

LEGAL RIGHTS - CRIMINAL - Right Against Self-Incrimination

IV. CONCLUDING OBSERVATIONS

ICCPR

- United Kingdom of Great Britain and Northern Ireland, ICCPR, A/50/40 vol. I (1995) 72 at paras. 424 and 432.

Paragraph 424

It is noted with concern that the provisions of the Criminal Justice and Public Order Act of 1994, which extended the legislation originally applicable in Northern Ireland, whereby inferences may be drawn from the silence of persons accused of crimes, violates various provisions in article 14 of the Covenant, despite the range of safeguards built into the legislation and the rules enacted thereunder.

Paragraph 432

The Criminal Justice and Public Order Act of 1994 and the equivalent legislation in Northern Ireland should be reviewed in order to ensure that the provisions which allow inferences to be drawn from the silence of accused persons do not compromise the implementation of various provisions in article 14 of the Covenant.

- Georgia, ICCPR, A/52/40 vol. I (1997) 40 at paras. 240, 241 and 253.

Paragraph 240

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

Paragraph 241

Deep concern is expressed over cases of torture inflicted on individuals deprived of their liberty, including for the purpose of extracting confessions. The fact that these and other acts of torture usually go unpunished and that in many cases a lack of confidence in the authorities keeps the victims from lodging complaints is deplored.

Paragraph 253

Systematic and impartial investigations into all complaints of ill-treatment and torture should be undertaken, persons charged with violations as a result of these investigations should be brought to trial, and victims should be compensated. Confessions obtained under duress should be systematically excluded from judicial proceedings and all convictions based on confessions allegedly made under torture should be reviewed.

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- Algeria, ICCPR, A/53/40 vol. I (1998) 52 at para. 357.

The Committee is deeply concerned over persistent allegations of systematic torture. The Committee deplores the apparent routine acceptance by trial court judges of confessions extracted under duress, even when there is medical evidence of torture, and calls on the State party to take all necessary measures to redress this situation.

- Japan, ICCPR, A/54/40 vol. I (1999) 36 at para. 167.

In order to exclude the possibility that confessions are extracted under duress, the interrogation of the suspect in police custody or substitute prisons should be strictly monitored, and recorded by electronic means.

- Austria, ICCPR, A/54/40 vol. I (1999) 42 at para. 186.

There is no provision in the Code of Criminal Procedure whereby a statement by way of confession must, if challenged, be proved not to have been extracted by means of torture or ill-treatment. Steps should be taken to amend the Code of Criminal Procedure in this regard.

- Mexico, ICCPR, A/54/40 vol. I (1999) 61 at para. 319.

The State party should amend the provisions of the law, as necessary, to ensure that the burden of proof that a confession used in evidence has been made by the accused person of his own free will shall lie with the State, and that confessions obtained by force cannot be used as evidence in trial proceedings.

See also:

- Romania, ICCPR, A/54/40 vol. I (1999) 68 at para. 372.

- Morocco, ICCPR, A/55/40 vol. I (2000) 24 at para. 107.

Firm measures should be adopted to eradicate the practice of torture, and legislation should be enacted to make torture a criminal offence. Any confession or statement obtained by torture or duress should be inadmissible in evidence. Appropriate mechanisms should be established for independent monitoring of police detention centres and penitentiaries, all reports of torture and ill-treatment must be investigated, the persons responsible should be prosecuted, and victims of torture

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must be granted compensation.

- Republic of Korea, ICCPR, A/55/40 vol. I (2000) 29 at paras. 143 and 144.

Paragraph 143

Non-compliance by the State party with the requirements of article 9 of the Covenant, and the seemingly widespread reliance of the prosecuting authorities and the courts on confessions by accused persons and accomplices, facilitate acts of torture and cruel, degrading and inhuman treatment by interrogating officials.

Paragraph 144

Establishment of an independent body to investigate allegations of torture should not be delayed.

- Ireland, ICCPR, A/55/40 vol. I (2000) 61 at paras. 436 and 437.

Paragraph 436

The continuing operation of the Offences Against the State Act is of concern, including the increase in the periods of detention without charge under the Act, that persons may be arrested on suspicion of being about to commit an offence, that the majority of persons arrested are never charged with an offence, and that, in circumstances covered by the Act, failure to respond to questions may constitute evidence supporting the offence of belonging to a prohibited organization. The application of the Act raises problems of compatibility with articles 9 and 14, paragraph 3 (g), of the Covenant.

Paragraph 437

Steps should be taken to ensure that all criminal procedures are brought into compliance with articles 9 and 14 of the Covenant.

