

ASSOCIATION - FREEDOM OF - TRADE UNIONS

III. JURISPRUDENCE

ICCPR

- *Weinberger v. Uruguay* (R.7/28), ICCPR, A/36/40 (29 October 1980) 114 at paras. 12, 16 and 17.

...

12. The Committee therefore decides to base its views on the following facts which have either been essentially confirmed by the State party or are uncontested except for denials of a general character offering no particular information or explanation: Ismael Weinberger Weisz was arrested at his home in Montevideo, Uruguay, on 25 February 1976 without any warrant of arrest. He was held incommunicado at the prison of "La Paloma" in Montevideo for more than 100 days...

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Ismael Weinberger was first brought before a judge and charged on 16 December 1976, almost 10 months after his arrest. On 14 August 1979, three and a half years after his arrest, he was sentenced to eight years of imprisonment by the Military judge of the Court of First Instance for "subversive association" (art. 60 (V) of the Military Penal Code) with aggravating circumstances of conspiracy against the Constitution. The concrete factual basis of this offence has not been explained by the Government of Uruguay, although the author of the communication claims that the true reasons were that his brother had contributed information on trade-union activities to a newspaper opposed to the Government and his membership in a political party which had lawfully existed while the membership lasted. The Committee further notes in this connection that the State party did not comply with the Committee's request to enclose copies of any court orders or decisions of relevance to the matter under consideration...

...

16. The Human Rights Committee... is of the view that these facts... disclose violations of the Covenant, in particular of:

...

Article 19 (2), because he was detained for having disseminated information relating to trade-union activities...

17. The Committee, accordingly, is of the view that the State party is under an obligation to provide the victim with effective remedies, including his immediate release and compensation for the violations which he has suffered and to take steps to ensure that similar violations do not occur in the future.

- *Pietraroia v. Uruguay* (R.10/44), ICCPR, A/36/40 (27 March 1981) 153, at paras. 13.1, 13.2,

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15, 17 and 18.

...

13.1 The Human Rights Committee... hereby decides to base its views on the following facts, which have either been essentially confirmed by the State party, or are uncontested, except for denials of a general character offering no particular information or explanation:

13.2 Rosario Pietraroia Zapala was arrested in Uruguay, without a warrant for arrest, early in 1976...and held incommunicado under the "prompt security measures" for four to six months...His trial began on 10 August 1976, when he was charged by a military court with the offences of "subversive association" ('asociación subversiva") and "conspiracy to violate the Constitution, followed by acts preparatory thereto" ("atentado contra la Constitución en el grado de conspiración seguida de actos preparatorios"). In this connection, the Committee notes that the Government of Uruguay has offered no explanations as regards the concrete factual basis of the offences for which Rosario Pietraroia was charged in order to refute the claim that he was arrested, charged and convicted on account of his prior political and trade-union activities which had been lawful at the time engaged in. In May 1977, the military prosecutor called for a penalty of 12 years' rigorous imprisonment and on 28 August 1978 Rosario Pietraroia was sentenced to 12 years' imprisonment...

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15. As regards article 19, the Covenant provides that everyone shall have the right to hold opinions without interference and that the freedom of expression set forth in paragraph 2 of that article shall be subject only to such restrictions as are necessary (a) for respect of the rights and reputations of others or (b) for the protection of national security or of public order ("ordre public"), or of public health or morals. The Government of Uruguay has submitted no evidence regarding the nature of the activities in which Rosario Pietraroia was alleged to have been engaged and which led to his arrest, detention and committal for trial. Bare information from the State party that he was charged with subversive association and conspiracy to violate the Constitution, followed by preparatory acts thereto, is not in itself sufficient, without details of the alleged charges and copies of the court proceedings. The Committee is therefore unable to conclude on the information before it that the arrest, detention and trial of Rosario Pietraroia was justified on any of the grounds mentioned in article 19 (3) of the Covenant.

...

17. The Human Rights Committee... is of the view that these facts...disclose violations of the Covenant, in particular of:

...

Article 19 (2), because he was arrested, detained and tried for his political and trade-union activities...

18. The Committee, accordingly, is of the view that the State party is under an obligation to provide the victim with effective remedies, including his immediate release and

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compensation for the violations which he has suffered, and to take steps to ensure that similar violations do not occur in the future.

- *Burgos v. Uruguay* (R.12/52), ICCPR, A/36/40 (29 July 1981) 176 at paras. 10.1, 10.2, 11.5, 13 and 14.

