

Complaint No. 396/2009 (*Gbadjavi v. Switzerland*)

Complaint No. 396/2009 (*Gbadjavi v. Switzerland*) concerned a national of Togo, residing in Switzerland, who claimed that his deportation to Togo would constitute a violation by Switzerland of article 3 of the Convention. In 1994, the complainant had joined the Union des Forces de Changement (UFC) as an active member of its security team. In 1999, he was detained by the gendarmerie for two months and repeatedly beaten and subjected to ill-treatment. The complainant left the country from 1999 to 2002 for Ghana and from 2003 to 2004 for Benin, both times after clashes with ruling party supporters, because he feared arrest, reprisals and/or being killed. In March 2006, the complainant and his sister were arrested and the complainant was taken by gendarmes to the office of the head of the Zébé camp. During questioning, he was asked about the nature of his relationship with a certain Mr. Olympio, who was suspected of instigating an attack on a gendarmerie camp in February 2006. The complainant was threatened with death and beaten during his time in detention. In April 2006, the complainant escaped from the prison after his brother-in-law bribed a guard. He went to Ghana, but, as he was afraid of being detained by the Togolese secret services in Ghana, he fled by plane to Italy under a false identity. He subsequently travelled to Switzerland, where he arrived in April 2006. In September 2006, the Federal Office for Migration rejected the claimant's asylum application and the subsequent appeals were also rejected. The Committee noted the complainant's claims that he was an active member of UFC, that his role was to protect party members, distribute leaflets and make statements, that he had been arrested on two occasions and that he had been tortured and held in inhuman conditions, as well as the complainant's argument that the situation in Togo had not improved for ordinary UFC members, who are at risk of being imprisoned and tortured. The Committee also noted the State party's challenge to the credibility of the complainant and its submission that even assuming that his testimony was credible, that did not constitute substantial grounds for believing that he would face torture if he returned to Togo. The Committee concluded that the return of the complainant to Togo would constitute a breach of article 3 of the Convention, taking into consideration the complainant's claim, as corroborated by a Swiss Refugee Council report, that members of the opposition UFC with a low political profile may still be subjected to Government reprisals and that those who fled Togo for Benin were viewed with greater suspicion. The Committee considered that the State party failed to properly assess the risk of torture when, at a later stage of the proceedings, the domestic courts rejected pieces of evidence such as a medical certificate which indicated a link between the claimant's state of health and the violations he allegedly suffered, without carrying out the necessary investigations. The Committee also took into account the current situation in Togo, where grave violations of human rights such as those perpetrated against representatives of opposition groups had still not been investigated and enjoyed impunity.