

Country Visit Working Group on Arbitrary Detention Report E/CN.4/2004/3/Add.2 para 65(3)

Full recommendation:

3. On the situation of prisoners of conscience. These prisoners are punished twice over. Many of them have, on the one hand, simply peacefully exercised their fundamental right to freedom of opinion and expression and, on the other, have been unable to benefit in most cases from the guarantees which are essential to the right to fair trial, as we have emphasized with regard in particular to the abolition of the prosecution service. Solutions must be sought to bring about their release in the near term.

With this aim the Article 90 Parliamentary Commission which, as we have seen, has investigated situations of arbitrary detention, could usefully be employed to propose a reformed legal framework. These releases could be announced on the holding of the next national or religious holiday.

Assessment using Impact Iran human rights indicators¹

Enacted in 1994, the Law on Formation of General and Revolutionary Courts gave the Head of the Judiciary the authority to abolish the Office of the Prosecutor,² subsequently disestablished the following year.³ As described by the Working Group on Arbitrary Detentions, in these circumstances the same judge would act “in succession as prosecutor, then investigating magistrate and lastly sentencing judge”,⁴ in contradiction with international standards.⁵ Amendments to the 1994 Law reinstated the Office of the Prosecutor in 2002.⁶

In its 2004 reports, the Working Group considered that the “multiplicity of functions” of the judge “vitiates the right to due process and that account should be taken of this in the context of amnesty laws and pardons”, notably with regards to prisoners of conscience.⁷ However, there is no readily available information that might indicate that redress for prisoners of conscience, convicted while the prosecution services were abolished, was granted.

¹ CCPR.9.3.S.3; CCPR.9.3.S.2; CCPR.9.4.S.1
CCPR.9.4.P.1
CCPR.9.2.O.4

² The Law on Formation of General and Revolutionary Courts, 13 July 1994, available at rc.majlis.ir/fa/law/show/90416

³ Amnesty International, <https://www.amnesty.org/download/Documents/MDE1327082016ENGLISH.PDF>

⁴ Working Group on Arbitrary Detention, 2004, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G03/147/77/pdf/G0314777.pdf?OpenElement>

⁵ The 1990 UN Guidelines on the Role of Prosecutors, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfProsecutors.aspx>, Human Rights Committee *General comment no. 32, Article 14*, <https://www.refworld.org/docid/478b2b2f2.html>

⁶ Amendments to the Law on Formation of General and Revolutionary Courts, 3 November 2002, available at <https://rc.majlis.ir/fa/law/show/93837>

⁷ Working Group on Arbitrary Detention, 2004, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G03/147/77/pdf/G0314777.pdf?OpenElement>

The Article 90 Commission of the Parliament is in charge of investigating complaints from citizens made against the operations of the Parliament itself, the executive and the judiciary.⁸ There is no information publicly available on the number of amnesties and pardons granted to prisoners for trials conducted between 1995 and 2002.

It is noteworthy that while the Office of the Prosecutor has been reestablished, the system of justice in the Islamic Republic of Iran is still characterized by a due process in crisis, with a reported significant number of prisoners of conscience being arbitrarily detained.^{9 10}

Recommendation Status:

This recommendation has **NOT** been implemented.

⁸ Iran Human Rights Documentation Center, <https://iranhrdc.org/internal-regulation-on-the-commission-of-article-90-of-the-constitution/>

⁹ See more: NGO joint submission to the Human Rights Committee from the Abdorrahman Boroumand Center, Iran Human Rights Documentation Center, Impact Iran, Human Rights Activists in Iran, 2020, https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/IRN/INT_CCPR_ICJ_IRN_42313_E.pdf

¹⁰ See more: Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, March 2018, <https://undocs.org/en/A/HRC/37/68>