- Uzbekistan, ICCPR, A/56/40 vol. I (2001) 59 at para. 79(8).

It is appreciated that the recently established Constitutional Court delivered a judgement holding that statements made under duress would not be admissible in evidence. The assurance by the State party's delegation that any allegation of torture by a defendant will lead to an immediate discontinuation of the case and a separate examination of the truthfulness of the allegation is noted. However, allegations of the continued use of torture and other forms of inhuman treatment by law enforcement officials, particularly for the purposes of extorting confessions, in violation of article 7 and article 14, paragraph 3(g), of the Covenant, are of concern. Allegations that judges refuse to take into account any evidence provided by the accused with regard to his/her treatment by law enforcement officials is also of concern. The State party must ensure that all allegations of ill-treatment by public officials,

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which are brought before the courts by detainees, are investigated by the presiding judge and the persons responsible prosecuted. The State party must ensure that no one is compelled to testify against himself or herself or to confess guilt.

- Croatia, ICCPR, A/56/40 vol. I (2001) 65 at para. 80(5).

Judgments holding inadmissible evidence obtained from suspects without the presence of a lawyer and striking down as unconstitutional criminal sanctions for criticism of high officials are welcomed.

- Syrian Arab Republic, ICCPR, A/56/40 vol. I (2001) 70 at para. 81(8).

Note is taken of the delegation's explanations that the death penalty is rarely imposed and even more rarely carried out. Serious concern still remains at the number of offences punishable by the death penalty and at the absence of any information on the number of death sentences imposed in the past 10 years and the number of executions carried out during the same period. This situation is particularly disturbing in the light of precise, consistent reports alleging that a large number of death sentences have been passed and executions carried out following unfair trials in which the accused were sentenced although evidence was used that had been obtained through confessions which had been made under torture. The State party is called upon to ensure respect for articles 6, 7 and 14 (3) (g) of the Covenant and the number of offences punishable by the death penalty should be reduced.

CAT

- Jordan, CAT, A/50/44 (1995) 23 at para. 167.

That political detainees are sentenced to death or imprisonment in trials before the State Security Court on the basis of confessions allegedly extracted after torture is of concern.

- Finland, CAT, A/51/44 (1996) 21 at paras. 129 and 137.

Paragraph 129

A provision specifically prohibiting the use of statements obtained under torture in judicial proceedings could constitute a strong preventive measure against acts of torture.

Paragraph 137

A special provision should be incorporated into the State party's criminal procedure, concerning the exclusion from judicial proceedings of evidence which has been established to have been obtained,

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directly or indirectly, as a result of torture, as provided for by article 15 of the Convention.

- Republic of Korea, CAT, A/52/44 (1997) 12 at para. 56.

Continued reports that many political suspects go through the "torture procedure" during interrogation, in an attempt to extract confessions from them is of deep concern. The sleep deprivation practised on suspects, which may in some cases constitute torture and which seems to be routinely used to extract confessions, is unacceptable.

- Poland, CAT, A/52/44 (1997) 18 at para. 109.

Statements obtained directly or indirectly under torture should not be admissible as evidence in the courts. Legal provisions permitting the use of physical force, for whatever reason, should be abolished as soon as possible.

- Georgia, CAT, A/52/44 (1997) 20 at para. 120.

The absence of proper guidelines for the taking of statements from persons under arrest and of firm criteria for their evidential evaluation is of concern.

- Mexico, CAT, A/52/44 (1997) 26 at para. 163.

The ineffectiveness of efforts to put an end to the practice of torture is the result, *inter alia*, of the continuing impunity of torturers and the fact that the authorities responsible for the administration of justice continue to admit confessions and statements made under torture as evidence during trials, despite legal provisions explicitly declaring them inadmissible.

- Argentina, CAT, A/53/44 (1998) 8 at para. 58.

Implementation of the following provisions of the new Code of Criminal Procedure should help prevent the practice of torture: prohibiting the police from taking a statement from a person who has been charged; strictly limiting cases in which the police may detain persons without a court order and obliging them to bring the detainee before the competent judicial authority immediately or within six hours; limiting the length of incommunicado detention; and stipulating that the fact that an individual is being held incommunicado may under no circumstances prevent him from communicating with his defence counsel before making any statement or before any proceeding requiring his personal

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participation.

- Switzerland, CAT, A/53/44 (1998) 11 at para. 99.

The adoption of legislative measures granting suspects the right to remain silent is recommended.

See also:

- Cuba, CAT, A/53/44 (1998) 12 at para. 118.

