

# EQUALITY AND DISCRIMINATION - EQUALITY BEFORE THE LAW

## IV. CONCLUDING OBSERVATIONS

### CERD

- Greece, CERD, A/47/18 (1992) 28 at para. 92.

Bearing in mind the provision of article 2, paragraph 1 (c), of the Convention, the Government is called upon to revise its Nationality Act as far as it differentiates between ethnic Greeks and non-ethnic Greeks, together with any legal or administrative practices which relied on such a distinction.

- Austria, CERD, A/47/18 (1992) 48 at para. 198.

Under article 5 (e) (i) of the Convention, everyone must be guaranteed the right, without distinction as to race, to equality before the law in the enjoyment of the right to work. That guarantee must cover the private and public sectors. It is disturbing that in the State party, as in other parts of Europe, there are signs of an increase in racism, xenophobia and anti-Semitism, and readiness to ignore the rights of members of ethnic groups, including Jews.

- Canada, CERD, A/49/18 (1994) 47 at para. 328.

Legal provisions concerning human rights, at both the federal and provincial levels, should be harmonized to avoid any possible difference in treatment. Equality in access to and treatment by courts should be fully guaranteed. The Employment Equity Act should be extended to wider categories of workers, including federal civil servants, to improve the effectiveness of remedies in this field.

- Croatia, CERD, A/50/18 (1995) 36 at paras. 170, 173 and 175.

#### *Paragraph 170*

It is noted that the administration of the criminal justice system fails to address adequately crimes of an ethnic nature. Thus, there has been a failure to prosecute alleged perpetrators of crimes directed at ethnic Serbs and it is reliably reported that a number of Croatian Serbs have been unfairly prosecuted or excessively punished for alleged crimes against non-Serbs.

#### *Paragraph 173*

Note is taken of the provisions of the laws concerning naturalization and acquisition of citizenship

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and concern is expressed as to the great difficulties encountered in the process by many who are not of ethnic Croat origin.

### *Paragraph 175*

The State party should ensure that laws and regulations concerning, *inter alia*, naturalization, acquisition of citizenship, determination of refugee status and tenure of rented accommodation are implemented in a transparent non-discriminatory manner and in full conformity with the provisions of the Convention. Any victim of a discriminatory application of such rules and regulations in violation of the terms of the Convention should receive redress to the extent that this is possible.

- Nigeria, CERD, A/50/18 (1995) 101 at para. 628.

Particular concern is expressed that trial by Special Tribunals, some of them with no right of appeal, could counter the right to equality before the law without distinction as to ethnic origin, in accordance with article 5 of the Convention.

- United Kingdom of Great Britain and Northern Ireland, CERD, A/51/18 (1996) 35 at para. 229.

The legal framework prohibiting racial discrimination is weakened by the non-incorporation of the Convention into domestic legislation, the absence of a bill of rights espousing the principles of equality before the law and non-discrimination, and the lack of recourse of individuals to petition an international body such as the Committee. In addition, concern is expressed that the laws relevant to the implementation of the Convention do not appear to be uniformly applied throughout the territory of the United Kingdom; specifically, the Race Relations Act does not extend to Northern Ireland and some provisions of the Criminal Justice Act do not apply to Scotland.

- Namibia, CERD, A/51/18 (1996) 67 at para. 497.

Concern is expressed over the persistence of a dual legal system regulating important aspects of personal status, such as marriage and succession. There remain serious discrepancies in the systems applicable to white, coloured and black people under the Administration of Estate Act.

- United Kingdom of Great Britain and Northern Ireland, CERD, A/52/18 (1997) 9 at para. 38.

Concern is expressed at the fact that asylum claims may *a priori* be considered to be unfounded, and

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thus are dealt with more swiftly, when the claimants come from certain countries considered not to "generally give rise to a serious risk of persecution," and at the fact that no right of in-country appeal is granted to asylum seekers sent back to certain safe third countries. The definition of racial discrimination under article 1, paragraph 1, of the Convention includes the effect as well as the purpose of an act, and it is thus noted that the Asylum and Immigration Act of 1996, in its effects, may be contrary to the Convention.

