complainant argues that the accusation against him of involvement in drug trafficking is based solely on the statements of a person arrested in connection with this criminal case, A.B., which were allegedly obtained under torture. He states that, apart from these statements, there is no evidence to implicate him in this international drug trafficking. He recalls the Committee's jurisprudence whereby, in accordance with article 15, each State party must ensure that any statements invoked as evidence in an extradition procedure have not been made as a result of torture.⁹

3.5 The complainant recalls that he raised before the State party's Court of Cassation his fear of being subjected to torture if extradited to Algeria, but he believes that the court failed to consider the risks involved properly, merely noting that, as Algeria was a party to the Convention against Torture, there was no reason to fear any risk of torture.¹⁰

⁶ Concluding observations of the Committee against Torture concerning the third periodic report of Algeria, adopted on 13 May 2008 (CAT/C/DZA/CO/3), para. 10.

⁷ Concluding observations of the Human Rights Committee concerning the third periodic report of Algeria, adopted on 1 November 2007 (CCPR/C/DZA/CO/3), paras. 15 and 19.

⁸ Concluding observations of the Committee against Torture concerning the fourth periodic report of Morocco, adopted on 17 November 2011 (CAT/C/MAR/CO/4), para. 9.

⁹ The complainant cites the Committee's jurisprudence. See communication No. 193/2001, *P.E. v. France*, decision adopted on 21 November 2002, and communication No. 419/2010, *Ktiti v. Morocco*, decision adopted on 26 May 2011.

¹⁰ The complainant did not raise before the Court of Cassation the fact that the incriminating statements used as evidence in the extradition procedure had allegedly been obtained under torture (alleged violation of article 15). Instead, he argued that "the allegations against him are simply accusations by persons who harbour hatred towards him and his family".

3.6 According to the complainant, domestic remedies have indeed been exhausted, as the application for revocation filed on 23 July 2012, which was still pending when this complaint was lodged with the Committee, is a remedy existing only in civil law and would be considered marginally applicable by the Court of Cassation in a criminal case. Furthermore, the complainant considers that the application for revocation does not have suspensive effect. In this regard, the complainant stresses that the law is silent on the issue and that the extradition order was signed by the State party's competent authorities while the application for revocation was in progress.

3.7 The complainant adds that there is no remedy in Moroccan law against the extradition order, which is an administrative act, notification of which he reportedly received during the week of 22 October 2012, while his extradition was scheduled for 15 November 2012. He maintains that the Moroccan judges are competent only to ensure that the legal requirements for extradition are met in accordance with the Moroccan Code of Criminal Procedure.

State party's observations on admissibility and on the merits

4.1 The State party contests the admissibility of the complaint on grounds of the complainant's failure to exhaust domestic remedies against the decision to extradite him to Algeria. The State party recalls that the extradition procedure has two parts: one judicial, the other administrative.

4.2 The judicial proceedings were conducted before the Court of Cassation, which issued a favourable opinion on the complainant's extradition in its decision of 25 April 2012, the Court having taken the view that the complainant's fears of being tortured by the Algerian authorities were unfounded. On 23 July 2012, the complainant filed an application for revocation of the Court of Cassation's favourable opinion. On 25 November 2012, the court handed down its decision, in which it found the application admissible but rejected it on the merits, standing by its original reasons for the opinion in favour of extradition.¹¹ The State party explains that, contrary to the complainant's assertions, an application for revocation is explicitly provided for in criminal cases¹² and, as such, has suspensive effect. The State party notes that the Court of Cassation has issued numerous judgements on the matter and that it has revoked several of its extradition rulings.¹³ The State party concludes that the complaint lodged with the Committee was "premature" and failed to comply with the requirement to exhaust domestic remedies.

4.3 The State party emphasizes that the second part of the extradition procedure is administrative in nature. Specifically, it consists of the decision taken by decree by the Head of Government (Prime Minister), who must decide on the Algerian State's extradition request, taking into account the opinion issued by the Court of Cassation and relevant legislation. In this case, the decree ordering the complainant's extradition was signed on 14 September 2012, on the basis of the Court of Cassation's favourable opinion issued on 25 April 2012, articles 718 et seq. of the Code of Criminal Procedure and the 1963 Bilateral Agreement on Judicial Cooperation between Morocco and Algeria. The complainant's extradition was originally scheduled for 15 November 2012 but was not carried out due to the interim measures granted by the Committee.

