

UPDATES FROM THE REGIONAL HUMAN RIGHTS SYSTEMS

AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

THE 35TH ORDINARY SESSION of the African Commission on Human and Peoples' Rights is scheduled to take place May 3-17, 2004 in Dakar, Senegal. A draft of the proposed schedule has not yet been released at the time of this writing.

EUROPEAN COURT OF HUMAN RIGHTS

THE EUROPEAN COURT of Human Rights (Court) was established in 1959 by the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention). Enforcing the obligations entered into by the Council of Europe's Contracting States, the Court is composed of the number of judges equal to that of the Contracting States. Any Contracting State or individual claiming to be a victim of a violation of the Convention may lodge a complaint with the Court. In its decisions, the Court takes into account the various legal systems of the Contracting States.

ELÇI AND OTHERS V. TURKEY

In *Elçi and Others v. Turkey*, the Court held that the arrest and detention of sixteen Turkish lawyers violated their rights under Articles 3, 5 and 8 of the European Convention.

The sixteen applicants were arrested and detained between mid-November and early December 1993, after Turkish security forces procured a confession from a former member of the Kurdish Workers' Party (PKK). The former PKK member alleged that the applicants acted as messengers between members of the PKK, including the applicants' detained clients. The applicants contended that they were targeted for arrest because they represented clients before the State Security Court. The applicants filed complaints with the Court in 1993 and 1994. The case was deemed admissible in 1996, and the complaints were joined in September 1997.

In their complaint, the applicants alleged that their detention violated the European Convention's protection of liberty and security under Article 5. Some of the applicants also argued that they were tortured in violation of the Convention's prohibition of torture under Article 3. It was also asserted that, while in custody, the applicants were subjected to coercive questioning, threatened, stripped, hosed down with cold water, humiliated and slapped in order to coerce them to sign confessions. They were held in cold, damp cells and corridors and

forced to sleep on the floor, sometimes blindfolded. They were allowed access to the bathroom only twice a day and were denied adequate nourishment.

Some of the applicants further alleged that security forces searched their homes and offices and seized documents (including the files of applicants to the European Commission of Human Rights) during their arrests. Such treatment would constitute violations of their right to respect of privacy under Article 8.

Prohibition of Torture and Inhuman Treatment and Punishment

The Court stressed that Article 3 protections against torture are fundamental to democracy and are not subject to derogation, even in circumstances involving threats of terrorism and organized crime. Despite this strict prohibition, the Court emphasized that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum level is based on all the circumstances of the case, including the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim.

In evaluating the applicants' specific claims under Article 3, the Court noted that the allegations made by several applicants of ill-treatment that occurred at one location were credible as a whole. The Court paid particular attention to medical examinations that corroborated the applicants' claims of abuse. The Court also noted that there were inconsistencies in the evidence of the Government witnesses and that the applicants' complaints were not taken seriously enough or adequately investigated by the authorities. The Court held that due to the seriousness and cruelty of the treatment and the severity of the pain suffered by the applicants, the actions of the security forces constituted torture within the meaning of Article 3. The Court also found that during their detention, certain applicants were subjected to ill-treatment that amounted to inhuman and degrading treatment, another violation of Article 3.

The Right to Liberty and Security

The Court emphasized that Article 5 requires any deprivation of liberty to be "lawful" and to comply with "a procedure prescribed by law." This language should be understood to strictly prohibit the arbitrary detention of individuals. The Court also

recalled the "reasonable suspicion" requirement under Article 5, which presupposes the existence of facts or information leading an objective observer to find that the person concerned may have committed the offence in question. "Reasonableness" is determined by the circumstances of a given case. Using this standard, the Court held that Turkey violated the applicants' Article 5 protections.

The Right to Privacy

With regard to Article 8, the Court highlighted that a lawyer's freedom to carry out his/her work without interference is both an essential characteristic of a democratic society and a necessary prerequisite for the effective enforcement of the provisions of the Convention. In this case, the persecution and harassment of members of the legal profession violated the terms of the European Convention. The Court found that the searches of five of the applicants' houses and, in certain cases, the seizure of personal documents and other items constituted an interference with the applicants' right to respect for their homes and correspondence. The Court determined that the search of the professional offices of two of the applicants, and the seizure of their files, also amounted to an interference with their right to respect for their homes and correspondence. Because the search and seizure measures were implemented without proper authorization or safeguards, they constituted a breach of Article 8.

Under Article 41, the Convention's provision on just satisfaction, the Court awarded the applicants sums ranging from 1,210 to 1,750€ for pecuniary damages and 2,100 to 36,000€ for non-pecuniary damages.

INTER-AMERICAN HUMAN RIGHTS SYSTEM

THE INTER-AMERICAN HUMAN RIGHTS system was created with the adoption of the American Declaration of the Rights and Duties of Man (Declaration) in 1948. In 1959, the Inter-American Commission on Human Rights (Commission) was established as an independent organ of the Organization of the American States (OAS) and it held its first session one year later. In 1969, the American Convention on Human Rights (Convention) was adopted. The Convention further defined the role of the Commission and created the Inter-American Court of Human Rights (Court). According to the Convention, once the Commission determines the case is admissible and meritorious, it will make recommendations and, in some

cases, present the case to the Court for adjudication. The Court hears these cases, determines responsibility under relevant regional treaties and agreements, and assesses and awards damages and other forms of reparation to victims of human rights violations.

