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HUMAN RIGHTS COMMITTEE

Eighty-eighth session

SUMMARY RECORD (PARTIAL)* OF THE 2416th MEETING**

Held at the Palais Wilson, Geneva,
on Monday, 30 October 2006, at 3 p.m.

Chairperson: Ms. CHANET

CONTENTS

GENERAL COMMENTS OF THE COMMITTEE (continued)

* No summary record was prepared for the rest of the meeting.

** No summary record was issued for the 2415th meeting.

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The discussion covered in the summary record began at 4.35 p.m.

GENERAL COMMENTS OF THE COMMITTEE (agenda item 8) (continued)
(CCPR/C/GC/32/CRP.1/Rev.1)

1. The CHAIRPERSON invited members to resume consideration of draft general comment No. 32 (CCPR/C/GC/32/CRP.1/Rev.1).

Paragraph 39

2. Mr. KÄLIN, Rapporteur on draft general comment No. 32 relating to article 14 of the Covenant, said that the definition of "juvenile" contained in paragraph 39 was based on article 1 of the Convention on the Rights of the Child. Given the Committee's lack of jurisprudence on juveniles, the text drew extensively on the relevant provisions of the Convention.

3. Mr. ANDO observed that, in some countries, juvenile legislation was applicable to young persons up to the age of 20. It would therefore be unwise to establish 18 as the age of applicability of article 14 of the Covenant; the relevant reference should either be amended or deleted.

4. Mr. KÄLIN agreed that it might be judicious to take account of the fact that some justice systems drew a distinction between "children" and "young adults" or "juveniles". He suggested adding the words "or later" at the end of the second sentence.

5. The CHAIRPERSON said it might be sufficient to make it clear that the attainment of legal majority was subject to domestic legislation.

6. Mr. KÄLIN said that article 14 provided no definition of "juvenile" and a reference to age was necessary in order to establish its scope of applicability.

7. Mr. SOLARI YRIGOYEN, supported by Mr. BHAGWATI, considered that the current wording of paragraph 39 was clear and should be retained. The near-universal ratification of the Convention on the Rights of the Child suggested that the definition of the child contained therein was internationally known and accepted.

8. Sir Nigel RODLEY said that, while he too considered the current wording of the paragraph satisfactory, it was important to bear in mind that the terms "child" and "juvenile" were not necessarily coextensive.

9. Mr. AMOR agreed and supported Mr. Kälin's earlier proposal to add the words "or later" at the end of the second sentence.

10. The CHAIRPERSON said that the Committee should avoid specifying an age of applicability other than that established in domestic legislation. Upon receipt of a communication concerning a juvenile, the Committee would need to decide whether he or she

was a juvenile within the meaning of the Covenant. Setting a specific age was inappropriate since the question of applicability of juvenile court procedures depended not only on the age, but also on the physical and mental maturity of the offender.

11. Ms. PALM said that, by setting the age of applicability at 18, protection under article 14, paragraph 4, might be withdrawn from a certain sector of the juvenile population that was afforded special treatment under domestic law in some countries. It might be best to delete the second sentence altogether.

12. The CHAIRPERSON suggested putting the second sentence in square brackets and reconsidering the paragraph at second reading, taking account of the present exchange of views.

13. Paragraph 39 was adopted on that understanding.

Paragraph 40

14. Mr. KÄLIN said that the last sentence was a repetition and should be deleted.

15. Paragraph 40, as amended, was adopted.

Paragraph 41

16. The CHAIRPERSON pointed out that the need to establish a minimum age below which children and juveniles should be presumed to have no capacity to infringe the penal law was already addressed in general comment No. 17 relating to article 24. Given that situation and the fact that article 14, paragraph 4, concerned procedural matters only, it would be best to delete the second sentence of paragraph 41.

17. Paragraph 41, as amended, was adopted.

Paragraph 42

18. Mr. SHEARER proposed the inclusion in the list of examples of the practice of "family conferencing", which had been successfully introduced in Australia and New Zealand as an alternative means of dealing with young offenders.

19. Mr. KÄLIN said that he had no objection to including such a reference. However, since the term was not widely known, it might be necessary to include an explanatory note and he invited Mr. Shearer to propose appropriate wording.

20. Mr. SHEARER explained that family conferencing was a form of conciliation between family members, the young offender and sometimes the victim, which was facilitated by a counsellor. The most appropriate term might be "conciliation".

21. The CHAIRPERSON thought it unnecessary to provide a detailed description of the practice, since it merely served as an example.

22. Mr. SOLARI YRIGOYEN supported the inclusion of the term “family conferencing”. It was important for the Committee to bring new procedures to the attention of the public and the expression was self-explanatory.

23. Mr. AMOR said that the list of examples was not exhaustive; referring to methods that were not widely known was not useful and might lead to misinterpretation.

24. The CHAIRPERSON suggested that the Committee should reconsider the question at second reading.

25. Paragraph 42 was adopted on that understanding.

Paragraph 43

26. Mr. AMOR asked whether the last sentence meant that convicted persons should have access to several levels of appeal if the latter existed.

27. Mr. KÄLIN said that that was precisely what had been determined in the Committee’s decision in the Raphael Henry v. Jamaica case (communication No. 230/1987, CCPR/C/43/D/230/1987). The Covenant stipulated that an individual had the right to one appeal, but if - in violation of the domestic law - access to an available second instance of appeal was denied, that was considered to be a violation of article 14, paragraph 5, of the Covenant.

