

EXTRADITION

IV. CONCLUDING OBSERVATIONS, CONTINUED

ICCPR

- Liechtenstein, ICCPR, A/59/40 vol. I (2004) 61 at para. 73(4).

(4) The Committee welcomes the State party's commitment not to extradite an individual to a State where he or she might face a capital sentence.
- Finland, ICCPR, A/60/40 vol. I (2004) 22 at para. 81(4).

(4) The Committee is pleased to observe the State party's concern to integrate human rights into action to combat terrorism, in part by maintaining an outright ban on extradition, *refoulement* or expulsion to a country where the individual concerned might be exposed to the death penalty and violations of articles 6 and 7 of the Covenant.
- Iceland, ICCPR, A/60/40 vol. I (2005) 50 at para. 87(7).

(7) The Committee is pleased to observe the State party's concern to integrate human rights into actions to combat terrorism, in part by maintaining an outright ban on extradition, *refoulement* or expulsion to a country where the individual concerned might be exposed to the death penalty and violations of articles 7 and 9 of the Covenant.
- Uzbekistan, ICCPR, A/60/40 vol. I (2005) 56 at para. 89(12).

(12) The Committee is concerned that there is no law governing expulsion of foreigners from Uzbekistan and that expulsion and extradition are regulated by bilateral agreements, which may allow for the expulsion of aliens even if they may be subjected to torture or ill-treatment in the receiving country (Covenant, arts. 7 and 13).

The State party should adopt the necessary norms to prohibit the extradition, expulsion, deportation or forcible return of aliens to a country where they would be at risk of torture or ill-treatment, and should establish a mechanism allowing aliens who claim that forced removal would put them at risk of torture or ill-treatment to file appeals with suspensive effect.

EXTRADITION

- Thailand, ICCPR, A/60/40 vol. I (2005) 83 at para. 95(17).

(17) While acknowledging the delegation's assurances that the Provincial Admission Board is in the process of being established, the Committee notes with concern the lack of a systematic adjudication procedure for asylum-seekers... Finally, the Committee notes with concern that the current screening and expulsion procedures contain no provisions guaranteeing respect for the rights protected by the Covenant (arts. 7 and 13).

The State party should establish a mechanism to prohibit the extradition, expulsion, deportation or forcible return of aliens to a country where they would be at risk of torture or ill-treatment, including the right to judicial review with suspensive effect. The State party should observe its obligation to respect a fundamental principle of international law, the principle of *non-refoulement*.

CAT

- Indonesia, CAT, A/57/44 (2002) 22 at paras. 44 and 45.

44. The Committee...expresses its concern about the following:

...

(g) Insufficient legal protection ensuring, as set out in article 3 of the Convention, that no person can be expelled, returned or extradited to another State where he/she would be in danger of being subjected to torture;

...

45. The Committee recommends that the State party:

...

(i) Ensure that no person can be expelled, returned, or extradited to another State where there are substantial grounds for believing that that person would be in danger of being subjected to torture, in accordance with article 3;

...

See also:

- Russian Federation, CAT, A/57/44 (2002) 42 at para. 94.

- Ukraine, CAT, A/57/44 (2002) 31 at para. 58.

58. The Committee recommends that the State party:

...

(c) Ensure that its competent authorities strictly observe the principle enshrined in article 3 of the Convention not to expel, return or extradite a person to a State where he/she might

EXTRADITION

be subject to torture;

(d) Establish its jurisdiction over offences of torture even if the offender is not a national of the State party, but is present in any territory under its jurisdiction and, where it does not exercise jurisdiction that it extradite the offender;

...

- Zambia, CAT, A/57/44 (2002) 34 at para. 64.

64. The Committee notes with concern that the State party has neither incorporated the Convention into its legislation nor introduced corresponding provisions in respect of several articles, in particular:

...

(d) Recognition of torture as an extraditable offence (art. 8);

...

- Saudi Arabia, CAT, A/57/44 (2002) at paras. 100 and 101.

100. The Committee is concerned about the following:

...

(g) Cases of deportation of foreigners that have been drawn to the Committee's attention that seem to have been in breach of the obligations imposed by article 3 of the Convention;

...

101. The Committee recommends, in particular, that the State party:

...

(e) Ensure that its law and practice reflect the obligations imposed by article 3 of the Convention;

...

- Uzbekistan, CAT, A/57/44 (2002) 54 at paras. 115 and 116.

115. The Committee expresses concern about the following:

...

(j) The extradition or expulsion of individuals, including those seeking asylum in Uzbekistan, to countries where they may be exposed to the risk of torture.

...

116. The Committee recommends that the State party:

...

(k) Ensure in the legislation and in practice that no one will be expelled, returned or

EXTRADITION

extradited to a State where there are substantial grounds for believing that he/she would be in danger of being subjected to torture;

...

