

Resolution No AGN/53/RES/7

Application of Article 3 of the Constitution

TAKING INTO ACCOUNT Article 3 of the Organization's Constitution,

The ICPO-INTERPOL General Assembly, meeting in Luxembourg from 4th to 11th September 1984 at its 53rd session:

RECOMMENDS THAT, in order to facilitate the interpretation of Article 3, the principles listed below should be circulated to all departments responsible for crime prevention and law enforcement, and that they should be applied by both the NCBs and the General Secretariat.

I. RULES OF PROCEDURE

1. Under Article 3 of the Constitution, the Organization is strictly forbidden" to undertake any intervention or activities of a political, military, religious or racial character".
2. A resolution adopted by the General Assembly in 1951 makes it clear that the scope of the Article covers "offences of a predominantly political, racial or religious character even if - in the requesting country - the facts amount to an offence against the ordinary law".
3. It is impossible to give a more precise definition of a political, military, religious or racial case. Each case has to be examined separately, with due consideration for the specific context.
4. When the Secretary General is aware of a case in which it might be necessary to apply Article 3, he discusses it with the requesting NCB to determine whether Article 3 is in fact applicable.
5. If the NCB maintains its request for action, it assumes full responsibility for the specific nature of the case and the Secretariat gives the fullest possible details in any notice published about it.
6. When, in the light of the provisions of Article 3, the Secretary General is in complete disagreement with an NCB over the interpretation to be given to certain facts, the Secretariat refuses to collaborate on the case.
7. When an NCB, acting on its own initiative, obviously infringes the provisions of Article 3, the Secretary General informs the other NCBs of his point of view.
8. If, during a bilateral exchange between NCBs, a difference of opinion arises regarding the application of Article 3, the General Secretariat must be informed.
9. The refusal of one or more countries to act on a request circulated by an NCB or by the General Secretariat (an extradition request, for example), does not mean that the request itself is invalid and that it automatically comes under Article 3 of the Constitution. However, if certain countries refuse extradition, this is reported to the other NCBs in an addendum to the original notice indicating that the offender has been released. When a person is arrested with a view to extradition the wanted notice remains valid, unless the requesting country decides otherwise, until the person concerned has

been extradited.

II. ANALYSIS OF POSITIONS ADOPTED IN SPECIFIC INSTANCES

1. Some of the acts included as offences in various national penal codes are by their very nature political, military, religious or racial (e.g. membership of a prohibited organization, the expression of certain prohibited opinions, offences involving the press, insulting the authorities, offences against the internal or external security of the State, desertion from the armed forces, treason, espionage, practising a prohibited religion, recruitment or propaganda for particular religions, membership of a racial association). Such acts come within the scope of Article 3.
2. Article 3 also covers any acts committed by politicians in connection with their political activities, even if those concerned are prosecuted after their fall from power and, in some cases, after they have fled abroad. The situation is different in the case of an offence committed by a politician acting as a private individual.
3. When offences are committed by persons with definite political motives but when the offences committed have no direct connection with the political life of the offenders' country or the cause for which they are fighting, the crime may no longer be deemed to come within the scope of Article 3. This is particularly true when offences are committed in countries which are not directly involved (i.e. outside the "conflict area") and when the offences constitute a serious threat to personal freedom, life or property.

Examples are cases in which:

- o police officers are killed or hostages are taken outside the conflict area, with a view to obtaining the release of an accomplice;
 - o there is an attack on members of the general public outside the conflict area (for instance by leaving a bomb in a bank or throwing a grenade into a café).
4. Offences committed outside the conflict area in order to draw attention to a particular cause (aircraft hijackings, the taking of hostages, kidnappings) do not come within the scope of Article 3.
 5. Generally speaking, a valid criterion is whether or not there is anything to connect the victims directly or indirectly with the aims or objectives pursued by the offenders, and with the countries in the conflict area or with the relevant political situation.
 6. When assessing a particular case in the light of the provisions of Article 3 of the Constitution, the type of co-operation requested by the NCB concerned also has to be considered. When prevention is involved there is nothing to hinder the circulation of technical information, even if this has been obtained in connection with politically motivated cases. Similarly it must be possible to circulate information about potential aircraft hijackers or offenders likely to take hostages, provided that such circulars are not based solely on the fact that the person in question belongs to a particular political movement.