- Mexico , CERD, A/52/18 91997) 42 at paras. 306 and 320.

### *Paragraph 306*

In certain situations an individual's right to enjoy equal treatment in the courts is not effectively guaranteed for members of indigenous groups. Specifically, they are not guaranteed the right to express themselves in their own language during legal proceedings.

### *Paragraph 320*

The State party should take all appropriate measures to ensure equal and impartial treatment before the law for all persons, and particularly those from indigenous groups. In particular, the authorities are invited to offer indigenous inhabitants the possibility of expressing themselves in their mother tongue in all judicial proceedings.

- Argentina, CERD, A/52/18 (1997) 69 at para. 555.

The State party is invited to take all measures within its power to expedite the ongoing proceedings in connection with the 1992 and 1994 anti-Semitic attacks. Attention is drawn to articles 5 (a) and 6 of the Convention in this regard.

- Lebanon, CERD, A/53/18 (1998) 42 at para. 174.

Concern is expressed with regard to the enjoyment by everyone to the right to equality before the law. In this regard, religious courts may pass judgements on some family issues which may be construed as discriminating against members of ethnic groups, including refugees and foreign workers.

- Costa Rica, CERD, A/54/18 (1999) 24 at para. 203.

The State party should make additional efforts to facilitate equal access to the courts and administrative bodies, in particular for the indigenous population, the black minority, refugees and

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immigrants, in order to ensure equality for all persons.

- Uruguay, CERD, A/54/18 (1999) 41 at para. 431.

The State party should make additional efforts to facilitate equal access to the courts and administrative bodies for persons belonging to the Afro-Uruguayan and indigenous communities in order to ensure equality of all persons.

- Azerbaijan, CERD, A/54/18 (1999) 46 at para. 499.

The State party should take further steps to facilitate equal access to the courts and administrative bodies for all persons belonging to ethnic minorities and provide information on the right to seek just and adequate reparation for any damage suffered as a result of racial discrimination.

- Slovenia, CERD, A/55/18 (2000) 45 at para. 244.

It is noted that different minority groups are provided by law with different protective measures in different areas of daily life, such as political representation, access to media, education and culture. Minority groups such as Croats, Serbs, Bosnians and Roma do not enjoy the same level of protection as the Italian and Hungarian minorities. In this connection, it is recommended that the State party, in accordance with article 2 of the Convention, ensure that persons or groups of persons belonging to other minority groups are not discriminated against.

- Iceland, CERD, A/56/18 (2001) 32 at para. 145.

The State party's positive efforts with regard to the prevention of ethnic discrimination are noted with appreciation. The efforts to ensure equal rights and protection from discrimination for the growing immigrant and foreign-born population are also noted.

- Sudan, CERD, A/56/18 (2001) 40 at para. 210.

With regard to articles 4, 5 and 6 of the Convention, the State party should continue its efforts to establish a domestic legal order giving full effect to the provisions of the Convention and ensure effective and equal protection remedies through the competent national tribunals and other State institutions against any acts of racial discrimination and related intolerances.

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- United States of America, CERD, A/56/18 (2001) 64 at paras. 395 and 396.

### *Paragraph 395*

It is noted with concern that the majority of federal, state and local prison and jail inmates are members of ethnic or national minorities, and that the incarceration rate is particularly high with regard to African-Americans and Hispanics. The State party should take firm action to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equal treatment before the courts and all other organs administering justice. Noting the socio-economic marginalization of a significant part of the African-American, Hispanic and Arab populations, it is further recommended that the State party ensure that the high incarceration rate is not a result of the economically, socially and educationally disadvantaged position of these groups.

### *Paragraph 396*

It is noted with concern that, according to the Special Rapporteur of the United Nations Commission on Human Rights on extrajudicial, summary or arbitrary executions, there is a disturbing correlation between race, both of the victim and the defendant, and the imposition of the death penalty, particularly in states like Alabama, Florida, Georgia, Louisiana, Mississippi and Texas. The State party is urged to ensure, possibly by imposing a moratorium, that no death penalty is imposed as a result of racial bias on the part of the prosecutors, judges, juries and lawyers or as a result of the economically, socially and educationally disadvantaged position of the convicted persons.

