



Refusal by Swiss courts to hear a case alleging torture committed in Tunisia had not violated the right of access to a tribunal

In today's **Chamber** judgment¹ in the case of [Nait-Liman v. Switzerland](#) (application no. 51357/07) the European Court of Human Rights held, by a majority, that there had been:

no violation of Article 6 § 1 (right of access to a court) of the European Convention on Human Rights

The case concerned the refusal of the Swiss civil courts to examine Mr Naït-Liman's civil claim for compensation in respect of the non-pecuniary damage caused by his alleged torture in Tunisia.

The Court found that the decision of the Swiss courts to decline jurisdiction to hear Mr Naït-Liman's civil action despite the absolute prohibition on torture under international law had not violated his right of access to a court, had pursued legitimate aims and had been proportionate to those aims. It followed that there had been no violation of the right of access to a court concerning both the action against Tunisia and the action against A.K., the then Tunisian Minister of the Interior.

Principal facts

The applicant, Abdennacer Naït-Liman, is a Tunisian national who has acquired Swiss nationality. He was born in 1962 and lives in Versoix in the Canton of Geneva.

According to the applicant, he was arrested on 22 April 1992 by the Italian police at his place of residence in Italy and taken to the Tunisian consulate in Genoa. He was presented with a bill of indictment according to which he represented a threat to Italian State security. He was then taken to Tunis by Tunisian agents. Mr Naït-Liman alleges that, from 24 April to 1 June 1992, he was arbitrarily detained and tortured in Tunis at the premises of the Ministry of the Interior on the orders of A.K., the then Minister of the Interior.

Following the alleged torture, Mr Naït-Liman fled Tunisia in 1993 for Switzerland, where he applied for political asylum. The Swiss authorities granted him asylum on 8 November 1995.

On 14 February 2001 Mr Naït-Liman lodged a criminal complaint with the Principal Public Prosecutor for the Canton of Geneva against A.K., while the latter was in hospital in Switzerland. Mr Naït-Liman applied to join the proceedings as a civil party seeking damages. On 19 February 2001 the Principal Public Prosecutor made an order discontinuing the proceedings on the grounds that A.K. had left Switzerland and the police had been unable to arrest him.

On 8 July 2004 the applicant lodged a claim for damages with the District Court against Tunisia and against A.K. The District Court declared the claim inadmissible on the ground that the court lacked territorial jurisdiction. It found that the Swiss courts did not have jurisdiction by necessity in the case at hand, owing to the lack of a sufficient link connecting the alleged facts with Switzerland. Mr Naït-Liman lodged an appeal with the Cantonal Court of Justice, which dismissed his claims on the

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

grounds that the defendants enjoyed immunity from jurisdiction. It referred to the Court's Grand Chamber judgment of 21 November 2001 in the case of [Al-Adsani v. the United Kingdom](#).

Mr Naït-Liman lodged an appeal with the Federal Court which was dismissed on 22 May 2007. The Federal Court considered that the Swiss courts in any event lacked territorial jurisdiction.

On 14 May 2007 Mr Naït-Liman obtained Swiss nationality from the town of Versoix, which confirmed its consent on 25 May 2007.

Complaints, procedure and composition of the Court

Relying on Article 6 § 1 (right of access to a court), Mr Naït-Liman complained of the fact that the Swiss courts had declined jurisdiction to examine the substance of his claim for damages in respect of the acts of torture to which he alleged that he had been subjected in Tunisia.

The application was lodged with the European Court of Human Rights on 20 November 2007.

Judgment was given by a Chamber of seven judges, composed as follows:

Işıl Karakaş (Turkey), *President*,
Nebojša Vučinić (Montenegro),
Helen Keller (Switzerland),
Paul Lemmens (Belgium),
Egidijus Kūris (Lithuania),
Robert Spano (Iceland),
Jon Fridrik Kjølbro (Denmark),

and also Stanley Naismith, *Section Registrar*.

Decision of the Court

Article 6 § 1

The Court found that the refusal to entertain Mr Naït-Liman's civil action had been aimed at ensuring the proper administration of justice. It shared the Government's view that universal jurisdiction, in a civil context, would risk creating considerable practical difficulties for the courts, particularly regarding the administration of evidence and the enforcement of such judicial decisions. Furthermore, the acceptance of universal jurisdiction would be liable to cause undesirable interference by a country in the internal affairs of another country. Accordingly, the Court concluded that the refusal of the Swiss courts to examine the substance of Mr Naït-Liman's action had pursued legitimate aims.

The Court reiterated that it was for the national authorities, particularly the courts, to interpret domestic law. It could not therefore call into question the assessment by the domestic authorities regarding alleged errors of law, save where these were arbitrary or manifestly unreasonable.

The Court observed that the decision of the domestic courts to decline jurisdiction was based on section 3 of the Federal Act on International Private Law ("the LDIP"). The Federal Court had concluded that there was no link between the applicant's claim and Switzerland, albeit that the Swiss authorities had granted him political asylum on 8 November 1995, precisely on account of the persecution suffered in his country of origin, and he had lived in Switzerland since then – that is, 11 and a half years – when the Federal Court had delivered its judgment on 22 May 2007.

The Federal Court's interpretation of section 3 of the LDIP was therefore not arbitrary. Moreover, the Swiss courts' decision that they lacked territorial jurisdiction did not appear unreasonable either having regard to the fact, observed by the Federal Court, that all the aspects of the case concerned

Tunisia. The Swiss authorities had been justified in having regard to the problems of administering evidence and enforcing judgments that would arise as a result of accepting jurisdiction in such circumstances. The Court found that the Federal Court had also been justified in finding that the fact that Mr Naït-Liman had settled in Switzerland after the events had not altered the decision to declare that the Swiss courts lacked jurisdiction, that fact being subsequent to the cause of action and not being part of it. Confirmation of Mr Naït-Liman's acquisition of Swiss nationality, on 25 May 2007, had been made after adoption of the Federal Court's judgment of 22 May 2007 and could not therefore be taken into account.

The Court observed that the respondent State was not bound to accept universal jurisdiction in a civil context, despite the absolute prohibition on torture in international law. The wording of Article 14 of the Convention against Torture ratified by Switzerland was not unequivocal as to its extraterritorial application. Although the Committee against Torture had indicated that the application of Article 14 was not limited to victims of torture committed on the territory of the State Party or by or against a national of that State, that approach had not been followed by the States Parties to that instrument.

The Court concluded that no convention obligation had obliged Switzerland to accept Mr Naït-Liman's civil action. Nor had the Swiss authorities been under such an obligation under customary law since there was clearly no practice of States in favour of the existence of civil universal jurisdiction. It concluded that there had therefore been no violation of Article 6 § 1.

The judgment is available only in French.

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Press contacts

echrpress@echr.coe.int | tel.: +33 3 90 21 42 08

Denis Lambert (tel: + 33 3 90 21 41 09)

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Nina Salomon (tel: + 33 3 90 21 49 79)

Inci Ertekin (tel: + 33 3 90 21 55 30)

The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.