- Venezuela, CAT, A/58/44 (2002) 32 at para. 76.

76. The Committee welcomes with satisfaction the entry into force on 30 December 1999 of the new Constitution of the Bolivarian Republic of Venezuela, which demonstrates progress in human rights. In particular, the Committee considers as positive the following aspects of the Constitution:

...

(h) It makes compulsory the extradition of persons charged with human rights offences and makes provision for a brief, public, oral procedure for trying them.

- Azerbaijan, CAT, A/58/44 (2003) 36 at paras. 88 and 89.

88. The Committee is concerned about:

...

(c) The lack of information on the implementation of article 3 of the Convention regarding the transfer of a person to a country where he/she faces a real risk of torture, and on the rights and guarantees granted to the persons concerned;

...

89. The Committee recommends that the State party:

...

(i) Ensure that all persons have the right to review of any decision about his/her extradition to a country where he/she faces a real risk of torture;

...

- Cambodia, CAT, A/58/44 (2003) 40 at paras. 98 and 99.

98. The Committee is concerned about the following:

...

(b) Allegations regarding the expulsion of foreigners that seem to have occurred without taking into consideration the safeguards contained in article 3 of the Convention and, in particular, the situation of large numbers of Montagnard asylum-seekers in the Cambodian-Vietnamese border area;

...

99. The Committee recommends that the State party:

...

EXTRADITION

(e) Take all the necessary measures to ensure that the requirement of article 3 of the Convention is taken into consideration when deciding on the expulsion, return or extradition of foreigners;

...

- Republic of Moldova, CAT, A/58/44 (2003) 53 at paras. 138 and 139.

138. The Committee expresses concern about:

...

(k) Allegations regarding the expulsion of aliens that seem to occur without taking into consideration the safeguards contained in article 3 of the Convention;

...

139. The Committee recommends that the State party:

...

(h) Take measures to ensure that the requirement of article 3 of the Convention is taken into consideration when deciding on the expulsion, return or extradition of aliens;

...

- Lithuania, CAT, A/59/44 (2003) 52 at paras. 109 and 110.

109. The Committee expresses concern about the following:

...

(d) Procedures related to expulsion of foreigners which in some instances may be in breach of article 3; the conditions in the facilities where foreigners awaiting expulsion are kept and the absence of data on the age, sex and country of destination of expelled foreigners or stateless persons, specifically those at the Foreigners Registration Centre;

...

110. The Committee recommends that the State party:

...

(g) Ensure that the competent authorities strictly observe article 3 of the Convention and do not expel, return or extradite a person to a State where he/she might be subjected to torture. The Committee urges the State party to intensify efforts to ensure that holding facilities for foreigners meet international standards...

...

- Chile, CAT, A/59/44 (2004) 28 at paras. 56 and 57.

56. The Committee expresses concern about the following:

EXTRADITION

...

(f) The absence of internal legal provisions that expressly prohibit extradition, return, or expulsion when there are grounds for believing the person may be subjected to torture in the requesting country, and the absence of internal provisions regulating the implementation of articles 5, 6, 7, and 8 of the Convention;

...

57. The Committee recommends that the State party should:

...

(g) Adopt specific legislation to prohibit extradition, return, or expulsion to countries where a person may be in danger of being subjected to torture;

...

- Germany, CAT, A/59/44 (2004) 45 at paras. 91 and 92.

91. The Committee expresses its concern at:

...

(d) The fact that, owing to perceived constitutional difficulties arising from the division of powers between federal and Länder authorities, measures taken at the federal level to enhance compliance with the Convention are not applicable to relevant activities of the Länder. Thus, the comprehensive federal rules regarding forcible return by air, while applicable to returns carried out by the Federal Border Police (*Bundesgrenzschutz*), are not applicable to returns carried out by Länder authorities;

...

92. The Committee recommends that:

...

(c) The State party take such measures as are appropriately within its power with respect to the authorities of the Länder to ensure the adoption and general application of measures which have proven efficacious at the federal level in improving compliance with the Convention, such as the federal rules on forcible return by air;

...

(e) The State party provide the Committee with details on how many cases of extradition or removal subject to receipt of diplomatic assurances or guarantees have occurred since 11 September 2001, what the State party's minimum requirements are for the content of such assurances or guarantees and what measures of subsequent monitoring it has undertaken in such cases;

...

(h) The State party consider making more active use of the Convention's extradition mechanisms with respect to German nationals who are alleged to have engaged, or to be complicit, in acts of torture abroad or in which German nationals are alleged to be victims;

...

EXTRADITION

- New Zealand, CAT, A/59/44 (2004) 61 at para. 133.