## **ICCPR**

- Latvia, ICCPR, A/50/40 vol. I (1995) 62 at para. 348.

Concern is expressed at the fact that the new Code of Criminal Procedure has not been enacted. The role of the Prosecutor under the Law on Prosecutor's Supervision, enacted on 19 May 1994, runs counter to the principle of equality of arms in criminal trials and does not protect the right to personal security in a proper way.

- Russian Federation, ICCPR, A/50/40 vol. I (1995) 65 at para. 394.

Greater efforts should be made to collect information on the situation of women and the effects on them of the structural political, economic and social changes taking place. On this basis, the Government should initiate or strengthen programmes aimed at providing assistance to women in difficult circumstances, including unemployed women, victims of domestic violence and victims of rape, with a view to ensuring their equality before the law and the equal protection of the law. In

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particular, it should consider allocating responsibility for that purpose to an appropriate high-level governmental body.

- Peru, ICCPR, A/52/40 vol. I (1997) 28 at para. 161.

It is noted with concern that when cases that might lead to a divorce are heard (physical or mental ill-treatment, serious injury and dishonourable conduct), the law instructs judges to take into consideration the education, habits and conduct of both spouses, a requirement that might easily lead to discrimination against women from the lower socio-economic strata.

- Georgia, ICCPR, A/52/40 vol. I (1997) 40 at para. 239.

In spite of the elimination of inequalities before the law, women continue to be the victims of unequal treatment and discrimination in the political, economic and social spheres.

- Lebanon, ICCPR, A/52/40 vol. I (1997) 53 at para. 348.

Legal and *de facto* discrimination continue to be matters of concern, including articles 487 to 489 of the Criminal Code, which impose harsher sentences for conviction of adultery on women than on men, nationality laws and the law which may restrict the right to leave the country for spouses in the absence of the consent of their husband (para. 9 of the report). These provisions are incompatible with articles 3 and 23 of the Covenant. Of equal concern is the compatibility of laws and regulations which do not allow Lebanese citizens to contract marriage other than in accordance with the laws and procedures of one of the recognized religious communities, and that these laws and procedures do not afford equality of rights to women.

- France, ICCPR, A/52/40 vol. I (1997) 62 at para. 411.

The declaration made by France concerning the prohibition, prescribed under article 27 of the Covenant, to deny ethnic, religious or linguistic minorities the right, in community with members of their group, to enjoy their own culture, to profess and practise their own religion or to use their own language is noted. The mere fact that equal rights are granted to all individuals and that all individuals are equal before the law does not preclude the existence in fact of minorities in a country, and their entitlement to the enjoyment of their culture, the practice of their religion or the use of their language in community with other members of their group.

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- India, ICCPR, A/52/40 vol. I (1997) 67 at para. 432.

Concern is expressed over the fact that women in India have not been accorded equality in the enjoyment of their rights and freedoms in accordance with articles 2, paragraph 1, 3 and 26 of the Covenant. Nor have they been freed from discrimination. Women remain underrepresented in public life and at the higher levels of the public service, and are subjected to personal laws which are based on religious norms and which do not accord equality in respect of marriage, divorce and inheritance rights. The enforcement of personal laws based on religion violates the right of women to equality before the law and non-discrimination. Therefore, efforts towards women's enjoyment of their rights without discrimination should be strengthened and personal laws that are fully compatible with the Covenant should be enacted.

- Sudan, ICCPR, A/53/40 vol. I (1998) 22 at para. 122.

Under customary arrangements a woman's consent to marriage is mediated by a guardian, and recourse has to be made to the courts to override any prohibition within the family on a woman's choice of a husband. Such restrictions, whether by practice or legislation, are incompatible with articles 3, 16, 23 and 26 of the Covenant. Therefore, the State party should repeal all legal provisions hindering women's free choice of spouse, as well as all other rules differentiating between men's and women's rights to marry and within marriage.

- Israel, ICCPR, A/53/40 vol. I (1998) 45 at para. 320.