...

10.1 The Human Rights Committee has considered the present communication in the light of all information made available to it by the parties...The Committee bases its views *inter alia* on the following undisputed facts:

10.2 Sergio Rubén López Burgos was living in Argentina as a political refugee until his disappearance on 13 July 1976; he subsequently reappeared in Montevideo, Uruguay, not later than 23 October 1976, the date of his purported arrest by Uruguayan authorities, and was detained under "prompt security measures". On 4 November 1976 pre-trial proceedings commenced when the second military examining magistrate charged him with the offence of "subversive association", but the actual trial began in April 1978 before a military court of first instance, which sentenced him on 8 March 1979 to seven years' imprisonment...

...

11.5 The State party has also not specified in what "subversive activities" López Burgos was allegedly involved or clarified how or when he engaged in these activities. It would have been the duty of the State party to provide specific information in this regard, if it wanted to refute the allegations of the author that López Burgos has been persecuted because of his involvement in the trade-union movement...

...

13. The Human Rights Committee...is of the view that the communication discloses violations of the Covenant, in particular:

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of article 22 (1) in conjunction with article 19 (1) and (2) because López Burgos has suffered persecution for his trade union activities.

14. The Committee, accordingly, is of the view that the State party is under an obligation pursuant to article 2 (3) of the Covenant to provide effective remedies to López Burgos, including immediate release, permission to leave Uruguay and compensation for the violations which he has suffered and to take steps to ensure that similar violations do not occur in the future.

- *J. B. et al. v. Canada* (118/1982), ICCPR, A/41/40 (18 July 1986) 151 at paras. 1.2, 6.2-6.5 and 7.

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1.2 The authors refer to the prohibition to strike for provincial public employees in the Province of Alberta under the Alberta Public Service Employee Relations Act of 1977 and claim that such prohibition constitutes a breach by Canada of article 22 of the International Covenant on Civil and Political Rights.

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6.2 The question before the Committee is whether the right to strike is guaranteed by article 22 of the International Covenant on Civil and Political Rights. Article 22, paragraph 1 provides:

"Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests."

Since the right to strike is not *expressis verbis* included in article 22, the Committee must interpret whether the right to freedom of association necessarily implies the right to strike, as contended by the authors of the communication. The authors have argued that such a conclusion is supported by decisions of organs of the International Labour Organisation in interpreting the scope and the meaning of labour law treaties enacted under the auspices of ILO. The Human Rights Committee has no qualms about accepting as correct and just the interpretation of those treaties by the organs concerned. However, each international treaty, including the International Covenant on Civil and Political Rights, has a life of its own and must be interpreted in a fair and just manner, if so provided, by the body entrusted with the monitoring of its provisions.

6.3 In interpreting the scope of article 22, the Committee has given attention to the "ordinary meaning" of each element of the article in its context and in the light of its object and purpose (article 31 of the Vienna Convention on the Law of Treaties).^{j/} The Committee has also had recourse to supplementary means of interpretation (article 32 of the Vienna Convention on the Law of Treaties) and perused the *travaux préparatoires* of the Covenant on Civil and Political Rights, in particular the discussions in the Commission on Human Rights and in the Third Committee of the General Assembly. The Committee notes that in the course of drafting the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights, the Commission on Human Rights based itself on the Universal Declaration of Human Rights. The Universal Declaration, however, does not refer to the right to strike. At its seventh session in 1951 the Commission adopted the text of a single "draft covenant on human rights" comprising 73 articles (E/1992, annex). The relevant draft articles 16 ("the right of association") and 27 ("the right of everyone, in conformity with article 16, to form and join local, national and international trade unions") did not provide for the right to strike. In the course of the discussions of these articles at the Commission's eighth session in 1952, article 27 was dealt with first. An amendment to article 27 providing for the inclusion of the right to strike was rejected by 11 votes to 6, with

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1 abstention. Three weeks later the Commission discussed article 16 and adopted it with minor amendments, without, however, any proposal or amendment being tabled with a view to including the right to strike in that article. Pursuant to General Assembly resolution A/543 (VI), the single draft covenant on human rights was split into a draft covenant on civil and political rights and a draft covenant on economic, social and cultural rights. Article 16 is assigned to the draft covenant on civil and political rights, eventually being numbered as article 22. Article 27, on the other hand, was assigned to the draft covenant on economic, social and cultural rights, eventually being renumbered as Article 8. Five years after the adoption of draft articles 16 and 27 by the Commission on Human Rights, the Third Committee of the General Assembly again discussed the draft covenants. Whereas an amendment to the new draft article 8 of the Covenant on Economic, Social and Cultural Rights was adopted, including "the right to strike, provided that it is exercised in conformity with the laws of the particular country", no similar amendment was introduced or discussed with respect the draft covenant on civil and political rights. Thus the Committee cannot deduce from the *travaux préparatoires* that the drafters of the Covenant on Civil and Political Rights intended to guarantee the right to strike.

