LEGAL RIGHTS - CRIMINAL - Presumption of Innocence

III. JURISPRUDENCE

ICCPR

- *Morael v. France* (207/1986), ICCPR, A/44/40 (28 July 1989) 210 at paras. 9.5 and 9.7.

  ...
  9.5. As to the complaint that the action for coverage of liabilities brought against the author violated the principle of presumption of innocence laid down in article 14 (2) of the Covenant, the Committee points out that the provision is applicable only to persons charged with a criminal offence...The object of article 99 of the Bankruptcy Act was to compensate creditors but it also entailed other penalties which, however, were civil-law and not criminal-law penalties. The provision concerning the presumption of innocence in article 14 (2) cannot therefore be applied in the case under consideration. That conclusion cannot be affected by the allegation that the provision of article 99 of the Bankruptcy Act was subsequently modified by elimination of the presumption of fault, considered unjust from the point of view of the material settlement of liability, for this circumstance does not of itself imply that the earlier provision contravened the above-mentioned provisions of the Convention.
  ...
  9.7 The Human Rights Committee...is of the view that the facts which have been put before it do not disclose any violations of paragraphs 1 and 2 of article 14 of the Covenant.

- *Campbell v. Jamaica* (248/1987), ICCPR, A/47/40 (30 March 1992) 232 at para. 6.2.

  ...
  6.2 ...It is the Committee's established jurisprudence that it is in principle for the appellate courts of State parties to the Covenant to evaluate facts and evidence in a particular case or to review the judge's instructions to the jury, unless it can be ascertained that the instructions to the jury were clearly arbitrary or amounted to a denial of justice, or that the judge manifestly violated his obligation of impartiality. e/ In this case, the Committee has been requested to examine matters belonging in this latter category. After careful consideration of the material before it, the Committee concludes that the remarks made by Justice T. about the author's "demeanour" in his summing up to the jury were neither arbitrary nor amounted to a manifest violation of his obligation of impartiality. The Committee cannot conclude either that the judge's directions unfairly buttressed the case of the prosecution. In the circumstances, the Committee finds no violation of article 14, paragraph 1. It follows that the conduct of the trial by the judge had no incidence on the author's right, under article 14, paragraph 2, to be presumed innocent until proved guilty according to law.

LEGAL RIGHTS - CRIMINAL - Presumption of Innocence

Notes

...

e/ See Official Records of the General Assembly, Forty-sixth Session, Supplement No. 40 (A/46/40), annex XI, sect. D, Communication No. 253/1987 (*Paul Kelly v. Jamaica*), views adopted on 8 April 1991, para. 5.13; and section C above, Communication No. 240/1987 (*Willard Collins v. Jamaica*), views adopted on 1 November 1991, para. 8.3.

_____

- *W. J. H. v. The Netherlands* (408/1990), ICCPR, A/47/40 (22 July 1992) 420 (CCPR/C/45/D/408/1990) at paras. 2.1, 2.2 and 6.2.

...

2.1 The author was arrested on 8 December 1983 and kept in pre-trial detention until 8 February 1984. On 24 December 1985, the Arnhem Court of Appeal convicted him on a variety of criminal charges, including forgery and fraud. On 17 March 1987, the Supreme Court (*Hoge Raad*) quashed the earlier conviction and referred the case to the 's-Hertogenbosch Court of Appeal, which acquitted the author on 11 May 1988.

2.2 Pursuant to sections 89 and 591a of the Code of Criminal Procedure, the author subsequently filed a request with the 's-Hertogenbosch Court of Appeal for award of compensation for damages resulting from the time spent in pre-trial detention and for the costs of legal representation. Section 90, paragraph 1, of the Code of Criminal Procedure provides that, after an acquittal, the Court may grant compensation for reasons of equity. On 21 November 1988, the Court of Appeal rejected the author's request. The Court was of the opinion that it would not be fair to grant compensation to the author, since his acquittal was due to a procedural error; it referred in this context to the judgment of the Arnhem Court of Appeal of 24 December 1985, by which the author was convicted on the basis of evidence that later was found to have been irregularly obtained.

...

6.2 With respect to the author's allegation of a violation of the principle of presumption of innocence enshrined in article 14, paragraph 2, of the Covenant, the Committee observes that this provision applies only to criminal proceedings and not to proceedings for compensation; it accordingly finds that this provision does not apply to the facts as submitted.

- *González del Río v. Peru* (263/1987), ICCPR, A/48/40 vol. II (28 October 1992) 17 (CCPR/C/46/D/263/1987) at paras. 5.2 and 5.4.

...

5.2 The Committee has noted the author's claim that he was not treated equally before the

Peruvian courts, and that the State party has not refuted his specific allegation that some of the judge's involved in the case had referred to its political implications...and justified the courts' inaction or the delays in the judicial proceedings on this ground. The Committee recalls that the right to be tried by an independent and impartial tribunal is an absolute right that may suffer no exception. It considers that the Supreme Court's position in the author's case was, and remains, incompatible with this requirement...

...

5.4 On the other hand, the Committee does not find that the author's right, under article 14, paragraph 2, to be presumed innocent until proven guilty according to law was violated. Whereas the remarks attributed to judges involved in the case may have served to justify delays or inaction in the judicial proceedings, they cannot be deemed to encompass a pre-determined judgement on the author's innocence or guilt.

- *Barroso v. Panama* (473/1991), ICCPR, A/50/40 vol. II (19 July 1995) 41 (CCPR/C/54/D/473/1991) at para. 8.3.

...

8.3 The author has alleged a violation of article 14, in particular of paragraphs 2, 3, 6 and 7. On the basis of the material before it, the Committee does not find that the presumption of innocence has been violated in the instant case as it relates to the death of Mr. Spadafora: no documentation has been provided which would corroborate the author's claim that the office of the special prosecutor was biased against Mr. del Cid and portrayed him as guilty ab initio: on the contrary, in the proceedings related to the death of Mr. Spadafora, Mr. del Cid was acquitted of the charges against him...

- *Richards v. Jamaica* (535/1993), ICCPR, A/52/40 vol. II (31 March 1997) 38 (CCPR/C/59/D/535/1993) at paras. 7.2 and 7.5.

...