¹¹ The complaint before the Committee was lodged on 25 October 2012, i.e. one month before the Court of Cassation's decision.

¹² Articles 536 et seq. of the Code of Criminal Procedure in force since 2 October 2002.

¹³ Jurisprudence cited: Supreme Court judgement of 16 December 1997 in case 2204/97 (published in Supreme Court Bulletin No. 4.1999) and judgement 1143/1 of 26 July 2006 in case 4089 (unpublished) – Decisions not provided.

4.4 The State party further emphasizes that the complainant did not lodge an appeal with the administrative chamber of the Court of Cassation against the Head of Government's decision. It adds that the complainant's argument to the effect that there are no remedies against the extradition order because it is an administrative act is incorrect. Provision is made in the Code of Administrative Courts¹⁴ for applications to set aside regulatory or individual decisions of the Head of Government on grounds of abuse of power. Moreover, there is significant practice in the area of appeals lodged with the administrative chamber of the Supreme Court (currently Court of Cassation) against decisions taken by the Prime Minister (currently Head of Government). The Head of Government's decree accepting the Algerian State's extradition request was effectively a "personal regulatory decision", an administrative act subject to appeal before the administrative chamber of the Court of Cassation within 60 days of the date of notification of the decision. The State party explains that the complainant had ample opportunity to submit such an appeal between the notification of the extradition date and 15 November 2012.

4.5 The State party also contests the merits of the complaint with respect to the complainant's allegations concerning possible ill-treatment in Algeria, the complainant's country of origin. In this connection, it recalls the Committee's general comment No. 1 (1996), on the implementation of article 3 of the Convention in the context of article 22,¹⁵ which states that the risk of torture must be foreseeable, real and personal. The State party notes that these requirements have not been met in this case, the complainant himself having explicitly stated during his first appearance before the French judge that he agreed to travel to Algeria within two months as he had done nothing wrong. During this hearing, while accompanied by his lawyer, the complainant neither expressed fear of the Algerian justice system, nor mentioned any risk of torture.¹⁶ The State party considers that the statements made by the complainant before the French judge contradict those made before the public prosecutor in Tangiers on the day of his arrest, since it was only at that point that he mentioned the risk of torture. The State party therefore questions the credibility of the complainant's allegations and considers them to be unfounded. While the complainant criticizes the State party for failing to consider his allegations, the State party notes, on the other hand, that the Court of Cassation's judgement is clearly reasoned on this point and is based mainly on the complainant's own statements before the French judge.

4.6 Lastly, the State party emphasizes that the complainant has failed to provide any evidence that the incriminating statements used in the extradition procedure were made under torture. It notes in this regard that his alleged accomplices, already in the hands of the Algerian justice system, were all assisted by their lawyers and did not claim to have been ill-treated during their arrest or interrogation. The defendant A.B., who implicated the complainant, had three of his lawyers with him during his appearance before the investigating judge, and there is no mention of torture during his interrogation in the case documents transmitted to the State party.

The complainant's comments on the State party's observations

5.1 With regard to the issue of exhaustion of domestic remedies, the complainant maintains in his comments of 31 December 2013 that the application for revocation has no suspensive effect on the extradition decision. He claims that, according to the State party's

¹⁴ Dahir No. 1.91-225 of 10 September 1993, enacting Act No. 41-90 on the creation of administrative courts, art. 9.

¹⁵ *Official Records of the General Assembly, Fifty-third Session, Supplement No. 44 (A/53/44)*, annex IX.

¹⁶ The State party cites the record of the hearing, in which at no time is it noted that either the complainant or his lawyer expressed any fear about a risk of torture by the Algerian authorities.

legislation, the application for revocation is an “extraordinary” remedy and only “ordinary” remedies automatically have suspensive effect.¹⁷ He concludes that, unless otherwise expressly provided in law, it cannot be presumed that an application for revocation has suspensive effect. Consequently, this remedy did not provide sufficient guarantee of the suspension of the contested extradition order and did not prevent the complaint from being lodged with the Committee while the application was in progress.

5.2 The complainant reiterates that there is no remedy against the Head of Government’s decision ordering extradition. In his view, the Head of Government’s decree is simply a decision implementing the Court of Cassation’s judgement and, as such, is non-appealable, not a decision establishing rights or a constitutive act. The complainant alleges that he was not notified of the decree in question, even though all administrative acts must be communicated to the persons concerned to ensure their access to remedies, which proves that it was not an administrative act.

