

LEGAL RIGHTS -CRIMINAL - Right To Appeal

IV. CONCLUDING OBSERVATIONS, CONTINUED

ICCPR

- Egypt, ICCPR, A/58/40 vol. I (2002) 31 at para. 77(16).

(16) While understanding the security requirements associated with efforts to combat terrorism, the Committee voices concern at their effects on the human rights situation in Egypt, particularly in relation to articles 6, 7, 9 and 14 of the Covenant.

...

(b) The Committee notes with alarm that military courts and State security courts have jurisdiction to try civilians accused of terrorism although there are no guarantees of those courts' independence and their decisions are not subject to appeal before a higher court (article 14 of the Covenant).

...

The State party must ensure that steps taken in the campaign against terrorism are fully in accordance with the Covenant. It should ensure that legitimate action against terrorism does not become a source of violations of the Covenant.

- Portugal, ICCPR, A/58/40 vol. I (2003) 56 at para. 83(16).

(16) The Committee notes with concern that detainees subject to solitary confinement as a disciplinary measure may only lodge an appeal if the period of confinement exceeds eight days...

The State party should ensure the right of detainees to an effective remedy, with suspensive effect, against all disciplinary measures of solitary confinement...

- Colombia, ICCPR, A/59/40 vol. I (2004) 35 at para. 67(10).

(10) The Committee expresses its concern with regard to draft legislative act No. 10 of 2002, which seeks to amend certain provisions of the Constitution dealing with the administration of justice. This draft legislation proposes modifications to *amparo* proceedings, rendering them inadmissible for reviews of certain judicial decisions...

The State party should take into consideration the fact that some of the provisions of this draft legislation would be in clear contradiction with provisions of the Covenant, in particular articles 2, 4 and 14. If it were to be adopted, such fundamental remedies as *amparo* proceedings could be jeopardized.

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- Uganda, ICCPR, A/59/40 vol. I (2004) 47 at para. 70(13).

(13) The Committee...finds incompatible with the Covenant that the death penalty is mandatory for the crimes of murder, aggravated robbery, treason and terrorism resulting in the death of a person, and the imposition of death sentences by field courts-martial without the possibility of appeal or to seek pardon or commutation of the sentence...

...The State party should ... abolish mandatory death sentences and ensure the possibility of full appeal in all cases, as well as the right to seek pardon or commutation of the sentence.

- Iceland, ICCPR, A/60/40 vol. I (2005) 50 at para. 87(14).

(14) The Committee has noted with concern the delegation's information that, in the case of minor offences (misdemeanours), the convicted person cannot appeal against the conviction and sentence to a higher tribunal, except in exceptional circumstances where the Supreme Court may so authorize (article 14, paragraph 5, of the Covenant).

The State party should recognize the right of everyone convicted of a criminal offence to have his/her sentence and conviction reviewed by a higher tribunal.

- Tajikistan, ICCPR, A/60/40 vol. I (2005) 70 at para. 92(12).

(12) The Committee is concerned that a procurator, rather than a judge, remains responsible for authorizing arrests. This creates an imbalance in the equality of arms between the accused and the prosecution, as the procurator may have an interest in the detention of those who are to be prosecuted...An appeal to a court to review the lawfulness and grounds of arrest is possible, but it does not guarantee the participation of the detainee (art. 9).

The State party should revise its criminal procedure legislation and introduce a system that ensures that all detainees are as a matter of course brought promptly before a judge who will decide without delay on the lawfulness of the detention.

- Syrian Arab Republic, ICCPR, A/60/40 vol. I (2005) 78 at para. 94(10).

(10) The Committee notes the statement by the delegation regarding the establishment of a committee to revise legislation governing the Supreme State Security Court. The Committee reiterates its previous concern that the procedures of this court are incompatible with article 14 of the Covenant (art. 14).

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The State party should take urgent measures to ensure that all rights and guarantees provided under article 14 of the Covenant are respected in the composition, functions and procedures of the Supreme State Security Court and in particular that accused persons are granted the right to appeal against decisions of the Court.

CAT

- Sweden, CAT, A/57/44 (2002) 51 at paras. 107 and 108.

107. The Committee...records its concern at the following:

...

(b) The Special Control of Foreigners Act, known as the anti-terrorism law, allows foreigners suspected of terrorism to be expelled under a procedure which might not be in keeping with the Convention, because there is no provision for appeal;

...

108. The Committee recommends that the State party should:

...

(c) Bring the Special Control of Foreigners Act into line with the Convention;

...

