

Flygtningenævnets baggrundsmateriale

Bilagsnr.:	305
Land:	Diverse emner
Kilde:	FN's Menneskerettighedskomiteé
Titel:	General Comment No. 16: Article 17 (Right to privacy)
Udgivet:	1988
Optaget på baggrundsmaterialet:	13. maj 2024

Thirty-second session (1988)

General comment No. 16: Article 17 (Right to privacy)

1. Article 17 provides for the right of every person to be protected against arbitrary or unlawful interference with his privacy, family, home or correspondence as well as against unlawful attacks on his honour and reputation. In the view of the Committee this right is required to be guaranteed against all such interferences and attacks whether they emanate from State authorities or from natural or legal persons. The obligations imposed by this article require the State to adopt legislative and other measures to give effect to the prohibition against such interferences and attacks as well as to the protection of this right.

2. In this connection, the Committee wishes to point out that in the reports of States parties to the Covenant the necessary attention is not being given to information concerning the manner in which respect for this right is guaranteed by legislative, administrative or judicial authorities, and in general by the competent organs established in the State. In particular, insufficient attention is paid to the fact that article 17 of the Covenant deals with protection against both unlawful and arbitrary interference. That means that it is precisely in State legislation above all that provision must be made for the protection of the right set forth in that article. At present the reports either say nothing about such legislation or provide insufficient information on the subject.

3. The term “unlawful” means that no interference can take place except in cases envisaged by the law. Interference authorized by States can only take place on the basis of law, which itself must comply with the provisions, aims and objectives of the Covenant.

4. The expression “arbitrary interference” is also relevant to the protection of the right provided for in article 17. In the Committee’s view the expression “arbitrary interference” can also extend to interference provided for under the law. The introduction of the concept of arbitrariness is intended to guarantee that even interference provided for by law should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances.

5. Regarding the term “family”, the objectives of the Covenant require that for purposes of article 17 this term be given a broad interpretation to include all those comprising the family as understood in the society of the State party concerned. The term “home” in English, “manzel” in Arabic, “zhùzhái” in Chinese, “domicile” in French, “zhilische” in Russian and “domicilio” in Spanish, as used in article 17 of the Covenant, is to be understood to indicate the place where a person resides or carries out his usual occupation. In this connection, the Committee invites States to indicate in their reports the meaning given in their society to the terms “family” and “home”.

6. The Committee considers that the reports should include information on the authorities and organs set up within the legal system of the State which are competent to authorize interference allowed by the law. It is also indispensable to have information on the authorities which are entitled to exercise control over such interference with strict regard for the law, and to know in what manner and through which organs persons concerned may complain of a violation of the right provided for in article 17 of the Covenant. States should in their reports make clear the extent to which actual practice conforms to the law. State party reports should also contain information on complaints

lodged in respect of arbitrary or unlawful interference, and the number of any findings in that regard, as well as the remedies provided in such cases.

7. As all persons live in society, the protection of privacy is necessarily relative. However, the competent public authorities should only be able to call for such information relating to an individual's private life the knowledge of which is essential in the interests of society as understood under the Covenant. Accordingly, the Committee recommends that States should indicate in their reports the laws and regulations that govern authorized interferences with private life.

8. Even with regard to interferences that conform to the Covenant, relevant legislation must specify in detail the precise circumstances in which such interferences may be permitted. A decision to make use of such authorized interference must be made only by the authority designated under the law, and on a case-by-case basis. Compliance with article 17 requires that the integrity and confidentiality of correspondence should be guaranteed *de jure* and *de facto*. Correspondence should be delivered to the addressee without interception and without being opened or otherwise read. Surveillance, whether electronic or otherwise, interceptions of telephonic, telegraphic and other forms of communication, wire-tapping and recording of conversations should be prohibited. Searches of a person's home should be restricted to a search for necessary evidence and should not be allowed to amount to harassment. So far as personal and body search is concerned, effective measures should ensure that such searches are carried out in a manner consistent with the dignity of the person who is being searched. Persons being subjected to body search by State officials, or medical personnel acting at the request of the State, should only be examined by persons of the same sex.

9. States parties are under a duty themselves not to engage in interferences inconsistent with article 17 of the Covenant and to provide the legislative framework prohibiting such acts by natural or legal persons.

10. The gathering and holding of personal information on computers, data banks and other devices, whether by public authorities or private individuals or bodies, must be regulated by law. Effective measures have to be taken by States to ensure that information concerning a person's private life does not reach the hands of persons who are not authorized by law to receive, process and use it, and is never used for purposes incompatible with the Covenant. In order to have the most effective protection of his private life, every individual should have the right to ascertain in an intelligible form, whether, and if so, what personal data is stored in automatic data files, and for what purposes. Every individual should also be able to ascertain which public authorities or private individuals or bodies control or may control their files. If such files contain incorrect personal data or have been collected or processed contrary to the provisions of the law, every individual should have the right to request rectification or elimination.

11. Article 17 affords protection to personal honour and reputation and States are under an obligation to provide adequate legislation to that end. Provision must also be made for everyone effectively to be able to protect himself against any unlawful attacks that do occur and to have an effective remedy against those responsible. States parties should indicate in their reports to what extent the honour or reputation of individuals is protected by law and how this protection is achieved according to their legal system.