7.2 The author has claimed that his trial was unfair because the prosecution entered a *nolle prosequi* plea after the author had pleaded guilty to a charge of manslaughter. The author claims that the extent of media publicity given to his guilty plea negated his right to presumption of innocence and thus denied him the right to a fair trial. The Court of Appeal of Jamaica acknowledged the possibility of disadvantage to author at presenting his defence at the trial, but observed that "nothing shows that the convicting jury was aware of this". The entry of a *nolle prosequi* was found by the Jamaican courts and the Judicial Committee of the Privy Council to be legally permissible, as under Jamaican law the author had not been finally convicted until sentence was passed. The question for the Committee is not, however, whether it was lawful, but whether its use was compatible with the guarantees of fair trial

enshrined in the Covenant in the particular circumstances of the case. *Nolle prosequi* is a procedure which allows the Director of Public Prosecutions to discontinue a criminal prosecution. The State party has argued that it may be used in the interests of justice and that it was used in the present case to prevent a miscarriage of justice. The Committee observes, however, that the Prosecutor in the instant case was fully aware of the circumstances of Mr. Richards' case and had agreed to accept his manslaughter plea. The *nolle prosequi* was used not to discontinue proceedings against the author but to enable a fresh prosecution against the author to be initiated immediately, on exactly the same charge in respect of which he had already entered a plea of guilty to manslaughter, a plea which had been accepted. Thus, its purpose and effect were to circumvent the consequences of that plea, which was entered in accordance with the law and practice of Jamaica. In the Committee's opinion, the resort to a *nolle prosequi* in such circumstances, and the initiation of a further charge against the author, was incompatible with the requirements of a fair trial within the meaning of article 14, paragraph 1, of the Covenant.

...

7.5 The Committee is of the opinion that the imposition of a sentence of death upon conclusion of a trial in which the provisions of the Covenant have not been respected constitutes, if no further appeal against the sentence is possible, a violation of article 6 of the Covenant. As the Committee noted in its General Comment 6[16], the provision that a sentence of death may be imposed only in accordance with the law and not contrary to the provisions of the Covenant implies that "the procedural guarantees therein prescribed must be observed, including the right to a fair hearing by an independent tribunal, the presumption of innocence, the minimum guarantees for the defence and the right to review of the conviction and sentence by a higher tribunal." In the present case, since the final sentence of death was passed without having observed the requirements of article 14, concerning fair trial and presumption of innocence, it must be concluded that the right protected by article 6 of the Covenant has been violated.

For dissenting opinions in this context, see Richards v. Jamaica (535/1993), ICCPR, A/52/40 vol. II (31 March 1997) 38 (CCPR/C/59/D/535/1993) at Individual Opinion by Nisuke Ando, 45 and Individual Opinion by David Kretzmer, 46.

- *Lewis v. Jamaica* (708/1996), ICCPR, A/52/40 vol. II (17 July 1997) 244 (CCPR/C/60/D/708/1996) at para. 8.2.

...

8.2 In the context of the delay, the author has also argued that his right to presumption of innocence was violated, because the delay was caused by the failure of the police to find his co-accused and that in the absence of his co-accused there was not enough evidence against him. The Committee notes that the author was arraigned before his co-accused was

apprehended, which shows that there was sufficient *prima facie* evidence against him to put him to trial. In the circumstances, the Committee finds that the facts before it do not disclose a violation of article 14, paragraph 2.

- *Singh v. Canada* (761/1997), ICCPR, A/52/40 vol. II (29 July 1997) 348 (CCPR/C/60/D/761/1997) at para. 4.3.

...
4.3 The author claims that the decisions against him taken by the University of Western Ontario and the Canadian judiciary amount to violations of articles...14, paragraph 2 and subparagraph 3(a)...of the Covenant. The Committee considers that on the basis of the material submitted by the author, no issues under these provisions arise in the instant case...[S]ince the author was never implicated with any criminal offence, there can be no question of a violation of the presumption of innocence and of the guarantees of the defence protected by article 14, paragraph 3. Finally, the Committee observes that the conduct of judicial proceedings in accordance with the requirements of article 14 does not raise issues under article 17 of the Covenant...

- *Polay Campos v. Peru* (577/1994), ICCPR, A/53/40 vol. II (6 November 1997) 36 at paras. 8.8 and 10.

...
8.8. As to Mr. Polay Campos' trial and conviction on 3 April 1993 by a special tribunal of "faceless judges", no information was made available by the State party, in spite of the Committee's request to this effect in the admissibility decision of 15 March 1996...[S]uch trials by special tribunals composed of anonymous judges are incompatible with article 14 of the Covenant. It cannot be held against the author that she furnished little information about her husband's trial: in fact, the very nature of the system of trials by "faceless judges" in a remote prison is predicated on the exclusion of the public from the proceedings. In this situation, the defendants do not know who the judges trying them are and unacceptable impediments are created to their preparation of their defence and communication with their lawyers. Moreover, this system fails to guarantee a cardinal aspect of a fair trial within the meaning of article 14 of the Covenant: that the tribunal must be, and be seen to be, independent and impartial. In a system of trial by "faceless judges", neither the independence nor the impartiality of the judges is guaranteed, since the tribunal, being established ad hoc, may comprise serving members of the armed forces. In the Committee's opinion, such a system also fails to safeguard the presumption of innocence, which is guaranteed by article 14, paragraph 2. In the circumstances of the case, the Committee concludes that paragraphs 1, 2 and 3 (b) and (d) of article 14 of the Covenant were violated.

LEGAL RIGHTS - CRIMINAL - Presumption of Innocence

...
10. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide Mr. Victor Polay Campos with an effective remedy. The victim was sentenced on the basis of a trial that failed to provide the basic guarantees of a fair trial. The Committee considers that Mr. Polay Campos should be released unless Peruvian law provides for the possibility of a fresh trial that does offer all the guarantees required by article 14 of the Covenant.

- *Chung v. Jamaica* (591/1994), ICCPR, A/53/40 vol. II (9 April 1998) 55 (CCPR/C/62/D/591/1994) at para. 8.3.

...
8.3. As to the claim that the trial judge's refusal to change the venue of the trial deprived Mr. Chung of a fair trial and of his right to be presumed innocent, the Committee notes that the request for a change of venue was examined in detail by the judge at the start of the trial...The judge heard both Mr. Chung's representative and the Deputy Director of Public Prosecutions on the issue; she noted that the author's fears related to expressions of hostility towards him which well preceded the trial, and that the author was the only one, out of five co-accused, to have requested a change in venue. After hearing the parties' submissions and having satisfied herself that the jurors had been selected properly, she exercised her discretion and allowed the trial to proceed in the parish of Manchester. The Committee does not consider, in these circumstances, that the judge's decision not to change the venue deprived the author of his right to a fair trial or to be presumed innocent until found guilty. An element of discretion is necessary in decisions such as the judge's on the venue issue, and barring any evidence of arbitrariness or manifest inequity of the decision, the Committee is not in a position to substitute its findings for those of the trial judge. Accordingly, there has been no violation of articles 14, paragraphs 1 and 2, of the Covenant.

- *Sánchez López v. Spain* (777/1997), ICCPR, A/55/40 vol. II (18 October 1999) 204 at paras. 2.1, 2.2, 6.4 and 7.