5.3 On the merits of the case, the complainant reiterates his arguments on the risk of torture *in abstracto* in the general Algerian context. He goes on to refer to statements describing acts of violence committed by the Algerian police, which he calls acts of torture, against witnesses or accused persons during the judicial proceedings in this case. Two such statements, made anonymously, were apparently collected by the complainant’s sister, although most of the persons contacted by her reportedly refused to speak for fear of reprisals. The complainant explains that this reflects the climate of fear and the *omertà* (code of silence) surrounding the ongoing Algerian judicial proceedings. A third person, Y.B., allegedly told the complainant’s sister that he had been deprived of water and food for 48 hours in custody and had been subjected to police pressure.

5.4 The complainant contends that he runs a real, present and personal risk, since it would appear that in this case, as indicated in the statements collected by his sister, the Algerian police has routinely used violence during the interrogations. He further contends that the Algerian investigators seem particularly interested in him because they are allegedly trying to implicate him along with his brother. He claims that he is therefore very likely to be subjected to violence during his interrogation to force him to provide information on his brother, who is wanted by the Algerian authorities.

5.5 Lastly, the complainant repeats his arguments concerning the State party’s failure to fulfil its obligation to ascertain whether the complainant would be at risk of being tortured if extradited to Algeria and to ensure that the incriminating statements were not obtained under torture. In this connection, the complainant adds that the two persons who testified anonymously to his sister were reportedly subjected to violence in order to force them to implicate him. There is thus a “high probability” that the statements of A.B. were made under torture.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any complaint contained in a communication, the Committee against Torture must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been, and is not being, examined under another procedure of international investigation or settlement.

¹⁷ He is citing article 597 of the Code of Criminal Procedure, which states that implementation takes place, at the request of the public prosecutor, when the decision is no longer subject to an *ordinary* remedy or appeal in cassation in the interests of the parties.

6.2 In accordance with article 22, paragraph 5 (b), of the Convention, the Committee must ascertain that the complainant has exhausted all available domestic remedies; this rule does not apply where it has been established that the application of those remedies has been unreasonably prolonged, or that it is unlikely to bring effective relief to the alleged victim.

6.3 The Committee notes that, in the State party's view, the communication is inadmissible under article 22, paragraph 5 (b), of the Convention. The suspensive effect of the application filed by the complainant on 23 July 2012 for revocation of the favourable opinion issued on 25 April 2012 by the Court of Cassation is disputed by the two parties. The Committee notes that, as stated by the complainant, the extradition order was signed by the Head of Government on 14 September 2012 while the application was in progress. The Court's decision to reject the application was handed down on 25 November 2012. Given the silence of Moroccan legislation on this matter and the fact that the State party has failed to provide any specific example of jurisprudence clarifying the suspensive nature of the application, the Committee is unable to conclude that the application for revocation prevented the complainant from submitting to the Committee a complaint that was, at most, premature.

6.4 With regard to the lack of remedies against the extradition order reported by the State party, the Committee notes that the parties' views differ on the exact nature of the related decree and therefore the availability of remedies against it. The Committee notes that, according to the complainant, the extradition order is not an administrative act but simply an act implementing a court decision, which does not establish rights and is therefore not subject to appeal. On the other hand, the State party explains that it is an administrative act, against which an application for setting aside on grounds of abuse of power can be filed with the administrative chamber of the Court of Cassation, in accordance with the provisions of the administrative law to which the State party refers.¹⁸

6.5 The Committee notes that, pursuant to the State party's legislation, an application for setting aside the extradition order on grounds of abuse of power does indeed seem possible. Nevertheless, it notes that, in his comments of 31 December 2013, the complainant denies having been officially notified of the decree ordering his extradition, signed on 14 September 2012, although his counsel had previously mentioned that the complainant had received a copy of the decree during the month of October 2012. The Committee further notes that the State party has not proved that the complainant was officially notified of the extradition order, which would have given him a formal opportunity to appeal within the two-month deadline.¹⁹ The Committee refers to its jurisprudence and recalls that, pursuant to the principle of exhaustion of domestic remedies, the complainant was only required to use remedies that were directly related to the risk of being subjected to torture in Algeria.²⁰ The Committee notes that the State party has not specified the exact scope of the application to set aside the extradition order on grounds of abuse of power, or how it might influence the complainant's extradition to Algeria, as the State party has not indicated whether the application has suspensive effect. On the other hand, regarding the alleged violation of article 15 of the Convention by the State party, the Committee notes that the complainant did not raise the complaint before the competent authorities, in particular the Court of Cassation,²¹ because on that occasion, the complainant

¹⁸ Dahir No. 1.91-225 of 10 September 1993, enacting Act No. 41-90 on the creation of administrative courts, art. 9.