28. The CHAIRPERSON said that States were not obliged to establish multiple instances of appeal, but once they had established such instances, they could not justifiably deny access to a further instance on the ground that access to one had already been granted. If further instances were available, then convicted persons should have access to them.

29. Paragraph 43 was adopted.

Paragraph 44

30. Paragraph 44 was adopted.

Paragraph 45

31. Mr. RIVAS POSADA said that the last sentence appeared to be a repetition of what had been stated in the first sentence. In addition, footnote 98 should include the number of a communication.

32. The CHAIRPERSON said that she had understood the two sentences to refer to two distinct situations.

33. Mr. KÄLIN said that, although the two sentences referred to two distinct matters, the paragraph might be improved by deleting the last sentence and, in the first sentence, inserting the phrase "or even a court of final instance" after "appeal court". A case number had recently been assigned to the relevant communication and would be included in footnote 98.

34. The CHAIRPERSON endorsed Mr. Kälin's proposal.

35. Paragraph 45, as amended, was adopted.

Paragraph 46

36. Mr. SOLARI YRIGOYEN pointed out that the case listed in footnote 100 had been styled as Vázquez v. Spain, whereas the complainant's full surname was Gómez Vázquez. The same applied to footnote 102, in which the case listed had been styled as Escolar v. Spain, whereas the complainant's full surname was Pérez Escolar.

37. Sir Nigel RODLEY said that, in the third sentence, the word "side" was too informal and should be replaced by "aspects" or "dimension". Alternatively, the phrase "factual side" could be replaced by "facts".

38. Mr. KÄLIN said that he would prefer the expression "factual aspects", since the word "facts" might be construed to mean that a full retrial was necessary.

39. The CHAIRPERSON said that the amendment proposed by Mr. Kälin would entail an amendment to the French version, which referred to "les faits de la cause". More than merely a translation problem, that amendment reflected a difference in legal rules, since the term "review" was understood differently in the two systems of law in question.

40. Sir Nigel RODLEY said that the original problem had been one of translation since the English phrase "the factual side of the case" had not been translated accurately by "les faits de la cause".

41. The CHAIRPERSON suggested that the phrase "can look at the factual side of the case" should be replaced by "can have access to certain factual aspects of the case".

42. Mr. KÄLIN said that he could accept that proposal. Although in the legal systems of continental Europe, the facts were reviewed much more comprehensively than in common-law systems, article 14 required the instance of appeal to examine the facts but left it to the discretion of the domestic law of each State party to determine exactly what was meant by the facts. For that reason, perhaps the formulation "factual dimension" might be a better choice of words.

43. Mr. SOLARI YRIGOYEN agreed. The important point was that there should be a review of an individual's conviction and sentence rather than a full retrial.

44. Mr. SHEARER proposed that, in the last sentence, the phrase "sets aside the presumption of innocence in the author's case" should be replaced by "considers that in all circumstances the conviction was justified".

45. The CHAIRPERSON agreed.

46. Mr. KÄLIN said that the phrase to which Mr. Shearer had taken exception concerned a particularity of Spanish law. Since the reference in the last sentence to "errors in weighing the evidence" in effect addressed that particularity, he was in favour of deleting the phrase "sets aside the presumption of innocence in the author's case".

47. The CHAIRPERSON said that, in any event, general comments should not include references to particularities of domestic law. Each State party should interpret the general comment with respect to its domestic law.

48. Paragraph 46, as amended, was adopted.

Paragraph 47

49. Mr. SOLARI YRIGOYEN said that, in the first sentence of the Spanish version, the word "dictámenes" should be replaced by "sentencias" or "fallos". In the last sentence, the phrase "se retrasa" should be replaced by "se dilata".

50. Sir Nigel RODLEY said that, in the first sentence, the word "judgements" should be replaced by "a … judgement".

51. Paragraph 47, as amended, was adopted.

Paragraph 48

52. Mr. RIVAS POSADA said that, in the first sentence of the Spanish version, the words "de supervisión" should be deleted.

53. The CHAIRPERSON said there were two cases that should be considered not to meet the requirements of article 14, paragraph 5: the one described in paragraph 47, in which the system of supervisory review only applied to already executory decisions and constituted an extraordinary means of appeal that was dependent on the discretionary power of the judge or prosecutor; and the one in which the appeal had been requested by the individual concerned.

54. Mr. KÄLIN proposed that the paragraph should be amended to read: "A system of supervisory review that only applies to executory decisions and thus constitutes an extraordinary means of appeal does not meet the requirements of article 14, paragraph 5, regardless of whether such review can be requested by the convicted person or is dependent on the discretionary power of a judge or prosecutor."

55. Paragraph 48, as amended, was adopted.

Paragraphs 49 to 53

56. Paragraphs 49 to 53 were adopted.

Paragraph 54

57. Sir Nigel RODLEY said that, in the second sentence, provision should be made for the situation of federal States which had a ne bis in idem rule, but in which various state jurisdictions or a federal jurisdiction could try a person for the same criminal offence. He wondered whether it would be more appropriate for the restriction referred to in that sentence to apply to two or more jurisdictions, rather than to the national jurisdictions of two or more States.

58. Mr. KÄLIN said that he could not accept that proposal.

59. The CHAIRPERSON suggested that members from countries with federal systems might wish to comment on that question at the Committee's next meeting, when it would continue its consideration of draft general comment No. 32.

The meeting rose at 6 p.m.