...
2.1 On 5 May 1990, the author was driving his car at 80 km/h in an area where the speed limit was 60 km/h. The car was photographed after being detected by the police radar. The General Department of Traffic (Ministry of the Interior) asked him, as the owner of the vehicle by means of which the offence had been committed, to identify the perpetrator of the offence or driver of the vehicle, in other words, himself...

2.2 Pursuant to this request and exercising the fundamental right not to confess guilt, Mr.

Sánchez López sent the traffic authorities a letter in which he stated that he was not the driver of the vehicle and did not know who had been driving it since he had lent it to several people during that period. As the perpetrator of a serious misdemeanour, he was fined 50,000 pesetas (the speeding fine was 25,000 pesetas).

...

6.4 With regard to the claim that the author's rights to the presumption of innocence and the right not to testify against himself as protected by article 14 paragraph 2 and 3 (g) of the Covenant were violated by the Spanish State, since he had to identify the owner of the vehicle reported for committing a traffic offence, the Committee considers that the documentation in its possession shows that the author was punished for non-cooperation with the authorities and not for the traffic offence. The Human Rights Committee considers that a penalty for failure to cooperate with the authorities in this way falls outside the scope of application of the above-mentioned paragraphs of the Covenant. Accordingly, the communication is held to be inadmissible under article 1 of the Optional Protocol.

...

7. The Human Rights Committee therefore decides:

(a) that the communication is inadmissible under article 1 of the Optional Protocol...

- *Gridin v. Russian Federation* (770/1997), ICCPR, A/55/40 vol. II (20 July 2000) 172 at paras. 8.3 and 10.

...

8.3 With regard to the allegation of a violation of the presumption of innocence, including public statements made by high ranking law enforcement officials portraying the author as guilty which were given wide media coverage, the Committee notes that the Supreme Court referred to the issue, but failed to specifically deal with it when it heard the author's appeal. The Committee refers to its General Comment No 13 on article 14, where it has stated that: "It is, therefore, a duty for all public authorities to refrain from prejudging the outcome of a trial". In the present case the Committee considers that the authorities failed to exercise the restraint that article 14, paragraph 2, requires of them and that the author's rights were thus violated.

...

10. ...[T]he State party is under an obligation to provide Mr. Gridin with an effective remedy, entailing compensation and his immediate release. The State party is under an obligation to ensure that similar violations do not occur in the future.

LEGAL RIGHTS - CRIMINAL - Presumption of Innocence

- *Kavanagh v. Ireland* (819/1998), ICCPR, A/56/40 vol. II (4 April 2001) 122 at paras. 2.1-2.3, 3.2-3.5 and 10.4.

...

2.1 Article 38(3) of the Irish Constitution provides for the establishment by law of Special Courts for the trial of offences in cases where it may be determined, according to law, that the ordinary courts are "inadequate to secure the effective administration of justice and the preservation of public peace and order". On 26 May 1972, the Government exercised its power to make a proclamation pursuant to Section 35(2) of the Offences Against the State Act 1939 (the Act) which led to the establishment of the Special Criminal Court for the trial of certain offences. Section 35(4) and (5) of the Act provide that if at any time the Government or the Parliament is satisfied that the ordinary courts are again adequate to secure the effective administration of justice and the preservation of public peace and order, a rescinding proclamation or resolution, respectively, shall be made terminating the Special Criminal Court regime. To date, no such rescinding proclamation or resolution has been promulgated.

2.2 By virtue of s. 47(1) of the Act, a Special Criminal Court has jurisdiction over a "scheduled offence" (i.e. an offence specified in a list) where the Attorney-General "thinks proper" that a person so charged should be tried before the Special Criminal Court rather than the ordinary courts...The Special Criminal Court also has jurisdiction over non-scheduled offences where the Attorney-General certifies, under s.47(2) of the Act, that in his or her opinion the ordinary courts are "inadequate to secure the effective administration of justice in relation to the trial of such person on such charge". The Director of Public Prosecutions (DPP) exercises these powers of the Attorney-General by delegated authority.

2.3 In contrast to the ordinary courts of criminal jurisdiction, which employ juries, Special Criminal Courts consist of three judges who reach a decision by majority vote. The Special Criminal Court also utilises a procedure different from that of the ordinary criminal courts, including that an accused cannot avail himself or herself of preliminary examination procedures concerning the evidence of certain witnesses.

...

3.2 On 19 July 1994, the author was arrested on seven charges related to the incident; namely false imprisonment, robbery, demanding money with menaces, conspiracy to demand money with menaces, and possession of a firearm with intent to commit the offence of false imprisonment. Six of those charges were non-scheduled offences, and the seventh charge (possession of a firearm with intent to commit the offence of false imprisonment) was a 'scheduled offence'.

3.3 On 20 July 1994 the author was charged directly before the Special Criminal Court with

all seven offences by order of the Director of Public Prosecution (DPP), dated 15 July 1994, pursuant to s.47(1) and (2) of the Act, for the scheduled offences and the non-scheduled offences respectively.

3.4 On 14 November 1994, the author sought leave from the High Court to apply for judicial review of the DPP's order...The author contended that the offences with which he was charged had no subversive or paramilitary connection and that the ordinary courts were adequate to try him...

3.5 On 6 October 1995, the High Court rejected all of the author's arguments. The Court held, following earlier authority, that the decisions of the DPP were not reviewable in the absence of evidence of mala fides, or that the DPP had been influenced by improper motive or policy. In the Court's view, certifying non-scheduled offences of a non-subversive or non-paramilitary nature would not be improper...

...

10.4 The author contends that his right to a public hearing under article 14, paragraph 1, was violated in that he was not heard by the DPP on the decision to convene a Special Criminal Court. The Committee considers that the right to public hearing applies to the trial. It does not apply to pre-trial decisions made by prosecutors and public authorities. It is not disputed that the author's trial and appeal were openly and publicly conducted. The Committee therefore is of the view that there was no violation of the right to a public hearing. The Committee considers also that the decision to try the author before the Special Criminal Court did not, of itself, violate the presumption of innocence contained in article 14, paragraph 2.

- *Cagas v. Philippines* (788/1997), ICCPR, A/57/40 vol. II (23 October 2001) 131 (CCPR/C/73/D/788/1997) at paras. 2.6-2.9, 3.3, 7.3, 8, 9, and Individual Opinion by Cecilia Medina Quiroga and Rafael Rivas Posada (partly dissenting).

...

2.6 The authors were arrested on 26, 29 and 30 June 1992, on suspicion of murder (the so-called Libmanan massacre)...

2.7 On 14 August 1992, the authors appeared in Court and were ordered detained until the trial. On 11 November 1992, the authors filed a petition for bail and on 1 December 1992, they filed a motion to quash the arrest warrants. On 22 October 1993, the regional Trial Court refused to grant bail. On 12 October 1994, the Court of Appeals in Manila confirmed the Trial Court Order of 22 October 1993. A motion for reconsideration of the Court of Appeals' decision was dismissed on 20 February 1995. On 21 August 1995, the Supreme Court dismissed the authors' appeal against the Court of Appeals' decision.