The demolition of Arab homes as a means of punishment is deplored, as is the practice of demolitions, in part or in whole, of "illegally" constructed Arab homes. The difficulties imposed on Palestinian families seeking to obtain legitimate construction permits are noted with regret. The demolition of homes conflicts directly with the obligation of the State party to ensure without discrimination the right not to be subjected to arbitrary interference with one's home (article 17), the freedom to choose one's residence (article 12) and equality of all persons before the law and equal protection of the law (article 26).

- Morocco, ICCPR, A/55/40 vol. I (2000) 24 at paras. 98 and 99.

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### *Paragraph 98*

A high rate of female illiteracy underlines the lack of equal opportunity for women in all aspects of society. The extent of discrimination against Moroccan women in education; in employment; in public life; and in criminal and civil laws, including laws dealing with inheritance, marriage, divorce and family relations, including the questions of polygamy, repudiation of marriage, grounds for divorce, age of marriage and restrictions on marriage by Muslim women to non-Muslims, are matters of concern. The constitutional guarantees of women's equality extend only to political rights.

### *Paragraph 99*

Efforts should be intensified to overcome illiteracy, lack of education and all forms of discrimination against women, to implement fully the guarantee of equality contained in the Covenant (and in particular articles 2, paragraph 1, 3, 23, 25 and 26) and to ensure the equal enjoyment by women of all rights and freedoms.

- Kuwait, ICCPR, A/55/40 vol. I (2000) 65 at paras. 458, 468 and 469.

### *Paragraph 458*

That polygamy is still practised in Kuwait, that men and women who commit adultery are not treated equally, and that toleration of so-called "crimes of honour" adds to the existing inequality between the sexes, is of concern.

### *Paragraph 468*

Concern is expressed about the number of persons still detained under prison sentences handed down in 1991 by the Martial Law Courts. These trials did not meet the minimum standards set by article 14 of the Covenant, in particular the principles of equality before the courts, impartiality of the tribunal, the presumption of innocence, the right to have adequate time and facilities for the preparation of a defence, and other rights of due process under article 14, paragraphs 3 and 5, of the Covenant.

### *Paragraph 469*

The cases of persons still held under sentences described in the previous paragraph should be reviewed by an independent and impartial body, and compensation should be paid pursuant to articles 9, paragraph 5, and 14, paragraph 6, of the Covenant, where appropriate.

- Dominican Republic, ICCPR, A/56/40 vol. I (2001) 54 at para. 78(10).



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The fact that the National Police has its own judicial body, separate from that established by the Constitution, to try crimes and offences by its members, is deplored; this is incompatible with the principle of equality before the law protected by articles 14 and 2, paragraph 3, of the Covenant. The State party should ensure that the jurisdiction of the police tribunals is restricted to internal disciplinary matters and that their powers to try police officers accused of common crimes are transferred to the ordinary civilian courts.

### **ICESCR**

- Armenia, ICESCR, E/2000/22 (1999) 54 at para. 300.

Despite equality between men and women before the law, there are still discrepancies in practice in the enjoyment of economic, social and cultural rights by men and women. For instance, despite the high level of education enjoyed by women and the high number of professionally qualified women, the unemployment rate of women remains high and there is a relatively low percentage of women in high-level positions, particularly in Parliament.

- Congo, ICESCR, E/2001/22 (2000) 43 at para. 202.

Deep concern is expressed about discrimination against women. Marriage and family laws overtly discriminate against women (for instance, adultery is illegal for women but, in certain circumstances, not for men; while the Legal Code provides that 30 per cent of the deceased husband's estate goes to the wife, in practice the wife often loses all rights of inheritance). Domestic violence, including rape and beatings, is widespread but rarely reported, and there are no legal provisions for punishing the offenders.

### **CEDAW**

- Madagascar, CEDAW, A/49/38 (1994) 45 at para. 240.

The two unequal laws on adultery should be abolished. Those laws are very discriminatory. The law on inheritance also needs urgent review to ensure that a woman's right to inherit is equal to that of a man.

- Slovakia, CEDAW, A/53/38/Rev.1 part II (1998) 55 at para. 80.