- Spain, CAT, A/53/44 (1998) 14 at para. 132.

It is of concern that although judges do not accept as incriminating evidence statements that have been obtained under duress or torture, they nevertheless accept those same statements as incriminating other co-defendants.

- Sri Lanka, CAT, A/53/44 (1998) 24 at para. 253.

The admissibility under the emergency regulation of confessions is a matter of concern, as well as the absence of strict legislation governing detention consistent with international norms.

- Yugoslavia, CAT, A/54/44 (1999) 6 at paras. 44, 45 and 47.

Paragraph 44

The incorporation of the definition contained in article 1 of the Convention, in compliance with article 4, paragraph 1 and article 2, paragraph 1, requires specific as well as systematic legislative treatment in the area of substantive criminal law. Article 4 of the Convention demands that each State party shall ensure that all acts of torture are offences under its own criminal law. A verbatim incorporation of this definition would permit the current Yugoslav criminal code formula defining the "extortion of confession" to be made more precise, clear and effective.

Paragraph 45

One of the essential means in preventing torture is the existence, in procedural legislation, of detailed provisions on the inadmissibility of unlawfully obtained confessions and other tainted evidence. The absence of detailed procedural norms pertaining to the exclusion of tainted evidence can diminish the practical applicability of these general principles. Evidence obtained in violation of article 1 of the Convention should never be permitted to reach the cognizance of the judges deciding the case, in any

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legal procedure.

Paragraph 47

The fact that confessions obtained by torture were admitted as evidence by the courts even in cases where the use of torture had been confirmed by pre-trial medical examinations is of concern.

- United Kingdom of Great Britain and Northern Ireland, CAT, A/54/44 (1999) 9 at para. 76.

It is of concern that the rules of evidence in Northern Ireland admit confessions of suspected terrorists upon a lower test than in ordinary cases and in any event permit the admission of derivative evidence even if the confession is excluded.

- Uzbekistan, CAT, A/55/44 (2000) 19 at para. 81.

The State party should ensure in practice absolute respect for the principle of the inadmissibility of evidence obtained by torture.

See also:

- Kazakhstan, CAT, A/56/44 (2001) 52 at para. 54.
- Paraguay, CAT, A/55/44 (2000) 27 at para. 149.

The exclusion of the probative value of any statement which is contrary to procedural guarantees provided for in the Constitution and in international law is noted with satisfaction. This gives national courts binding jurisdiction in accordance with article 15 of the Convention.

- El Salvador, CAT, A/55/44 (2000) 28 at paras. 162 and 168.

Paragraph 162

The maintenance in the Code of Criminal Procedure of confessions made out of court is in contradiction with the Constitution, which gives legal force only to confessions made before a judicial authority.

Paragraph 168

Recognition of out-of-court confessions should be removed from the Code of Criminal Procedure,

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on the ground that it contravenes the relevant constitutional guarantee.

- Cameroon, CAT, A/56/44 (2001) 28 at paras. 65 and 66.

Paragraph 65

The absence of legislative provisions rendering evidence obtained through torture inadmissible, pursuant to article 15 of the Convention is of concern.

Paragraph 66

The State party should introduce provisions into its legislation for the inadmissibility of evidence obtained through torture, except in the case of acts carried out against the perpetrator of torture in order to prove that an act of torture has been committed.

- Georgia, CAT, A/56/44 (2001) 35 at para. 82.

In order to ensure that perpetrators of torture do not enjoy impunity, urgent steps be taken to: i) establish an effective and independent complaints mechanism; ii) make provisions for the systematic review of all convictions based upon confessions that may have been obtained through torture; iii) make adequate provisions for compensation and rehabilitation of victims of torture.

- Slovakia, CAT, A/56/44 (2001) 43 at para. 105.

Measures should be adopted to ensure that statements or information obtained through coercion is not admissible as evidence in courts and that legal provisions permitting the use of physical force by police officials be reviewed, revised, as appropriate, and implemented in accordance with the requirements of the Convention.

- Brazil, CAT, A/56/44 (2001) 49 at paras. 119 and 120.

Paragraph 119

Concern is expressed about the absence in Brazilian legislation of an explicit prohibition on any statement obtained through torture being accepted as evidence in judicial proceedings.

Paragraph 120

The State party should explicitly prohibit the use as evidence in judicial proceedings of any statement obtained through torture.

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- Kazakhstan, CAT, A/56/44 (2001) 52 at para. 129.

The State party should review cases of convictions based on confessions that may have been obtained through torture or ill-treatment, and ensure adequate compensation to victims.

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.