LEGAL RIGHTS - CRIMINAL - Presumption of Innocence

2.8 On 5 June 1996, Mr. Cagas sent a letter on behalf of the authors to the Court Administrator of the Supreme Court, submitting additional facts in support of their claim that their right to bail had been wrongly denied.

2.9 On 26 July 1996, the Court Administrator replied to the authors that they were no longer entitled to raise issues that were not raised before the Supreme Court.

...

3.3 The authors note that while the presumption of innocence is a principle embodied in the Philippine Constitution, accused who are denied bail are denied their right to presumption of innocence. They further contend that a denial of bail deprives them of adequate time and facilities to prepare their defence properly, which constitutes a breach of the principle of due process.

...

7.3 With regard to the allegation of violation of article 14 (2), on account of the denial of bail, the Committee finds that this denial did not *a priori* affect the right of the authors to be presumed innocent. Nevertheless, the Committee is of the opinion that the excessive period of preventive detention, exceeding nine years, does affect the right to be presumed innocent and therefore reveals a violation of article 14 (2).

...

8. The Human Rights Committee...is of the view that the facts before it disclose a violation of articles 9 (3), 14 (2) and 14 (3) (c) of the Covenant.

9. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the authors with an effective remedy, which shall entail adequate compensation for the time they have spent unlawfully in detention. The State party is also under an obligation to ensure that the authors be tried promptly with all the guarantees set forth in article 14 or, if this is not possible, released.

...

Individual Opinion by Cecilia Medina Quiroga and Rafael Rivas Posada (partly dissenting)

In this case, the Committee has decided that the Philippines violated, to the detriment of Mr. Cagas, Mr. Butin and Mr. Astillero, articles 9 (3), 14 (2) and 14 (3) of the International Covenant on Civil and Political Rights. In this respect I concur with the majority vote, but I dissent from that vote in that I believe that the Committee should also have found that the State had violated article 14 (1) of the Covenant. I explain my reasons below:

> (a) In the file before the Committee there is no indication that the three authors of the communication have been tried and have been convicted and sentenced to a custodial penalty. It may therefore be presumed that they have been deprived of their liberty for a period of nine years without a trial and without a conviction, since it was the responsibility of the State to inform the Committee about this matter, and this has not

so far been done. This is a clear violation of articles 9 (3) and 14 (3) of the Covenant. It should be noted that such a lengthy deprivation of liberty can only be considered as equivalent to the serving of a sentence, in this case without a conviction to back it up. This, in my opinion, calls into question the State party's compliance with the provisions of article 9 (1) of the Covenant, which prohibits arbitrary detention.
...

- *Ricketts v. Jamaica* (667/1995), ICCPR, A/57/40 vol. II (4 April 2002) 29 (CCPR/C/74/D/667/1995) at paras. 2.3 and 7.2.

...
2.3 On 31 October 1983 the author was convicted of murder and sentenced to death by the Lucea Circuit Court. Although the verdict of the jury had to be unanimous, the author claims that four of the 12 jurors disagreed with the foreman and that the foreman falsely told the Court that the jury was unanimous. On 1 November 1983 four affidavits were presented, which state that they disagreed with the verdict.
...
7.2 With regard to the author's claim that he is a victim of a violation of articles 14 (1) and (2) of the Covenant, because he was convicted and sentenced by a non-unanimous jury, the Committee notes that after the trial four members of the Lucea Circuit Court jury submitted affidavits stating that they had not agreed to the verdict, though they conceded that they had not given oral expression to their differing view when the jury foreman announced that the verdict was accepted by all jurors. The Committee observes that the question presented by the jurors' affidavits was raised on appeal before the Judicial Committee of the Privy Council, which dismissed the petition. The Committee further notes that the alleged lack of unanimity was not raised before the trial judge nor before the Court of Appeal. In these circumstances, the Committee cannot conclude that article 14 , paragraphs 1 and 2 of the Covenant has been violated.

For dissenting opinion in this context, see Ricketts v. Jamaica (667/1995), ICCPR, A/57/40 vol. II (4 April 2002) 29 (CCPR/C/74/D/667/1995) at Individual Opinion by Mr. Hipólito Solari Yrigoyen.

- *Chira Vargas v. Peru* (906/2000) ICCPR, A/57/40 vol. II (22 July 2002) 228 (CCPR/C/75/D/906/2000) at paras. 2.3, 2.4, 2.6-2.8 and 7.3.

...
2.3 On 16 October 1991, an administrative decision relieved the author of his duties as a disciplinary measure, after 26 years of service.1/ The decision was based on a report dated

8 October 1991, which contained conclusions based on a police report that the author claims never existed, and a second disciplinary report dated 16 October 1991, in which the author was accused of violating article 84.C.6 of the Disciplinary Regulations, although he contends that the article in question was intended to cover a different situation.

2.4 The same day, an order was issued for the author's arrest, without a judicial order and without his being apprehended in *flagrante delicto*. The author was taken to Lima, where he was forced to attend a press conference. The author claims that no charges were ever brought against him, in either the ordinary or the military courts, for criminal negligence or liability in the course of his duties, or for any other criminal offence arising from the death of Mr. Pérez Arévalo, and that he was neither tried nor sentenced.

...

2.6 According to the author, the minutes of the National Police Board of Inquiry dated 16 October 1991, which was based on the disciplinary reports dated 8 and 16 October 1991 and the reports prepared by the Office of the National Police Headquarters Legal Adviser, contained a number of irregularities, such as erasures of time and date, which constituted violations of the rules of procedure of the Board of Inquiry. In addition, the author was not notified in advance of the Board of Inquiry hearing.2/ He was under arrest at the time and found it difficult to prepare a defence: he was allowed only two minutes to present his case and had no time to submit any evidence in his own defence.

2.7 On 30 January 1995, the author submitted an application for *amparo* to the Trujillo Third Special Civil Court, requesting that the Supreme Decision relieving him of his duties should be declared unenforceable. In its judgement of 2 March 1995, the Court declared the decision unenforceable and ordered the reinstatement of the author to active service in the National Police with the rank of commander. The judgement was appealed by the Public Prosecutor of the Ministry of the Interior in the Trujillo First Civil Division which, on 20 June 1995, upheld the order for the author's reinstatement. The Public Prosecutor then appealed to the Constitutional Division of the Supreme Court, which, in its decision of 6 December 1995, declared itself incompetent to hear the appeal. On 27 December 1995, the appeal was declared inadmissible by the Trujillo First Civil Division.