¹⁹ Neither the complainant nor the State party has submitted a copy of the extradition order.

²⁰ See communication No. 170/2000, *A.R. v. Sweden*, para. 7.1, decision dated 23 November 2001, and communication No. 428/2010, *Kalinichenko v. Morocco*, para. 14.3, decision dated 25 November 2011.

²¹ See the complainant's defence statement before the Court of Cassation, dated 10 April 2012.

stated that the confessions had been made by “persons who harbour hatred towards him and his family”. The Committee therefore finds that article 22, paragraph 5 (b), of the Convention does not preclude it from declaring the communication admissible in respect of the alleged violation of article 3, but that the alleged violation of article 15 is not admissible, as it was not raised before the State party’s courts.

6.6 In the light of the above considerations, the Committee decides that the communication is admissible, as far as it raises issues under article 3 of the Convention, and decides to proceed with its examination on the merits.

Consideration of the merits

7.1 The Committee has considered the communication in the light of all the information made available to it by the parties concerned, in accordance with article 22, paragraph 4, of the Convention.

7.2 The Committee must determine whether the extradition of the complainant to Algeria would violate the State party’s obligations under article 3, paragraph 1, of the Convention not to expel or return (*refouler*) a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. The Committee recalls that the existence in a country of gross, flagrant or mass violations of human rights is not in itself a sufficient ground for believing that an individual would be subjected to torture.²² Conversely, the absence of a consistent pattern of flagrant violations of human rights does not mean that an individual might not be subjected to torture.

7.3 Recalling its general comment No. 1, the Committee reaffirms that the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. However, the risk does not have to meet the test of being “highly probable”, but it must be personal, present, foreseeable and real.

7.4 The Committee also notes that, according to the complainant, the Court of Cassation failed to consider the risk of torture faced by the complainant properly, merely noting that, as Algeria was a party to the Convention against Torture, there was no reason to fear any risk of torture. The Committee observes that, for his part, the complainant merely stated before the Court of Cassation that he feared being subjected to torture in Algeria, without substantiating the allegation, and yet, as noted by the State party, he had not made any such claims during his appearance before the French investigating judge. The Committee recalls that, in assessing the risk of torture to which an individual would be exposed in the context of extradition or deportation proceedings, a State cannot base itself solely on the fact that another State is a party to the Convention against Torture, or that it has provided diplomatic assurances.²³ The Committee observes that, in the event, the State party authorities did not possess any evidence allowing them to carry out a more accurate assessment of the vague, general and unsubstantiated allegation of risk of torture made by the complainant.

7.5 The Committee notes that the complainant subsequently attempted to prove that he faces a foreseeable, real and personal risk of torture on the basis of anonymous statements collected by his sister. The Committee recalls its jurisprudence whereby the risk of torture must be assessed on grounds that go beyond mere theory, and indicates that it is generally for the complainant to present an arguable case.²⁴ On the basis of all the information

²² See *Kalinichenko v. Morocco*, para. 15.3.

²³ See *Kalinichenko v. Morocco*, para. 15.6, and communication No. 327/2007, *Boily v. Canada*, paras. 14.4 and 14.5, Views adopted on 14 November 2011.

²⁴ See communication No. 298/2006, *C.A.R.M. et al. v. Canada*, para. 8.10, decision adopted on 18 May 2007; No. 256/2004, *M.Z. v. Sweden*, para. 9.3, decision adopted on 12 May 2006; No. 214/2002,

submitted by the complainant, including on the general situation in Algeria, the Committee considers that the complainant has not provided sufficient evidence to enable it to conclude that his extradition to Algeria would expose him to a foreseeable, real and personal risk of torture within the meaning of article 3 of the Convention.

8. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, therefore concludes that the complainant's extradition to Algeria does not constitute a breach of article 3 of the Convention.

[Adopted in French, English and Spanish, the French text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

M.A.K. v. Germany, para. 13.5, decision adopted on 12 May 2004; No. 150/1999, *S.L. v. Sweden*, para. 6.3, decision adopted on 11 May 2001; and No. 347/2008, *N.B.-M. v. Switzerland*, para. 9.9, decision adopted on 14 November 2011.