

EXTRADITION

IV. CONCLUDING OBSERVATIONS

ICCPR

- Portugal (Macau), ICCPR, A/52/40 vol. I (1997) 50 at para. 313.

It is noted with appreciation that the domestic law, as interpreted by the Superior Court of Justice, prohibits extradition to a country where the person concerned may be sentenced to death.

- Italy, ICCPR, A/53/40 vol. I (1998) 50 at para. 331.

The Committee is pleased to note that the Constitutional Court, in 1996, reinforced the right to life by declaring unconstitutional the law ratifying a treaty of extradition on the grounds that there was no absolute guarantee in law that the person concerned would not be executed.

- Belgium, ICCPR, A/54/40 vol. I (1999) 26 at para. 75.

Assurances that extradition procedures are suspended until asylum determination procedures are concluded are welcomed.

- Canada, ICCPR, A/54/40 vol. I (1999) 48 at para. 235.

Concern is expressed that Canada takes the position that compelling security interests may be invoked as a justification of the removal of aliens to countries where they may face a substantial risk of torture or cruel, inhuman or degrading treatment. Canada should revise this policy in order to comply with the requirements of article 7 and its obligation never to expel, extradite, deport or otherwise remove a person to a place where treatment or punishment contrary to article 7 is a substantial risk.

- Portugal (Macau), ICCPR, A/55/40 vol. I (2000) 33 at paras. 177 and 178.

Paragraph 177

Concern is expressed that no firm agreement has been reached on the transfer of residents of the Macau Special Administrative Region to face trial in other jurisdictions in China, or their extradition to other countries in cases where they may face heavier penalties than those laid down in the Macau Penal Code, including the death penalty.

EXTRADITION

Paragraph 178

The Committee reiterates that Macau residents enjoy the protection of the Covenant and should not lose that protection by being transferred to other jurisdictions.

- Uzbekistan, ICCPR, A/56/40 vol. I (2001) 59 at para. 79(13).

That there is no prohibition on the extradition or expulsion of individuals, including those seeking asylum in Uzbekistan, to countries where they may be exposed to the risk of the death penalty, torture or to cruel, inhuman or degrading treatment or punishment, is of concern. The State party should ensure that individuals who claim that they will be subjected to torture, inhuman or degrading treatment, or the death penalty in the receiving state, have the opportunity to seek protection in Uzbekistan or at least assured of *non-refoulement* (arts. 6 and 7 of the Covenant).

CAT

- Chile, CAT, A/46/46 (1991) 44 at para. 262.

It is stressed that the concepts of civil and criminal liability are very different and that, in the absence of a criminal conviction, the State might still be held liable to compensate a victim of torture for the acts committed. Also, in accordance with article 6 of the Convention, a person accused of an act of torture should be detained in order to give other states time to submit a request for extradition.

- Switzerland, CAT, A/49/44 (1994) 20 at paras. 134 and 135.

Paragraph 134

While welcoming the view that the right of non-return is a basic right, certain provisions of the legislation on the right to asylum, which may authorize return and extradition to States in which the applicant is genuinely at risk of being subjected to torture, are of concern.

Paragraph 135

It is essential that any asylum-seeker whose case is being considered, with a view to return or regularization of his situation, should be treated with due consideration for his dignity and should be protected against any measure that deprives him of his liberty.

- Colombia, CAT, A/51/44 (1996) 15 at para. 81.

The State party should bring domestic legislation into line with the obligations of the Convention

EXTRADITION

with regard to the non-return or expulsion of anyone who fears being subjected to torture, the extraterritorial and universal application of the law, extradition and the express invalidity of evidence obtained under torture.

See also:

- Mauritius, CAT, A/54/44 (1999) 15 at para. 123.

- Armenia, CAT, A/51/44 (1996) 17 at para. 98.

Legal and practical measures should be taken to guarantee that a person not be expelled, returned (*refoulé*) or extradited to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

- Finland, CAT, A/51/44 (1996) 21 at para. 136.

Legal protection should be provided to those persons who requested asylum and who are sent back to a country included in the list of safe countries, by decision of the competent authority. Decisions on expulsion, return (*refoulement*) or extradition should take into account the provisions of article 3 of the Convention.

- Paraguay, CAT, A/52/44 (1997) 30 at para. 204.

The fact that domestic law includes insufficient provisions prohibiting the expulsion, *refoulement* or extradition of a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture is of concern. The Constitution extends such protection only to those granted political asylum.

- Namibia, CAT, A/52/44 (1997) 35 at para. 249.