2.8 On 12 January 1996, the Trujillo Third Special Civil Court ordered the execution of the judgement of 2 March 1995, with the reinstatement of the author as commander in the police force. In a written submission dated 1 February 1996, the Public Prosecutor opposed the author's reinstatement, arguing that administrative procedures must be carried out prior to such reinstatement.

...

7.3 With regard to the alleged violations of article 14, paragraphs 1 and 2, of the Covenant, the author alleges a violation of his right to the presumption of innocence and his right to a defence inasmuch as he was relieved of his duties without having been brought before a

competent court. The Committee recalls that article 14, paragraph 1, guarantees everyone the right, in the determination of his rights and obligations, to a hearing by an impartial tribunal or court, including the right of access to a civil court. In that regard, the Committee notes that both the Trujillo Third Special Civil Court and the Trujillo First Civil Division found that the author had been unlawfully dismissed and reinstated him in his post. Consequently, the Committee considers that, in this case, there was no violation of due process within the meaning of article 14, paragraph 1, of the Covenant. The Committee also considers that the domestic courts recognized the author's innocence and that consequently there was no violation of the right contained in article 14, paragraph 2, of the Covenant and, for the same reason, there was no violation of article 17 of the Covenant.

_____

Notes

1/ According to the decision, the author had committed serious breaches of discipline and police regulations through his improper handling of a drug trafficking case, which resulted in the death of the suspect, Áureo Pérez Arévalo.

2/ The author does not mention the date of the hearing in the communication.

_____

- *Cabal and Pasini v. Australia* (1020/2002), ICCPR, A/58/40 vol. II (7 August 2003) 346 (CCPR/C/78/D/1020/2002) at para. 7.6.

...
7.6 With respect to the claim that the authors' right to be presumed innocent was violated by not segregating or treating them separately from convicted prisoners, the Committee recalls article 14, paragraph 2, only relates to individuals charged with a criminal offence. As the authors were not charged by the State party with a criminal offence, this claim does not raise an issue under the Covenant and the Committee, therefore declares it inadmissible *ratione materiae* under article 3 of the Optional Protocol.
...

- *Rameka v. New Zealand* (1090/2002), ICCPR, A/59/40 vol. II (6 November 2003) 330 (CCPR/C/79/D/1090/2002) at paras. 2.1, 2.2, 2.4, 2.5, 3.4 and 7.4.

...
Mr. Rameka's case

2.1 On 29 March 1996, Mr. Rameka was found guilty in the High Court at Napier of two

charges of sexual violation by rape, one charge of aggravated burglary, one charge of assault with intent to commit rape, and indecent assault. Pre-sentence and psychiatric reports provided to the court referred *inter alia* to the author's previous sexual offences, his propensity to commit sexual offences, his lack of remorse and his use of violence, concluding that there was a 20% likelihood of further commission of sexual offences.

2.2 In respect of the first charge of rape, he was sentenced to preventive detention (that is, indefinite detention until release by the Parole Board) under section 75 of the Criminal Justice Act 1985, 1/ concurrently to 14 years' imprisonment in respect of the second charge of rape, to two years' imprisonment in respect of the aggravated burglary and to 2 years' imprisonment for the assault with intent to commit rape. He was convicted and discharged in respect of the remaining indecent assault charge, as the sentencing judge viewed it as included in the other matters dealt with. He appealed against the sentence of preventive detention as being both manifestly excessive and inappropriate, and against the sentence of 14 years' imprisonment for rape as being manifestly excessive.

...

Mr. Harris' case

2.4 On 12 May 2000, Mr. Harris was found guilty by the High Court at Auckland, following pleas of guilty, of 11 counts of sexual offences occurring over a period of three months against a boy who turned 12 during the period in question. They comprised two charges of sexual violation involving oral genital contact and nine charges of indecent assault or inducing indecent acts in respect of a boy under 12. He had previously been convicted of two charges of unlawful sexual connection with a male under 16 and one of indecently assaulting a male under 12, all in respect of an 11 year old boy. On the two unlawful sexual connection counts, he was sentenced to six years' imprisonment, and concurrently to four years' on the remaining counts.

2.5 The Solicitor-General, for the Crown, sought leave to appeal on the basis that preventive detention, or at least a longer finite sentence, should have been imposed. On 27 June 2000, the Court of Appeal agreed, and substituted a sentence of preventive detention in respect of each count. The Court referred to the warning of serious consequences given by the court sentencing the author for his previous offences, his failure to amend his behaviour following a sexual offenders' course in prison, the features of breach of a child's trust in offending, the failure to heed police warnings provided to the author against illicit contact with the child victim, as well as the comprehensive psychiatric report defining him as a homosexual paedophile attracted to pre-pubescent boys and the risk factors analysed in the report. While observing that the case would warrant a finite sentence of "not less" than seven and a half years, the Court however concluded, in the circumstances, that no appropriate finite sentence would adequately protect the public, and that preventive detention, with its features of continuing supervision after release and amenability to recall, was the appropriate sentence.

...

3.4 As to the issue of arbitrary detention, the authors argue that there is insufficient regular review of their future "dangerousness", and that they are effectively being sentenced for what they might do when released, rather than what they have done. The authors refer to jurisprudence of the European Court of Human Rights5/ and academic writings6/ in support of the proposition that a detainee has the right to have renewed or ongoing detention that is imposed for preventive or protective purposes to be tested by an independent body with judicial character. The authors observe that under the State party's scheme, there is no possibility for release until 10 years have passed and the Parole Board may consider the case. Concerning the presumption of innocence, the authors contend that preventive detention should be seen as a punishment for crimes which have not yet been, and which may never be, committed, and thus in breach of article 14, paragraph 2.

...

7.4 ...[I]n terms of the ability of the Parole Board to act in judicial fashion as a "court" and determine the lawfulness of continued detention under article 9, paragraph 4, of the Covenant, the Committee notes that the remaining authors have not advanced any reasons why the Board, as constituted by the State party's law, should be regarded as insufficiently independent, impartial or deficient in procedure for these purposes. The Committee notes, moreover, that the Parole Board's decision is subject to judicial review in the High Court and Court of Appeal. In the Committee's view, it also follows from the permissibility, in principle, of preventive detention for protective purposes, always provided that the necessary safeguards are available and in fact enjoyed, that detention for this purpose does not offend the presumption of innocence, given that no charge has been laid against the remaining authors which would attract the applicability of article 14, paragraph 2, of the Covenant.24/...

Notes

1/ Sections 75, 77 and 89 *Criminal Justice Act* 1985 provide as follows:

Sentence of preventive detention

"(1) This section shall apply to any person who is not less than 21 years of age, and who either

> (a) is convicted of an offence against section 128 (1) [sexual violation] of the Crimes Act 1961; or
>
> (b) Having been previously convicted on at least one occasion since that person attained the age of 17 years of a specified offence, is convicted of another specified offence, being an offence committed after that previous conviction.

