

LEGAL RIGHTS - CRIMINAL - Right to Appeal

IV. CONCLUDING OBSERVATIONS

CERD

- 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.

- Ukraine, CERD, A/56/18 (2001) 61 at para. 363.

The continuing efforts of the State party to reform its legislation, including its Criminal Code, the abolition of the death penalty and the creation of an appeals court system, and in particular the State party's recent adoption of the Law of Refugees of January 2000, the Citizenship Law of January 2001 and the Law of Immigration of June 2001 are noted with satisfaction.

ICCPR

- Venezuela, ICCPR, A/48/40 vol. I (1993) 61 at para. 309.

Concern is expressed over the application of article 35 of the Aliens Act, which does not provide for any possibility of appeal.

- Norway, ICCPR, A/49/40 vol. I (1994) 21 at para. 96.

A careful study of the recently enacted amendment to the Criminal Procedure Act should be undertaken with regard to the scope of article 14, paragraph 5, of the Covenant, with a view to withdrawing the reservation made in that connection.

- Cameroon, ICCPR, A/49/40 vol. I (1994) 36 at para. 204.

The Cameroonian authorities are invited to modify their legislation applicable to administrative detention so as to make it limited in time and subject to appeal in accordance with article 9, paragraph 4, of the Covenant.

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- Azerbaijan, ICCPR, A/49/40 vol. I (1994) 50 at paras. 299 and 306.

Paragraph 299

The number of death sentences pronounced and the lack of any appeal procedure for persons under sentence of death is of concern.

Paragraph 306

The use of the death penalty should be reduced and provision should be made for the right to appeal against a death sentence.

- Sweden, ICCPR, A/51/40 vol. I (1996) 17 at para. 89.

The amendment to the Code on Judicial Procedure stipulating that in certain cases both the convicted person and the public prosecutor need leave to appeal to the Court against a decision in a criminal case may in certain circumstances raise the question of compatibility with article 14, paragraph 5, of the Covenant.

- Spain, ICCPR, A/51/40 vol. I (1996) 24 at paras. 178 and 185.

Paragraph 178

The maintenance on a continuous basis of special legislation, under which persons suspected of belonging to or collaborating with armed groups may be detained incommunicado for up to five days, may not have a lawyer of their own choosing and are judged by the Audiencia Nacional without possibility of appeal, is of concern.

Paragraph 185

The right of appeal against decisions of the Audiencia Nacional should be instituted.

- Nigeria, ICCPR, A/51/40 vol. I (1996) 37 at paras. 261, 265 and 297.

Paragraph 261

The establishment by presidential decree of several types of special tribunals, including their composition and rules of procedure which exclude the free choice of a lawyer, and the absence of any provisions for appeals, constitute violations of the rights provided under article 14.

Paragraph 265

Urgent steps should be taken to ensure that persons facing trials are afforded all the guarantees of a fair trial as explicitly provided for in article 14 (1), (2) and (3) and can have their conviction and

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sentence reviewed by a higher tribunal in accordance with article 14 (5) of the Covenant.

Paragraph 297

Abolition of the death penalty should be considered. Until its abolition, the State party must ensure that the application of the death penalty is strictly limited to the most serious crimes as required by article 6 (2) of the Covenant, and that the number of crimes for which the death penalty is imposed is reduced to the minimum. Urgent steps should be taken to ensure that persons facing trials are afforded all the guarantees of a fair trial as explicitly provided for in article 14 (1), (2) and (3) of the Covenant and can have their conviction and sentence reviewed by a higher tribunal in accordance with article 14 (5) of the Covenant.

- Peru, ICCPR, A/51/40 vol. I (1996) 48 at paras. 351 and 363.

Paragraph 351

The absence of systematic review of the convictions pronounced as a result of trials before the military courts, which have not met the requirement of a fair trial, is of concern.

Paragraph 363

The Government of Peru should ensure that all trials are conducted with full respect for the safeguards of fair trial provided by article 14 of the Covenant, including in particular the right to communicate with counsel and the right to have time and facilities to prepare the defence and the right to have the conviction reviewed.

- Georgia, ICCPR, A/52/40 vol. I (1997) 40 at paras. 240 and 258.

Paragraph 240

The fact that some capital sentences appear to have been imposed in cases where confessions were obtained under torture or duress or following trials where the guarantees provided under article 14 of the Covenant were not respected, particularly the right to have a case reviewed by a higher court (art. 14, para. 5, of the Covenant), is deplored.

Paragraph 258

The creation of an independent legal profession is a necessary precondition for the effective enjoyment of the right to defence and the right to appeal.

- France, ICCPR, A/52/40 vol. I (1997) 62 at para. 410.

