

LEGAL RIGHTS -CRIMINAL
- Protection Against Retroactive Criminalization

IV. CONCLUDING OBSERVATIONS, CONTINUED

ICCPR

- Estonia, ICCPR, A/58/40 vol. I (2003) 41 at para. 79(8).

(8) The Committee is concerned that the relatively broad definition of the crime of terrorism and of membership of a terrorist group under the State party's Criminal Code may have adverse consequences for the protection of rights under article 15 of the Covenant, a provision which, significantly, is non-derogable under article 4, paragraph 2.

The State party is requested to ensure that counter-terrorism measures, whether taken in connection with Security Council resolution 1373 (2001) or otherwise, are in full conformity.

- Portugal, ICCPR, A/58/40 vol. I (2003) 56 at para. 83(15).

(15) The Committee notes with concern that many of the provisions relating to terrorism in the Penal Code and the Code of Penal Procedure relate to exceptional situations, which may result in violations of articles 9, 15 and 17 of the Covenant.

The State party should ensure that measures taken against terrorism do not infringe the provisions of the Covenant and that exceptional provisions are not abused by State officials.

- Israel, ICCPR, A/58/40 vol. I (2003) 64 at para. 85(14).

(14) The Committee is concerned about the vagueness of definitions in Israeli counter-terrorism legislation and regulations which, although their application is subject to judicial review, appear to run counter to the principle of legality in several aspects owing to the ambiguous wording of the provisions and the use of several evidentiary presumptions to the detriment of the defendant. This has adverse consequences for the rights protected under article 15 of the Covenant, which is non-derogable under article 4, paragraph 2, of the Covenant.

The State party should ensure that measures designed to counter acts of terrorism, whether adopted in connection with Security Council resolution 1373 (2001) or in the context of the ongoing armed conflict, are in full conformity with the Covenant.

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- Russian Federation, ICCPR, A/59/40 vol. I (2003) 20 at para. 64(20).

(20) While welcoming the State party's efforts to ban and prosecute groups propagating racist and xenophobic views, the Committee expresses its concern that the definition of "extremist activity" in the federal law of July 2002 "On Combating Extremist Activities" is too vague to protect individuals and associations against arbitrariness in its application.

The State party is encouraged to revise the above law with a view to making the definition of "extremist activity" more precise, to exclude any possibility of arbitrary application and give notice to persons concerned regarding actions for which they will be held criminally liable (arts. 15 and 19 to 22).

- Sri Lanka, ICCPR, A/59/40 vol. I (2003) 30 at para. 66(8).

(8) The Committee is concerned that article 15 of the Constitution permits restrictions on the exercise of the fundamental rights set out in chapter III (other than those set out in articles 10, 11, 13.3 and 13.4) which go beyond what is permissible under the provisions of the Covenant, and in particular under article 4, paragraph 1, of the Covenant. It is further concerned that article 15 of the Constitution permits derogation from article 15 of the Covenant, which is non-derogable, by making it possible to impose restrictions on the freedom from retroactive punishment (article 13, paragraph 6, of the Constitution).

The State party should bring the provisions of chapter III of the Constitution into conformity with articles 4 and 15 of the Covenant.

- Germany, ICCPR, A/59/40 vol. I (2004) 39 at para. 68(10).

(10) The Committee regrets that Germany maintains its reservations, in particular regarding article 15, paragraph 1, of the Covenant, a non-derogable right, and those made when the Optional Protocol was ratified by the State party which partially limits the competence of the Committee with respect to article 26 of the Covenant.

The State party should consider withdrawing its reservations.

- Uganda, ICCPR, A/59/40 vol. I (2004) 47 at para. 70(8).

(8) The Committee notes the adoption of the Anti-Terrorism Act of June 2002, pursuant to Security Council resolution 1373 (2001). It is concerned that section 10 of the Act

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criminalizes a “terrorist organization” without any reference to a particular criminal offence committed by or through such an organization. It is also concerned that section 11 of the Act does not establish objective criteria for determining membership in a “terrorist organization” (arts. 2 and 15).

The State party should review the Anti-Terrorist Act with a view to ensuring that the provisions set out in sections 10 and 11 are in full conformity with the Covenant.

- Belgium, ICCPR, A/59/40 vol. I (2004) 56 at para. 72(24).

(24) The Committee is concerned that the Act of 19 December 2003 on terrorist offences gives a definition of terrorism which, in referring to the degree of severity of offences and the perpetrators’ intended purpose, does not entirely satisfy the principle of offences and penalties being established in law (art. 15).

The State party should produce a more precise definition of terrorist offences.

- Morocco, ICCPR, A/60/40 vol. I (2004) 35 at para. 84(20).

(20) The Committee is concerned that the Criminal Code permits any serious attack using violence to be classed as a terrorist act. It is also concerned about the numerous reports that the Anti-Terrorism Act adopted on 28 May 2003 is being applied retroactively.

In order to rectify this situation of legal uncertainty, the Committee recommends that the State party should amend the legislation in question by clearly defining its scope, and requests it to ensure compliance with the provisions of article 15 and all the other provisions of the Covenant.

- Slovenia, ICCPR, A/60/40 vol. I (2005) 74 at para. 93(12).

(12) The Committee has taken note of the efforts undertaken by the State party to reduce backlogs in court cases by adopting strategies such as the “Hercules project”, but it remains concerned that the backlog is increasing for certain categories of cases (art. 14).

The State party should take steps to further reduce the backlog, while guaranteeing access to justice to all, and ensure that those persons remanded in custody for trial are brought to trial as speedily as possible.

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CAT

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

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

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(c) The inadequacy of measures to ensure that the second amendment to the 1945 Constitution, relating to the right not to be prosecuted based on retroactive law, will not apply to offences such as torture and crimes against humanity which under international law are already criminalized;

...

45. The Committee recommends that the State party:

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(f) Ensure that crimes under international law such as torture and crimes against humanity committed in the past are investigated and, where appropriate, prosecuted in Indonesian courts;

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