(2) Subject to the provisions of this section, the High Court, if it is satisfied that it is expedient for the protection of the public that an offender to whom this section applies should be detained in custody for a substantial period, may pass a sentence of preventive detention. …

(3A) A court shall not impose a sentence of preventive detention on an offender to whom subsection (1)(a) of this section applies unless the court

(c) Has first obtained a psychiatric report on the offender; and

(d) Having regard to that report and any other relevant report,

Is satisfied that there is a substantial risk that the offender will commit a specified offence upon release."

Period of preventive detention indefinite

"An offender who is sentenced to preventive detention shall be detained until released on the direction of the Parole Board in accordance with this Act."

Discretionary release on parole

"(1) Subject to subsection (2) of this section, an offender who is subject to an indeterminate sentence is eligible to be released on parole after the expiry of 10 years of that sentence."

...

5/ The authors cite *Van Droogenboeck v. Belgium* (1982) 4 EHRR 443 (administrative detention "at the Government's disposal" following a two year sentence for theft) and *Weeks v. United Kingdom* (1988) 10 EHRR 293 (discretionary life sentence for armed robbery with release on licence when no longer a threat).

6/ The authors cite Harris, O'Boyle & Warbrick: *Law of the European Convention on Human Rights* (Butterworth's, London, 1995) at 108-9, 146, 151-152 and 154, and Wachenfeld "The Human Rights of the Mentally Ill in Europe under the European Convention on Human Rights", *Nordic Journal of International Law* 60 (1991) at 174-175.

...

24/ See also *Wilson v. The Philippines* case No. 868/1999, Views adopted on 30 October 2003, at paragraph 6.5.

For dissenting opinions in this context, see Rameka v. New Zealand (1090/2002), ICCPR, A/59/40 vol. II (6 November 2003) 330 (CCPR/C/79/D/1090/2002) at Individual Opinion by Mr. Bhagwati,

LEGAL RIGHTS - CRIMINAL - Presumption of Innocence

Ms. Chanet, Mr. Ahanhanzo and Mr. Yrigoyen, 347 and Individual Opinion by Mr. Rajsoomer Lallah, 349.

- *Saidov v. Tajikistan* (964/2001), ICCPR, A/59/40 vol. II (8 July 2004) 164 at paras. 6.6, 7 and 8.

  ...
  6.6 The author...claimed that her husband's right to be presumed innocent until proved guilty has been violated, due to the extensive and adverse pre-trial coverage by State-directed media which designated the author and his co-charged as criminals, thereby negatively influencing the subsequent court proceedings. In the absence of information or objection from the State party in this respect, the Committee decides that due weight must be given to the author's allegations, and concludes that Mr. Saidov's rights under article 14, paragraph 2, have been violated.
  ...
  7. The Human Rights Committee...is of the view that the facts before it disclose a violation of Mr. Saidov's rights under articles 6, 7, 10, paragraph 1, and 14, paragraphs 1, 2, 3 (b), (d), and (g), and 5, of the Covenant.

  8. Under article 2, paragraph 3 (a), of the Covenant, the author is entitled to an effective remedy, including compensation. The State party is under an obligation to take measures to prevent similar violations in the future.

- *Nallaratnam v. Sri Lanka* (1033/2001), ICCPR, A/59/40 vol. II (21 July 2004) 246 at paras. 7.4-7.6.

  ...
  7.4 On the claim of a violation of the author's rights under article 14, paragraph 3 (g), in that he was forced to sign a confession and subsequently had to assume the burden of proof that it was extracted under duress and was not voluntary, the Committee must consider the principles underlying the right protected in this provision. It refers to its previous jurisprudence that the wording, in article 14, paragraph 3 (g), that no one shall "be compelled to testify against himself or confess guilt", must be understood in terms of the absence of any direct or indirect physical or psychological coercion from the investigating authorities on the accused with a view to obtaining a confession of guilt 17/. The Committee considers that it is implicit in this principle that the prosecution prove that the confession was made without duress. It further notes that pursuant to section 24 of the Sri Lankan Evidence Ordinance, confessions extracted by "inducement, threat or promise" are inadmissible and that in the instant case both the High Court and the Court of Appeal considered evidence that the author

had been assaulted several days prior to the alleged confession. However, the Committee also notes that the burden of proving whether the confession was voluntary was on the accused. This is undisputed by the State party since it is so provided in section 16 of the PTA [Prevention of Terrorism Act]. Even if, as argued by the State party, the threshold of proof is "placed very low" and "a mere possibility of involuntariness" would suffice to sway the court in favour of the accused, it remains that the burden was on the author. The Committee notes in this respect that the willingness of the courts at all stages to dismiss the complaints of torture and ill-treatment on the basis of the inconclusiveness of the medical certificate (especially one obtained over a year after the interrogation and ensuing confession) suggests that this threshold was not complied with. Further, insofar as the courts were prepared to infer that the author's allegations lacked credibility by virtue of his failing to complain of ill-treatment before its Magistrate, the Committee finds that inference to be manifestly unsustainable in the light of his expected return to police detention. Nor did this treatment of the complaint by its courts satisfactorily discharge the State party's obligation to investigate effectively complaints of violations of article 7. The Committee concludes that by placing the burden of proof that his confession was made under duress on the author, the State party violated article 14, paragraphs 2, and 3 (g), read together with article 2, paragraph 3, and 7 of the Covenant.

7.5 The Human Rights Committee...is of the view that the facts before it disclose violations of articles 14, paragraphs 1, 2, 3, (c), and 14, paragraph (g), read together with articles 2, paragraph 3, and 7 of the Covenant.

7.6 In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective and appropriate remedy, including release or retrial and compensation. The State party is under an obligation to avoid similar violations in the future and should ensure that the impugned sections of the PTA are made compatible with the provisions of the Covenant.

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17/ *Berry v. Jamaica*, case No. 330/1988, Views adopted on 4 July 1994.

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- *Rolando v. The Philippines* (1110/2002), ICCPR, A/60/40 vol. II (3 November 2004) 161 at paras. 2.1-2.3 and 4.4.

...

2.1 In September 1996, the author was arrested and detained at a police station, without a warrant. He was told that he was being detained after allegations made by his wife of the

rape of his stepdaughter. Before, the author was employed as a police officer. He requested to see his arrest warrant and a copy of the formal complaint, but did not receive a copy of either. He claims that he was not informed of his right to remain silent or of his right to consult a lawyer, as required under article III, section 12 (1) of the Philippine Constitution of 1987. On 1 November 1996, he was released. Throughout his detention, he was not brought before any judicial authority, nor was he formally charged with an offence.

