

Dealing with an anonymous communication and formulating recommendations

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Issues addressed

- **CC mandate to deal with the persecution/harassment cases and its limits**
- **Formulating recommendations in the Belarus case and in general**
- **Dealing with anonymous communications (anonymity of subjects referred to in the communications)**

CC mandate to deal with the persecution/ harassment cases and its limits

- AC art. 3/8— active obligation of the Parties to ensure that persons exercising their rights under AC are not persecuted - requirement of a result, not effort
- aspects of art. 3/8 considered by CC in a few previous communications (C/23, C/27, C36, C/44)
- C/102 clearly admissible - with respect to persecution for exercising rights under AC, not on the general situation in the Party
- factual basis for the conclusions about persecution - communication, response, test of 4 steps (para 65.); limits - no reason to analyze legislation or police practices in general

General limits of CC approach to the communications

- AC art. 15 - "a non-confrontational, non-judicial and consultative nature" of the compliance review mechanism
- Decision I/7 art. 37. - possible measures - not direct interference in the legal system of the Party
- AC Guide - the compliance procedure is designed to improve compliance with the Convention and is not a redress procedure for violations of individual rights

Formulating recommendations in the Belarus case and in general

- (113.) The Committee ... recommends that the Party concerned:
- (a) **Take the necessary legislative, regulatory, administrative, institutional, practical or other measures** to ensure that members of the public exercising their rights in conformity with the provisions of the Convention are not penalized, persecuted or harassed for their involvement;
- (b) **Disseminate the Committee's findings and recommendations on communication ACCC/C/2014/102 to senior officials in the police, security forces, judiciary and to other relevant authorities,** ...together with a request to disseminate the findings to all relevant officials...;
- (c) Deliver appropriate training and information programmes ... for police, security forces and the judiciary
- (d) Report to the Committee on an annual basis ...
- (114.) When evaluating the implementation of the above recommendations, **the Committee will take into account any information received from members of the public or other sources about future incidents** of alleged penalization, persecution or harassment contrary to article 3, paragraph 8, of the Convention...

Formulating recommendations in the Belarus case and in general

- Party can choose by which means would meet the goal
- no possibilities to enforce recommendations like review or cancelations of the decisions, providing compensations etc.
- out of the scope of AC art. 15 mandate
- para 114. – most important - CC will not only examine if recommendations of para 113. were introduced, but also what is the situation in practice - if another reported an proved, incident, will not conclude about compliance; importance of feedback from the public (observers)
- in general, communicants can/should be active on proposing specific recommendations, also understand that CC is not a remedy for redress in specific cases

Anonymous communications (anonymity of subjects referred to)

- anonymous communications inadmissible (para 20. a) of I/7 decision)
- information submitted to the Committee, relating to the identity of the member of the public submitting the information, shall be kept confidential if submitted by a person because of a concern that he or she may be penalized, persecuted or harassed (para 29.);
- the C/102 findings - *“fairness and due process ... require that the Party concerned must be able to adequately respond to all allegations against it. If the Party concerned is not able to identify the specific incident in question, it may not be in a position to adequately prepare its response to the communicant’s allegation concerning that incident”*
- questioning the possibility of CC to deal with specific communications if the communicant (or person to who the facts relate) asks for confidentiality

Thank you for your attention

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