

LEGAL RIGHTS - CRIMINAL - Presumption of Innocence

IV. CONCLUDING OBSERVATIONS

ICCPR

- Luxembourg, ICCPR, A/48/40 vol. I (1993) 30 at paras. 133, 142 and 144.

Paragraph 133

The use of preventive detention should not become routine nor should it lead to excessive periods of detention or infringe upon the presumption of innocence.

Paragraph 142

The application of pre-trial detention may lead to excessive periods of detention and may infringe upon the presumption of innocence.

Paragraph 144

Legislation on criminal procedure should be reviewed so that it is fully in line with provisions concerning pre-trial detention under article 9 and the presumption of innocence under article 14 of the Covenant.

- Uruguay, ICCPR, A/48/40 vol. I (1993) 102 at para. 504.

It is noted with concern that the regulations relating to pre-trial detention are not in conformity with article 9 of the Covenant. In this regard, it is underlined that, in accordance with the principle of the presumption of innocence, release should be the rule and not the exception as is the case under the current system.

- Cyprus, ICCPR, A/49/40 vol. I (1994) 53 at para. 327.

The legislative reforms presently under way should be expanded and accelerated in order to ensure that all relevant legislation, including the Criminal Code and administrative procedures are in conformity with the requirements of the Covenant. In expanding the review, the general comments should be used as a guide to the application of the Covenant. In this connection, the presumption of innocence should be expressly stipulated in the Penal Code.

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- Argentina, ICCPR, A/50/40 vol. I (1995) 35 at paras. 157 and 163.

Paragraph 157

The Penal Code appears to be deficient in certain key areas that apparently conflict with the principle of presumption of innocence (article 14, paragraph 2, of the Covenant) and this is of concern. The system of pre-trial detention, which the Committee considers to be one of the remaining vestiges of authoritarian rule is also of concern. It is also of concern that persons may be detained for a period longer than the maximum penalty allowed by law and it is regretted, in this connection, that article 317 of the Constitution does not order their release. It is further noted that bail is established according to the economic consequences of the crime committed and not by reference to the probability that the defendant will not appear in court or otherwise impede due process of law. It is incompatible with the presumption of innocence that the length of pre-trial detention is not a product of the complexity of the case but is set by reference to the possible length of sentence.

Paragraph 163

With respect to the Code of Criminal Procedure, the system of pre-trial detention should be carefully reviewed. Legal safeguards should be established to ensure that, in instances where pre-trial detention exceeds the maximum applicable penalty for a crime, the defendant will be released without qualification. The purpose of pre-trial detention should be clearly defined and the length of detention should be set accordingly, applying the principle of presumption of innocence. The same consideration to the setting of bail is also recommended.

- Peru, ICCPR, A/51/40 vol. I (1996) 48 at paras. 357 and 359.

Paragraph 357

Note is taken of Decree Law 25,499 of 1992, according to which repentance of one's association with a terrorist organization and information concerning such organizations or which leads to the identification of other persons involved can lead to a reduction in sentence. It is of concern that the law may have been used by individuals to denounce innocent persons in order to avoid prison sentences or to reduce their length, a concern that is supported by the fact that there are at least seven draft proposals - one of them from the Defensor Público and another from the Ministry of Justice - and a Decree Law 26,329 attempting to solve the problem of innocent people being prosecuted or having been convicted under the anti-terrorist laws.

Paragraph 359

Immediate measures should be taken to release innocent prisoners and to provide them with compensation and to systematically revise, on a non-discretionary basis, convictions handed down by the military tribunals in treason and terrorism cases, particularly convictions based on lack of identification documents or on evidence obtained in the application of the repentance law. The same recommendation applies to detainees awaiting trial.

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- France, ICCPR, A/52/40 vol. I (1997) 62 at para. 404.

The frequent resort to and length of pre-trial detention is of concern. It is a matter of particular concern that the length of pre-trial detention should be high in case of juveniles. This would constitute violation of article 9, paragraph 3, and article 14, paragraphs 2 and 3 (c), of the Covenant. Measures should be taken to reduce the length of pre-trial detention.

- India, ICCPR, A/52/40 vol. I (1997) 67 at para. 446.

It is regrettable that women who have been forced into prostitution are criminalized by the Immoral Trafficking Prevention Act and, further, that article 20 of the Act puts the burden of proof on a woman to prove that she is not a prostitute, which is incompatible with the presumption of innocence. The application of this law to women in the situation described should be repealed and measures should be taken to protect and rehabilitate women and children whose rights have been violated in this way.

- Uruguay, ICCPR, A/53/40 vol. I (1998) 38 at para. 242.

