

LIMITATIONS - GENERAL - PERMISSIBLE LIMITATIONS

III. JURISPRUDENCE

ICCPR

Cabal and Pasini v. Australia (1020/2002), ICCPR, A/58/40 vol. II (7 August 2003) 346 (CCPR/C/78/D/1020/2002) at paras. 7.3 and 7.4.

...

7.3 The Committee notes that the State party has invoked its reservation to article 10, paragraph 2 (a), of the Covenant which states that, "In relation to paragraph 2 (a) the principle of segregation is an objective to be achieved progressively". Also, the Committee notes the authors' argument that despite the reservation this part of the communication is admissible as the reservation was made twenty years ago and it would be reasonable to expect that the State party would have fulfilled its objective to comply fully with its obligations under this article at this stage. Further, the Committee notes that both parties have made reference to the Committee's general comment No. 24 on reservations.

7.4 The Committee observes that the State party's reservation in question is specific and transparent, and that its scope is clear. It refers to the *segregation* of convicted and unconvicted persons and does not extend, as argued by the authors and not contested by the State party, to cover the *separate treatment* element of article 10, paragraph 2 (a) as it refers to these two categories of persons. The Committee recognises that while 20 years have passed since the State party entered the reservation and that it intended to achieve its objective "progressively", and although it would be desirable for all States parties to withdraw reservations expeditiously, there is no rule under the Covenant on the time frame for the withdrawal of reservations. In addition, the Committee notes the State party's efforts to date to achieve this objective with the construction of the Melbourne Remand Centre in 1989, specifically for the purpose of housing remand prisoners, and its plan to construct two new prisons in Melbourne, including a remand prison, by end 2004. Consequently, although it may be considered unfortunate that the State party has not achieved its objective to *segregate* convicted and unconvicted persons in full compliance with article 10, paragraph 2 (a), the Committee cannot find that the reservation is incompatible with the object and purpose of the Covenant. This part of the authors' claim is, therefore, inadmissible under article 3 of the Optional Protocol.