2.2 On 27 January 1997, he was arrested again and charged with the rape of his stepdaughter Lori Pagdayawon, under article 335, paragraph 3, of the Revised Penal Code, as amended. He claims that he was not informed of his right to remain silent or his right to consult a lawyer. He also claims that the first opportunity he had to engage a private lawyer was at the inquest. The same lawyer represented him throughout the proceedings. On 27 May 1997, the Regional Trial Court of Davao City found him guilty as charged and sentenced him to death, as well as to pay the sum of 50,000 pesos to the victim. 1/ According to the author, the death penalty is mandatory for the crime of rape; it is a crime against the person by virtue of Republic Act No. 8353.

2.3 On 15 February 2001, under its automatic review procedure, the Supreme Court affirmed the death sentence of the Trial Court but increased the author's civil liability to 75,000 pesos and "an additional award of 50,000 pesos by way of moral damages". 2/ According to the author, the Supreme Court followed its usual practice of not hearing the testimony of any witnesses during the review process, relying solely upon the lower courts' appreciation of the evidence. It reiterated its position, established in previous case law, 3/ about the weight given to the testimony of young women who make allegations of rape, by stating that "[t]he testimony of a rape victim, who is young and of tender age, is credible and deserves full credit, especially where the facts point to her having been the victim of a sexual assault. Certainly [*sic*] would not make public the offence and, undergo the trial and humiliation of a public trial if she had not in fact been raped". According to the author, the only effective test which the court has laid down to test the veracity of the alleged victim's allegation is the willingness of the victim to submit herself to a medical examination and endure the ordeal of court proceedings.

...

4.4 As to the claim that the author was denied the right to be presumed innocent, in accepting the testimony of the minor victim, the Committee notes that on a review of the judgements of the Regional Trial Court and the Supreme Court, the judiciary did take the minor victim's age into account in assessing her testimony and did consider that a rape trial is of such an ordeal that it would be unlikely to institute such proceedings if a rape in fact had not occurred. However, these were not the only considerations addressed by the Regional Trial Court and the Supreme Court. Both courts took into account, *inter alia*, medical evidence and witness statements in the evaluation of the facts and evidence in the case. The Committee has also noted the statement, in the judgement of the Regional Trial Court, which

confirms that "on the whole, the evidence for the prosecution has overcome the accused's constitutional presumption of innocence. The prosecution has established the guilt of the accused beyond reasonable doubt. The evidence of the accused, consisting merely of denial, did not overcome the probative weight of the prosecution's evidence which established his guilty beyond reasonable doubt." The Committee reiterates its jurisprudence 5/ that the evaluation of facts and evidence is best left for the courts of States parties to decide, unless the evaluation of facts and evidence was clearly arbitrary or amounted to a denial of justice. As the author has provided no evidence to demonstrate that the courts' decisions were clearly arbitrary or amounted to a denial of justice, the Committee considers this claim inadmissible under article 2, of the Optional Protocol for non-substantiation for purposes of admissibility. For these reasons, the Committee concludes that this claim is inadmissible.

Notes

1/ The judgement reads as follows: "The crime committed is statutory rape. The penalty imposable, considering the circumstances of relationship being present, is the supreme penalty of death. The court is left with no alternative but to obey the mandate of the law in the imposition of the penalty. In the language of the Supreme Court in *People v. Leo Echegaray, G.R*. No. 117472, June 25, 1996, 'The law has made it inevitable under the circumstances of this case that the accused-appellant face the supreme penalty of death.'"

2/ The Supreme Court stated that the author was sentenced under section 11 of Republic Act No. 7659, which states inter alia that "The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances: 1. When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step parent, guardian, relative by consanguinity or affinity with the third civil degree, or the common-law spouse of the parent of the victim …". The court stated that "The qualifying circumstances of minority and relationship that would warrant imposition of the death penalty were specifically alleged and proven."

3/ *People v. Tao*, G.R. No. 133872, 5 May 2000; *People v. Amigable*, G. R No. 133857, 31 March 2000; *People v. Sampior*, G. R No. 117691, 1 March 2000.

...

5/ *Ramil Rayos v. The Philippines*, case No. 1167/2003, Views of 27 July 2004.

- *Arutyuniantz v. Uzbekistan* (971/2001), ICCPR, A/60/40 vol. II (30 March 2005) 68 at paras. 2.1-2.3, 6.2-6.6, 7 and 8.

...

LEGAL RIGHTS - CRIMINAL - Presumption of Innocence

2.1 On 31 May 2000, Vazgen Arutyuniantz and another man, Armen Garushyantz, were convicted in the Military Court in Tashkent 2/ of the aggravated murder of two people and of burgling their apartments; they were sentenced to death. The Court found that in January 1999, the two men had visited the apartment of one of the victims, to whom they owed money, and killed her by striking her with a hammer, and then burgled her apartment. It found that in March 1999, the pair had also killed another man by striking him several times on the head with a hammer, and then burgled his apartment. The author states that her son admitted to being present at the scene of each of the two murders, and to robbery, but maintains his innocence in relation to the two murders.

2.2 The author states that her son's trial was unfair and that he was unjustly convicted of murder. His conviction was based on the testimony of his alleged accomplice, Garushyantz, who changed his testimony several times. When he was arrested, Garushyantz said that Arutyuniantz, who then was still at large, had committed the two murders. After Arutyuniantz was apprehended, Garushyantz admitted that he had lied about Arutyuniantz committing the murders, in the hope that Arutyuniantz would not be apprehended and therefore offer no contradictory testimony. Then in Court, fearing a possible death sentence, Garushyantz again changed his testimony, this time claiming that Arutyuniantz had killed the first victim, but that he had killed the second. Despite these inconsistencies, the testimony of Garushyantz was the basis of her son's conviction for murder.

2.3 The author states there was no evidence and no judicial conclusion as to whether it was in fact Arutyuniantz or his accomplice who killed one or both of the victims, despite the requirements of Supreme Court Order Number 10, which requires that in cases of crimes allegedly committed by a group of people, the Court must ascertain who played what role in the crime. The decision of the court simply states that "*Garushyantz and Arutyuniantz struck (the victims) with a hammer"*, and there was no consideration of precisely who struck the blows with the hammer. The author claims that in such circumstances her son's right to be presumed innocent until proved guilty was violated. The author states that the Court approached the trial with a predisposition towards conviction, and that it upheld each and every accusation levelled against her son under the Criminal Code, even though some plainly had no application. Thus, her son was charged with the killing of two or more persons under article 97 of the Criminal Code which, according to the author, only applies where the murders in question occur simultaneously. She further claims that there was no evidence of the murders being committed in aggravating circumstances, as found by the Court. She submits that the Court's decision simply replicated the indictment, and that this is further indication of the Court's lack of objectivity.