Proper procedures should be instituted in order to comply with article 3 of the Convention, i.e. to enable refugees to apply for residence in cases where substantial grounds exist for believing that they would be in danger of being subjected to torture if expelled, returned or extradited to another country.

- France, CAT, A/53/44 (1998) 15 at para. 145.

EXTRADITION

Article 3 of the Convention applies equally to expulsion, *refoulement* and extradition. The possibility of lodging a suspensive appeal against a refusal to allow entry and subsequent *refoulement* should exist.

- Tunisia, CAT, A/54/44 (1999) 11 at para. 101.

The fact that the State party does not accede to requests of extradition of political refugees is noted. Concern is expressed that this should not be the only exception for refusal of extradition.

- Venezuela, CAT, A/54/44 (1999) 16 at para. 146.

For the purposes of the improved consideration of the advisability of applying article 3 of the Convention to a particular case, it would appear appropriate for questions of passive extradition to be considered at two instances.

- Libyan Arab Jamahiriya, CAT, A/54/44 (1999) 20 at para. 183.

The fact that the State party had, in one incident, extradited persons to a country where there are substantial grounds for believing that they are in danger of being subjected to torture is of concern. The State party was not legally obliged to do so.

- Uzbekistan, CAT, A/55/44 (2000) 19 at paras. 80 and 81.

Paragraph 80

The lack of a formal prohibition of the expulsion, return or extradition of a person to another State where he runs the risk of being subjected to torture, in accordance with article 3 of the Convention, is of concern.

Paragraph 81

The State party should formally prohibit the expulsion, return or extradition of persons to a State where they would be in danger of being subjected to torture.

- Poland, CAT, A/55/44 (2000) 21 at para. 89.

EXTRADITION

Concern is expressed that the new Penal Code does not include the "danger of exposure to torture" as one of the grounds for the refusal of extradition, as is required by article 3 of the Convention.

- El Salvador, CAT, A/55/44 (2000) 28 at paras. 157, 158, 163 and 169.

Paragraph 157

The promulgation and effective observance of the new Penal Code and Code of Criminal Procedure, whose provisions include important guarantees for the protection of fundamental human rights, should contribute to better fulfilment of the State's obligations under the Convention.

Paragraph 158

Among those provisions, particular importance is attached to several, including the obligation for national courts to judge individuals charged with offences affecting internationally protected property, in the event that their extradition is rejected.

Paragraph 163

There are no legal provisions opposing expulsion, return or extradition when there are substantial grounds for believing that the person concerned would be in danger of being subjected to torture.

Paragraph 169

Legal provisions should be introduced opposing expulsion, return or extradition in circumstances referred to in article 3 of the Convention.

- Australia, CAT, A/56/44 (2001) 22 at paras. 52 and 53

Paragraph 52

Concern is expressed about the apparent lack of appropriate review mechanisms for ministerial decisions in respect of cases coming under article 3 of the Convention.

Paragraph 53

The State party should consider the desirability of providing a mechanism for independent review of ministerial decisions in respect of cases coming under article 3 of the Convention.

- Canada, CAT, A/56/44 (2001) 24 at paras. 58 and 59.

Paragraph 58

EXTRADITION

Concern is expressed over the following:

The position of the State party in arguments before courts, and in policies and practices that, when a person is considered a serious criminal or security risk, the person can be returned to another state even where there are substantial grounds for believing that the individual would be subjected to torture, an action which would not be in conformity with the absolute character of the provisions of Article 3(1) of the Convention.

The lack of adequate measures taken in regards to breaches of the norms of the Convention as required by article 7(1)

Paragraph 59

It is recommended that the State party:

Comply fully with article 3(1) of the Convention prohibiting return of a person to another state where there are substantial grounds for believing that the individual would be subjected to torture, whether or not the individual is a serious criminal or security risk.

Prosecute every case of an alleged torturer in a territory under its jurisdiction where it does not extradite that person and the evidence warrants it, and prior to any deportation.

- Cameroon, CAT, A/56/44 (2001) 28 at para. 63.

The scrupulous respect shown by the courts and political authorities in Cameroon for the State party's obligations under article 3 of the Convention, thus ensuring that a person was not extradited to a country where he was in danger of being subjected to torture or sentenced to death is noted with satisfaction.

- Slovakia, CAT, A/56/44 (2001) 43 at paras. 104 and 105.

Paragraph 104

Concern is expressed about exceptions to the guarantees of article 3, regarding the return of persons at risk of torture, in contradiction to the absolute prohibition of article 3.

Paragraph 105

Clear guidelines should be provided on the prohibition against torture and ill-treatment and the prohibition on returning persons facing a probable risk of torture.