STATEHOOD SOLIDARITY COMMITTEE V. UNITED STATES, REPORT NO. 98/03

On December 29, 2003, the Commission issued Report No. 98/03, finding the lack of federal representation and participation for citizens of the District of Columbia (D.C.) in the United States to be a violation of the Declaration. This decision came more than ten years after the Statehood Solidarity Committee (petitioners), entered a petition against the United States Government, in April 1993, on behalf of all D.C. citizens.

Petitioners' Claim

Since the inception of the District of Columbia in 1801, D.C. citizens have been denied representation in the U.S. Senate and allowed only one non-voting Member in the U.S. House of Representatives. The petitioners claimed that by denying D.C. citizens representation in the U.S. federal legislature, the United States is in violation of Article II (right to equality under the law) and Article XX (right to vote and participate in government) of the Declaration.

The petitioners claimed that the United States fails to afford them equality under the law, protected by Article II of the Declaration, because unlike citizens of U.S. states, D.C. citizens are denied the right to legislative, budgetary, and full judicial autonomy. Article II allows for differential treatment only when there is a legitimate aim and an objective justification for such differential treatment, and a proportional relationship between the means employed and the aim sought.

In creating the District of Columbia and denying it federal representation over 200 years ago, the U.S. government sought to protect the safety and integrity of the federal seat of government. The government was concerned that D.C. citizens could potentially rise up against the government and cause political instability. It also feared that due to their close proximity to the federal government, D.C. citizens would have disproportionate influence over policymakers.

The petitioners argued that these historical reasons for denying D.C. citizens federal representation are outdated and can no longer justify continued differential treatment today. The petitioners speculated that D.C.'s continued lack of representation may stem from bias

against African-Americans, who make up the majority of the D.C. population. They concluded that such differential treatment, whether racially motivated or otherwise, is detrimental to the citizens of the District of Columbia and cannot be justified in light of the antiquated rationale formulated over 200 years ago.

In addition, the petitioners claimed that by denying D.C. citizens full congressional representation, the United States denies them meaningful participation in the national government, in contravention to Article XX of the Declaration. The petitioners contended that the alternative methods of political participation offered by the State (described below), were not sufficient to guarantee the rights provided by Article XX. Finally, the petitioners argued that no other federal district in the Americas denies its citizens the right to federal representation, citing examples such as Buenos Aires, Argentina; Brasilia, Brazil; Mexico City, Mexico; and Caracas, Venezuela.

State Response

The United States responded to the petitioners' Article II claim by arguing that the differential treatment of D.C. citizens was not based on racial discrimination nor was it an attempt to disenfranchise its citizens. Instead, it claimed that such differential treatment was based on the State's interest in protecting the security and integrity of the federal seat of government.

In response to the petitioners' Article XX claim, the United States contended that the Declaration was not explicit as to the framework and methods of political participation and therefore it was within the discretion of the states to determine the structure of their government. The United States further argued that D.C. citizens did in fact have the opportunity to participate in political processes through quasi-representation in Congress and through presidential and local elections. Ultimately, the United States argued that the issue of D.C. voting rights should be left to the American people to debate and decide on, and not to the international community.

Commission's Findings

The Commission found that the United States had violated Articles II and XX of the Declaration by denying D.C. citizens the right to equal and effective participation in government. The Commission found that the denial of D.C. citizens' right to meaningful representation, while the citizens of U.S. states were granted that same right, violated the petitioners' right to equality under the law as guaranteed by Article II of the Declaration. It found that such lim-

itations on D.C. citizens' political participation were arbitrary and without justification.

In addition, the Commission found that the United States was violating Article XX of the Declaration by denying D.C. citizens effective participation in the national legislature. While the Commission recognized the autonomy of states to structure their governments as they saw fit, it underscored the need for member states to meet the minimum standards required to give effect to internationally recognized human rights, such as the right to participate in government.

The Commission found that the alternative political activities mentioned by the United States were insufficient to satisfy the requirements of Article XX. Specifically, the Commission found that the existence of a non-voting Member of the House of Representatives was essentially meaningless and rendered D.C.'s participation in the federal legislature ineffective. Ultimately, the Commission found that the restrictions imposed by the United States curtailed the right of D.C. citizens to participate in their national government without adequate justification.

Regarding the petitioners' contention that D.C.'s lack of federal representation stemmed from a bias against African-Americans, the Commission found that a racial discrimination component of the Article II and XX violations was not adequately briefed so as to make a specific determination. The Commission found that though this lack of representation had a prejudicial impact on the African-American community, there was insufficient evidence to prove discriminatory intent on the part of the United States.

It is unlikely the United States will decide to grant D.C. residents representation in the national legislature based on this decision alone. However, this decision is important in that it conveys regional condemnation of an undemocratic structure and raises this important issue before the international community. While the United States is generally unresponsive to international pressure, especially in relation to its domestic affairs, this decision will surely energize the movement for D.C. voting rights at the national level. **HRB**

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