...

6.2 In relation to the author's claim that her son was not presumed innocent until proved guilty, the author has made detailed submissions which the State party has not addressed. The Committee recalls that it is implicit in article 4, paragraph 2, of the Optional Protocol

that a State party should examine in good faith all allegations brought against it, and should provide the Committee with all relevant information at its disposal. The Committee does not consider that a general statement about the adequacy of the criminal proceedings in question meets this obligation. In such circumstances, due weight must be given to the author's allegations, to the extent that they have been substantiated.

6.3 The author points to a number of circumstances which she claims demonstrate that her son did not benefit from the presumption of innocence. She states that her son's conviction was based on the testimony of an accomplice who changed his evidence on several occasions, and who at one point confessed to the having committed the murders himself and having falsely implicated Arutyuniantz. She also states that the trial court never made a positive finding of who murdered the two victims; the decision refers to both accused striking and killing the victims with a single hammer.

6.4 The Committee also recalls its general comment No. 13, which reiterates that by reason of the principle of presumption of innocence, the burden of proof for any criminal charge is on the prosecution, and the accused must have the benefit of the doubt. His guilt cannot be presumed until the charge has been proved beyond reasonable doubt. From the information before the Committee, which has not been challenged in substance by the State party, it transpires that the charges and the evidence against the author left room for considerable doubt. Incriminating evidence against a person provided by an accomplice charged with the same crime should, in the Committee's opinion, be treated with caution, particularly in circumstances where the accomplice has changed his account of the facts on several occasions. There is no information before the Committee that, despite their having being raised by the author's son, the trial court or the Supreme Court took these matters into account.

6.5 The Committee is mindful of its jurisprudence that it is generally not for itself, but for the courts of States parties, to review or to evaluate facts and evidence, or to examine the interpretation of domestic legislation by national courts and tribunals, unless it can be ascertained that the conduct of the trial or the evaluation of facts and evidence or interpretation of legislation was manifestly arbitrary or amounted to a denial of justice.3/ For the reasons set out above, the Committee considers that the author's trial in the present case suffered from such defects.

6.6 In the absence of any explanation from the State party, the above concerns raise considerable doubt as to the author's son's guilt in relation to the murders for which he was convicted. From the material available to it, the Committee considers that Mr. Arutyuniantz was not afforded the benefit of this doubt in the criminal proceedings against him. In the circumstances, the Committee concludes that the author's trial did not respect the principle of presumption of innocence, in violation of article 14 (2).

LEGAL RIGHTS - CRIMINAL - Presumption of Innocence

7. The Human Rights Committee...is of the view that the facts before it disclose violations of article 14 (2) of the Covenant.

8. Pursuant to article 2, paragraph 3 (a), of the Covenant, the Committee considers that the author is entitled to an appropriate remedy, including compensation and either his retrial or his release.

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2/ It transpires from the file that the author's co-defendant had been in the armed services until 1998, when he deserted; no particular claim was made by the author on the fact that her son was judged by a Military Court.

3/ See communication No. 842/1998, *Romanov v. Ukraine*, inadmissibility decision of 30 October 2003.

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- *Khalilov v. Tajikistan* (973/2001), ICCPR, A/60/40 vol. II (30 March 2005) 74 at paras. 2.5-2.8, 7.4, 8 and 9.

...

2.5 According to the author, her son was beaten by investigators to make him confess participation in different unresolved crimes, including murder, use of violence, robberies and theft, and different other crimes that occurred between 1998 and 2000. According to her, the investigators refused to interrogate neighbours of the aunts in whose houses her son hid between December 1997 and January 2000, and who could have testified that he was innocent.

2.6 On an unspecified date, Mr. Khalilov was transferred from the Lenin District Police Department to Kaferingansky District Police Department. In the meantime, his father was taken from his workplace and brought to his son in the Kaferingansky District Police Department. The father noted that his son had been beaten and stated that he would complain to the competent authorities. The investigators began to beat him in front of his son. The author's son was threatened and told that he had to confess his guilt of two murders during a TV broadcast or otherwise his father would be killed. Mr. Khalilov confessed guilt in the two murders as requested. Notwithstanding, the investigators killed his father 1/.

2.7 On 12 February, Mr. Khalilov was shown again on national television (broadcast "Iztirob"). According to the author, he had been beaten and his nose was broken, but the cameras showed his face only from one particular angle that did not reveal these injuries.

LEGAL RIGHTS - CRIMINAL - Presumption of Innocence

2.8 Mr. Khalilov's case was examined by the Supreme Court jointly with the cases of other five co-accused 2/. The author's son was found guilty of the crimes under articles 104(2) (homicide), 181 (3) (hostage taking), 186 (3) (banditism), 195 (3) (illegal buying, selling, keeping, transporting of weapons, ammunitions, explosives, etc.), 244 (theft), and 249 (robbery with use of violence), of the Criminal Code of Tajikistan. He was sentenced to death on 8 November 2000. According to the author, no victim or injured party recognized her son in court as a participant in the criminal acts, notwithstanding the fact that the witnesses had declared that they could recognize by face every participant in the crimes. The Court allegedly ignored their statements and refused to take them into account or to include them in its decision.

...

7.4 The Committee has noted the author's claim, under article 14, paragraph 2, that her son's right to be presumed innocent was violated by investigators. She contends that her son was forced to admit guilt on at least two occasions during the investigation on national television. In the absence of any information from the State party, due weight must be given to these allegations. The Committee recalls its general comment No. 13 and its jurisprudence 6/ that it is "a duty for all public authorities to refrain from prejudging the outcome of a trial". In the present case, it concludes that the investigating authorities failed to comply with their obligations under article 14, paragraph 2.

...

8. The Human Rights Committee...is of the view that the facts before it disclose a violation of Mr. Khalilov's rights under articles 6, paragraph 1; 7; 10, paragraph 1; and 14, paragraphs 2, 3 (g) and 5, of the Covenant, and a violation of article 7 in the author's own respect.

9. Under article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy, including information on the location where her son is buried, and compensation for the anguish suffered. The State party is also under an obligation to prevent similar violations in the future.

Notes

1/ The author submits a letter of her son (dated 27 December 2000), addressed to the Committee, in which M. Khalilov contends that his father was brought to the police department and was beaten, humiliated, and burned with an iron by the investigators, until he died. According to Mr. Khalilov, his father was returned home dead and was buried on 9 February 2000. Mr. Khalilov gives the names of two officials who participated in his and his father's beatings: one N., chief of a Criminal Inquiry Department, and his deputy, U. According to him, there were also 3-4 other persons.

2/ The exact dates of the proceedings are not provided.

...

6/ See, for example *Gridin v. The Russian Federation*, communication No. 770/1997, Views adopted on 20 July 2000.