The continued application of the anti-terrorist laws which provide for a centralized court with

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prosecutors having special powers of arrest, search and prolonged detention in police custody for up to four days (twice the normal length), and according to which an accused does not have the same rights in the determination of guilt as in the ordinary courts, is of concern. That there is no appeal provided for against the decisions of the Special Court is also of concern. In the circumstances, anti-terrorist laws, which appear to be necessary to combat terrorism, should be brought fully into conformity with the requirements of articles 9 and 14 of the Covenant.

- Jamaica, ICCPR, A/53/40 vol. I (1998) 15 at para. 85.

Further efforts should be made to reduce delays in the hearing of cases. This applies in particular to the delays between dismissal of capital appeals by the Court of Appeal of Jamaica and the hearing of a petition for special leave to appeal by the Judicial Committee of the Privy Council. The appropriate legal provisions should be adopted to ensure prompt issue of a reasoned judgement by the Court of Appeal.

- Iraq, ICCPR, A/53/40 vol. I (1998) 18 at para. 104.

It is noted with concern that special courts, which may impose the death penalty, do not provide for all procedural guarantees required by article 14 of the Covenant, and in particular the right of appeal. It is also noted that in addition to the list of offences which are under the jurisdiction of the special courts, the Minister of the Interior and the Office of the President of the Republic have discretionary authority to refer any other cases to these courts. Courts exercising criminal jurisdiction should not be constituted other than by independent and impartial judges, in accordance with article 14, paragraph 1, of the Covenant. The jurisdiction of such courts should be strictly defined by law and all procedural safeguards protected by article 14, including the right of appeal, should be fully respected.

- Sudan, ICCPR, A/53/40 vol. I (1998) 22 at para. 127.

Training should be given to judges on appropriate penalties and on procedural safeguards which must be observed. Lashes should be excluded as a punishment, and an appellate procedure should be introduced to review convictions and sentences.

- Morocco, ICCPR, A/55/40 vol. I (2000) 24 at para. 111.

Appropriate legislation should be adopted so as to guarantee the presumption of innocence and to ensure a right to appeal in all criminal cases.

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- Cameroon, ICCPR, A/55/40 vol. I (2000) 36 at para. 211.

It is of deep concern that a person held in administrative detention may have his detention extended indefinitely with the authorisation of the Provincial Governor or the Minister for Territorial Administration, and that such person has no remedy by way of appeal or application of *habeas corpus*.

- United Kingdom of Great Britain and Northern Ireland (Jersey, Guernsey and the Isle of Man), ICCPR, A/55/40 vol. I (2000) 47 at para. 305.

The authorities in Guernsey should give due consideration to establishing independent bodies with a mandate to review administrative decisions.

- Syrian Arab Republic, ICCPR, A/56/40 vol. I (2001) 70 at para. 81(16).

The procedures of the State Security Court are incompatible with the provisions of article 14, paragraphs 1, 3 and 5. The public nature of proceedings before the State Security Court is not guaranteed. Moreover, it is noted that the State Security Court's decisions are not subject to appeal. The State party should ensure that the procedures of the State Security Court scrupulously respect the provisions of article 14, paragraphs 1 and 3 of the Covenant and should grant accused persons the right to appeal against the Court's decisions (article 14, paragraph 5 of the Covenant).

ICESCR

- Dominican Republic, ICESCR, E/1997/22 (1996) 44 at para. 227.

It is noted with concern that, according to information received from various sources, there is no mechanism for lodging complaints against the arbitrariness or corruption of some judges and that there is no appellate procedure for challenging the discriminatory application of a law, an executive decree or a decree of a court.

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CAT

- Luxembourg, CAT, A/54/44 (1999) 20 at paras. 174 and 175.

Paragraph 174

The excessive length and frequent use of strict solitary confinement of detainees and the fact that this disciplinary measure may not be the subject of appeal is of concern.

Paragraph 175

The State party should introduce into law the possibility of an effective appeal against the most severe disciplinary measures imposed on detainees and reduce the severity of these measures.

- Belarus, CAT, A/56/44 (2001) 19 at para. 45.

The continuing use of the death penalty, and the inadequate procedures for appeals, lack of transparency about those being held on death row and the reported refusal to return the bodies of those executed to their relatives, inhibiting any investigation into charges of torture or ill-treatment of them in prison are matters of concern.

CRC

- Norway, CRC, CRC/C/97 (2000) 43 at para. 215.

The withdrawal of the State party's reservation to article 40 (2) (b) (v) of the Convention is welcomed. The amendments to the Children Act are encouraging as these strengthen the position of children and the protection of their rights.

- Democratic Republic of the Congo, CRC, CRC/C/108 (2001) 31 at paras. 223 and 224.

Paragraph 223

It is of concern that child civilians and child soldiers are brought before military courts and that such courts do not guarantee international judicial protections, such as the right to appeal.

Paragraph 224

It is urged that, in keeping with the ban on the recruitment of children as soldiers, no child be tried by a military tribunal.