6.4 The conclusions to be drawn from the drafting history are corroborated by a comparative analysis of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, Article 8, paragraph 1 (d), of the International Covenant on Economic, Social and Cultural Rights recognizes the right to strike, in addition to the right of everyone to form and join trade unions for the promotion and protection of his economic and social interests, thereby making it clear that the right to strike cannot be considered as implicit component of the right to form and join trade unions. Consequently, the fact that the International Covenant on Civil and Political Rights does not similarly provide expressly for the right to strike in article 22, paragraph 1, shows that this right is not included in the scope of this article, while it enjoys protection under the procedures and mechanisms of the International Covenant on Economic, Social and Cultural rights subject to the specific restrictions mentioned article 8 of that instrument.

6.5 As to the importance which the authors appear to attach to article 22, paragraph 3...of the Covenant on Civil and Political Rights, the Committee observes that the State party has in no way claimed that article 22 authorizes it to take legislative measures or to apply the law to the detriment of the guarantees provided for in ILO Convention No. 87.

7. In the light of the above, the Human Rights Committee concludes that the Communication is incompatible with the provisions of the Covenant and thus inadmissible *ratione materiae* under article 3 of the Optional Protocol...

Notes

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j/ Official Records of the United Nations Conference on the Law of Treaties, Vienna, 26

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March-24 May 1968 and 9 April-22 May 1969. (United Nations publication, Sales No. E.70.V.5), p. 287.

For dissenting opinion in this context, see J. B. et al. v. Canada (118/1982), ICCPR, A/41/40 (18 July 1986) 151, Individual Opinion by Mrs. Higgins and Messrs. Lallah, Mavrommatis, Opsahl and Wako, 161 at paras. 1-10.

- *Sohn v. Republic of Korea* (518/1992), ICCPR, A/50/40 vol. II (19 July 1995) 98 (CCPR/C/54/D/518/1992), at paras. 10.2-12.

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10.2 ...The issue before the Committee is...whether the author's conviction under article 13, paragraph 2, of the Labour Dispute Adjustment Act for having joined in issuing a statement supporting the strike at the Daewoo Shipyard Company and condemning the Government's threat to send in troops to break the strike violates article 19, paragraph 2, of the Covenant.

10.3 Article 19, paragraph 2, of the Covenant guarantees the right to freedom of expression and includes "freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media". The Committee considers that the author, by joining others in issuing a statement supporting the strike and criticizing the Government, was exercising his right to impart information and ideas within the meaning of article 19, paragraph 2, of the Covenant.

10.4 The Committee observes that any restriction of the freedom of expression pursuant to paragraph 3 of article 19 must cumulatively meet the following conditions: it must be provided for by law, it must address one of the aims enumerated in paragraph 3(a) and (b) of article 19, and must be necessary to achieve the legitimate purpose. While the State party has stated that the restrictions were justified in order to protect national security and public order and that they were provided for by law, under article 13(2) of the Labour Dispute Adjustment Act, the Committee must still determine whether the measures taken against the author were necessary for the purpose stated. The Committee notes that the State party has invoked national security and public order by reference to the general nature of the labour movement and by alleging that the statement issued by the author in collaboration with others was a disguise for the incitement to a national strike. The Committee considers that the State party has failed to specify the precise nature of the threat which it contends that the author's exercise of freedom of expression posed and finds that none of the arguments advanced by the State party suffice to render the restriction of the author's right to freedom of expression compatible with paragraph 3 of article 19.

11. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional

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Protocol to the International Covenant on Civil and Political Rights, finds that the facts before it disclose a violation of article 19, paragraph 2, of the Covenant.

12. The Committee is of the view that Mr. Sohn is entitled, under article 2, paragraph 3(a), of the Covenant, to an effective remedy, including appropriate compensation, for having been convicted for exercising his right to freedom of expression. The Committee further invites the State party to review article 13(2) of the Labour Dispute Adjustment Act. The State party is under an obligation to ensure that similar violations do not occur in the future.