Regulations relating to pre-trial detention both in respect of suspects (imputados) and accused, are not in conformity with article 9 of the Covenant. In accordance with the principle of presumption of innocence, pre-trial detention should not be mandatory. The wide possibilities which exist to restrict a suspect's liberty, in the light of the broad definition of "imputado" are also of concern. Detention procedures and other restrictions on the liberty of suspects and accused should be revised with a view to facilitating full application of the rights provided for under the Covenant, having particular regard to the principle of the presumption of innocence.

- Ecuador, ICCPR, A/53/40 vol. I (1998) 43 at para. 286.

The holding in detention of accused persons pending trial for a maximum duration of a third of the possible sentence facing them, irrespective of the risk that they may fail to appear for trial is incompatible with the presumption of innocence and the right to be tried within a reasonable time or to be released on bail. Bail legislation should be brought into conformity with the provisions of the Covenant and resort to preventive detention should be the exception and not the rule.

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- Italy, ICCPR, A/53/40 vol. I (1998) 50 at para. 343.

The Italian system of holding offenders, before and after trial, in "preventive detention" until the final stages of any possible appeal have been exhausted and the sentence has been finalized, the maximum period of which is set by reference to the penalty for the offence of which the person stands accused, and can last up to six years, could constitute an infringement of the presumption of innocence (article 14, paragraph 2) and the principle of the right to a fair trial within a reasonable time or to release (article 9, paragraph 3). Therefore, it is recommended that (i) the linkage between the offence with which a person has been charged and the length of detention from the time of arrest up to final sentence should not be maintained; and (ii) the grounds for preventive detention should be restricted to those cases in which such detention is essential to protect legitimate interests, such as the appearance of the accused at the trial.

- 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 ensure a right to appeal in all criminal cases.

- Kuwait, ICCPR, A/55/40 vol. I (2000) 65 at paras. 468, 469, 487 and 488.

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.

Paragraph 487

The implications of penal proceedings against journalists, requiring them to prove their good faith and reveal their sources are of concern, raising issues not only under article 19 but also with regard to the presumption of innocence guaranteed by article 14, paragraph 2, of the Covenant.

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Paragraph 488

The Press and Publications Law and the Penal Code should be brought into harmony with article 19 of the Covenant. Any restriction on the rights under article 19 must be in strict conformity with paragraph 3 of that article.

- Argentina, ICCPR, A/56/40 vol. I (2001) 38 at para. 74(10).

In light of articles 9 and 14 of the Covenant, the failure of the State party to fully ensure the principle of presumption of innocence in criminal proceedings is of deep concern. In this respect, that the duration of pre-trial detention is determined by reference to the possible length of sentence following conviction rather than the need to bring the detainee before the courts is of concern. The imposition of such detention should not be the norm but should be resorted to only as an exceptional measure to the extent necessary and consistent with due process of law and article 9 (3) of the Covenant. In this regard, there should not be any offences for which pre-trial detention is obligatory. All aspects of the system of pre-trial detention, including the determination of the length of detention, should be reformed in accordance with the requirements of article 9 and the principle of presumption of innocence under article 14.

- Dominican Republic, ICCPR, A/56/40 vol. I (2001) 54 at para. 78(11).

Despite the creation of more courts, the high percentage of prisoners in pre-trial detention has increased. This means that many people accused of crimes remain in detention waiting for their trials to end, which is contrary to article 9, paragraph 3, and article 14, paragraph 2, of the Covenant. The State party should reform the law immediately to make pre-trial detention the exception rather than the rule, used only when strictly necessary.

- Monaco, ICCPR, A/56/40 vol. I (2001) 89 at para. 84(14).

The absence of any specific mention of the presumption of innocence in domestic legislation is noted (article 14). The State party should explicitly incorporate this principle in its legislation and take all other measures that this implies, particularly where pre-trial detention is concerned.

- Guatemala, ICCPR, A/56/40 vol. I (2001) 93 at para. 85(22).

The large percentage of prisoners held in pre-trial detention is of concern. This means that a large number of persons accused of crimes remain in pre-trial detention for long periods, pending the completion of the criminal proceedings against them, contrary to article 9, paragraph 3, and article

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14, paragraph 2, of the Covenant. The State party should continue to take all necessary measures to reduce the number of persons in pre-trial detention and the period during which they are detained.

CAT

- Jordan, CAT, A/50/44 (1995) 23 at para. 174.

The State party should reduce the length of preventive detention, taking into account its principle of presumption of innocence and the complexity of investigation.

- Uzbekistan, CAT, A/55/44 (2000) 19 at para. 80.

In practice, criminal prosecutions in the State party do not seem to respect the principle of the presumption of innocence and have an inquisitorial character incompatible with article 11 of the Convention.

CRC

- United Kingdom of Great Britain and Northern Ireland, CRC, CRC/C/38 (1995) 35 at para. 222.

The Criminal Evidence (N.I.) Order 1988 which appears to be incompatible with the right to presumption of innocence and the right not to be compelled to give testimony or confess guilt, is of concern.