133. The Committee notes with appreciation:

(a) The adoption of the 1999 Extradition Act, responding to the Committee's previous recommendations;

...

- Argentina, CAT, A/60/44 (2004) 12 at para. 31.

31. The Committee welcomes with satisfaction the efforts made by the State party to combat impunity in respect of crimes against humanity committed under the military dictatorship, and in particular:

...

(c) The repeal in 2003 of executive decree No. 1581/01, which required the automatic rejection of requests for extradition in cases involving serious and flagrant violations of human rights under the military dictatorship.

- United Kingdom of Great Britain and Northern Ireland (Crown Dependencies and Overseas Territories), CAT, A/60/44 (2004) 16 at paras. 39 and 40.

39. The Committee expresses its concern at:

...

(d) The State party's reported use of diplomatic assurances in the "*refoulement*" context in circumstances where its minimum standards for such assurances, including effective post-return monitoring arrangements and appropriate due process guarantees followed, are not wholly clear and thus cannot be assessed for compatibility with article 3 of the Convention;

...

40. The Committee recommends that:

...

(c) The State party should reassess its extradition mechanism insofar as it provides for the Home Secretary to make determinations on issues such as medical fitness for trial which would more appropriately be dealt with by the courts;

...

(e) The State party should apply articles 2 and/or 3 of the Convention, as appropriate, to transfers of a detainee within a State party's custody to the custody whether *de facto* or *de jure* of any other State;

...

(i) The State party should provide the Committee with details on how many cases of extradition or removal subject to receipt of diplomatic assurances or guarantees have

EXTRADITION

occurred since 11 September 2001, what the State party's minimum contents are for such assurances or guarantees and what measures of subsequent monitoring it has undertaken in such cases;

...

- Greece, CAT, A/60/44 (2004) 20 at paras. 47 and 48.

47. The Committee notes that many of the concerns it expressed during the consideration of the third periodic report (A/56/44, para. 87) have not been adequately addressed, and will be reiterated in the present concluding observations. Consequently, the Committee expresses its concern at:

...

(b) Procedures related to the expulsion of foreigners which in some instances may be in breach of the Convention... The Committee acknowledges that owing to its geographic location Greece has become an important passageway into Europe for many immigrants and asylum-seekers, the number of which has increased significantly in the past decade. The importance of providing an adequate response is therefore all the more pressing;

...

48. The Committee recommends that the State party:

...

(c) Ensure that the competent authorities strictly observe article 3 of the Convention and, in doing so, that they take account of general comment No. 1 (1996) of the Committee, in which the Committee notes that it "is of the view that the phrase 'another State' in article 3 refers to the State to which the individual concerned is being expelled, returned or extradited, as well as to any State to which the complainant may subsequently be expelled, returned or extradited" (para. 2);

...

- Canada, CAT, A/60/44 (2005) 25 at paras. 57 and 58.

57. The Committee expresses its concern at:

(a) The failure of the Supreme Court of Canada, in *Suresh v. Minister of Citizenship and Immigration*, to recognize at the level of domestic law the absolute nature of the protection of article 3 of the Convention, which is not subject to any exception whatsoever;

...

58. The Committee recommends that:

(a) The State party unconditionally undertake to respect the absolute nature of article 3 in all circumstances and fully to incorporate the provision of article 3 into the State party's

EXTRADITION

domestic law;

...

(e) Given the absolute nature of the prohibition against *refoulement* contained in article 3 of the Convention, the State party should provide the Committee with details on how many cases of extradition or removal subject to receipt of “diplomatic assurances” or guarantees have occurred since 11 September 2001, what the State party’s minimum requirements are for such assurances or guarantees, what measures of subsequent monitoring it has undertaken in such cases and the legal enforceability of the assurances or guarantees given;

...

- Switzerland, CAT, A/60/44 (2005) 28 at paras. 64 and 65.

64. The Committee expresses concern regarding the following:

...

(c) The Federal Act on Administrative Procedure does not explicitly include the findings of the Committee in respect of an individual complaint concerning a violation of article 3 of the Convention as constituting, in itself, grounds for a review of a case. The Committee notes, however, that the finding will provide the basis for reappraisal when new facts or evidence are adduced during the proceedings;

(d) In order for a person to invoke article 3 of the Convention, the Committee notes that the standards of proof required by the State party exceed the standards required by the Convention. The Committee wishes to draw the attention of the State party to its general comment No. 1 (1996) stating 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 (para. 6)”;

...

65. The Committee recommends that the State party:

...

(c) Take measures to ensure that a finding of this Committee of a violation of article 3 be considered as sufficient grounds to review a case;

(d) Ensure compliance with the requirements of article 3, including the proper test of proof, or the risk of torture, when determining whether to expel, return or extradite a person to another State;

...