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Procedures designed to permit prosecution of violence against women independent of victim testimony should be implemented and the requirement that the complainant's evidence be corroborated should be omitted; crisis centre hotlines and victim support centres equipped with medical, psychological and emotional support should be established; and, in order to raise public awareness, information on this issue should be disseminated through the media.

- Chile, CEDAW, A/54/38/Rev.1 part II (1999) 64 at para. 222.

The Government should introduce and vigorously support legislation which permits divorce, allows women to remarry after divorce, and grants women and men the same rights to administer property during marriage and equal rights to property on divorce. Women should also be granted the right to initiate divorce on the same terms as men.

- Republic of Moldova, CEDAW, A/55/38 part II (2000) 56 at paras. 91 and 92.

### *Paragraph 91*

Although the Constitution provides for the equality of all citizens before the law and public authorities, including on grounds of sex, concern is expressed that it does not reflect the definition of discrimination in article 1 of the Convention, which prohibits both direct and indirect discrimination. Concern is also expressed about the status of the Convention in domestic law, and whether its provisions can be directly invoked before the Courts. The lack of information provided about remedies available to women for redress of violations of their rights protected under the Convention, is a further matter of concern.

### *Paragraph 92*

The Government should encourage a constitutional amendment to incorporate equality on the basis of sex in the Constitution and to reflect fully article 1 of the Convention. The Government is requested to clarify the status of the Convention in domestic law, and to ensure, through legal education and continuing professional training, that judicial officers are aware of the Convention.

- Iraq, CEDAW, A/55/38 part II (2000) 66 at paras. 182 and 183.

### *Paragraph 182*

While article 19, subparagraph (a), of the Constitution of 1970 provides for equality of all citizens before the law without discrimination, including discrimination on the basis of sex, concern is expressed that it does not specifically prohibit discrimination that has the effect or purpose of adversely affecting women's human rights. The fact that article 19, subparagraph (b), grants equal

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opportunities to all citizens “within the limits of the law”, thus restricting the guarantee of article 19, subparagraph (a), in particular for women, is also of concern.

### *Paragraph 183*

The Government should encourage a constitutional amendment which reflects fully article 1 of the Convention. The Government is also encouraged to undertake a comprehensive legislative review with a view to bringing all legislation into full conformity with the Convention.

- Egypt, CEDAW, A/56/38 part I (2001) 33 at paras. 346 and 347.

### *Paragraph 346*

Several provisions of the Penal Code discriminate against women. In particular, in the case of murder following the crime of adultery, men and women are not treated equally. In addition, prostitutes are penalized, while their clients are not.

### *Paragraph 347*

Any discriminatory penal provisions should be eliminated in accordance with the Constitution and the Convention.

- The Netherlands, CEDAW, A/56/38 part II (2001) 63 at para. 196.

The Government is commended on its conceptual approach to the implementation of each article of the Convention which incorporates, wherever possible, three policy levels: achievement of complete equality for women before the law; improvement of the position of women; and efforts to confront the dominant gender-based ideology.

## **CRC**

- Jordan, CRC, CRC/C/97 (2000) 31 at paras. 175 and 176.

### *Paragraph 175*

The infringement of a child’s rights under the Convention as a result of indirect discrimination, or discrimination against his or her mother (e.g. in relation to custody, guardianship and nationality) is incompatible with article 2.

### *Paragraph 176*

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In accordance with the concluding observations of the Human Rights Committee, the Committee on the Elimination of Discrimination against Women, its own previous concluding observations and with article 2 of the Convention, effective measures should be taken to prevent and eliminate discrimination on the grounds of sex and birth status in all fields of civil, economic, political, social and cultural life. The State party should incorporate equality on the basis of sex in article 6 of the Constitution. All efforts should be made to enact or rescind civil and criminal legislation, where necessary, to prohibit any such discrimination. In this regard, the State party is encouraged to consider the practice of other States that have been successful in reconciling fundamental rights with Islamic texts. All appropriate measures, such as comprehensive public education campaigns, should be taken to prevent and combat negative societal attitudes in this regard, particularly within the family. Religious leaders should be mobilized to support such efforts.