- Uzbekistan, CAT, A/57/44 (2002) 54 at para. 113.

113. The Committee notes the following positive developments:

...

(e) The report by the representative of the State party of the establishment of an appeals system for court sentences and the introduction of alternatives to prison sentences, releasing detainees on bail;

...

- Egypt, CAT, A/58/44 (2002) 22 at para. 42.

42. The Committee recommends that the State party:

...

(i) Ensure that all persons convicted by decisions of military courts in terrorism cases shall have the right to have their conviction and sentence reviewed by a higher tribunal according to law;

...

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- Azerbaijan, CAT, A/58/44 (2003) 36 at para. 89.

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;

...

CRC

- Greece, CRC, CRC/C/114 (2002) 25 at paras. 170 and 171.

170. Noting that the State party has a system of special juvenile justice courts and that a committee was established to look into issues of concern in the criminal justice system and a new bill relating to the care of juvenile delinquents and children at risk, the Committee remains concerned:

...

(i) That the right of appeal is restricted to sentences of imprisonment of more than one year;

...

171. The Committee recommends that the State party:

...

(d) Ensure respect for all juvenile justice standards including the rights of children during arrest and detention procedures, minimum conditions of detention, the non-restricted rights of appeal and to legal representation, free interpretation where needed and other relevant assistance;

...

- Belgium, CRC, CRC/C/118 (2002) 29 at paras. 97 and 98.

97. The Committee appreciates the fact that the State party has reviewed its declaration on article 2 and its reservation to article 40.2(v) of the Convention, pursuant to the previous concluding observations. Nevertheless, it is concerned that the State party does not intend to withdraw them...With respect to the reservation to article 40, the Committee is concerned that the possibility of appeal to the Court of Cassation against judgements and measures imposed by the Court of Assizes (sitting here as the court of first and last instance) is strictly limited to points of law and therefore deprives the defendant of a full review of his case by a higher court, which is all the more important in that the Court of Assizes handles the most severe cases and imposes relatively heavy sentences.

98. The Committee encourages the State party to review its declaration and reservation with

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a view to withdrawing them in accordance with the Declaration and Programme of Action of the Vienna World Conference on Human Rights (1993).

- Switzerland, CRC, CRC/C/118 (2002) 78 at paras. 310 and 311.

310. The Committee is concerned at the reservations made by the State party to articles 5, 7, 10, 37 and the four reservations made with regard to article 40, but welcomes the information that the State party is considering the withdrawal of most of these reservations thanks to recent and current revisions of the Constitution and other relevant laws, following a tentative timetable presented during the dialogue. Despite this information, the Committee remains concerned at the rather slow pace of this withdrawal process and even more at the fact that some reservations may not be withdrawn at all, or only in the distant future.

311. In light of the 1993 Vienna Declaration and Programme of Action, the Committee recommends that the State party:

...

(f) Expedite the current legal reform which abolishes the competence of the Federal Tribunal as a court of first instance and withdraw as soon as possible after approval of that reform the reservation made to article 40(2)(b)(v).

- Argentina, CRC, CRC/C/121 (2002) 8 at paras. 87 and 88.

87. The Committee...reiterates its deep concern that Law N.10.903 of 1919 and Law N.22.278, currently in force and based on the doctrine of “irregular situation”, do not make a clear distinction between children in need of care and protection and those in conflict with the law. In this regard, the Committee notes that there are several draft laws for the reform of the juvenile justice system under discussion before Parliament, under which a judge can order the detention of children without due process only because of their social situation and that this decision cannot be appealed...

88. The Committee recommends that the State party:

...

(c) Ensure that there is a clear distinction in terms of procedures and treatment between children in conflict with the law and children in need of protection;

...

- Burkina Faso, CRC, CRC/C/121 (2002) 103 at paras. 487 and 489.

487. The Committee is concerned at...the possibility for children to appeal only through

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their parents...

...

489. ...[T]he Committee particularly recommends that the State Party:

...

(e) Amend legislation to allow children to appeal a decision without their parents;

...

- Republic of Korea, CRC, CRC/124 (2003) 24 at paras. 87 and 88.

87. The Committee remains very concerned at the State party's reservations to articles 9, paragraph 3, 21, paragraph (a), and 40, paragraph 2 (b) (v).

88. The Committee, noting that juveniles sentenced for having committed a crime have the right to appeal, encourages the State party to withdraw, as soon as possible, the reservations made to article 40, paragraph 2 (b) (v)...