LEGAL RIGHTS - CRIMINAL - Protection Against Double Jeopardy

III. JURISPRUDENCE

ICCPR

- *Schweizer v. Uruguay* (66/1980) (R.16/66), ICCPR, A/38/40 (12 October 1982) 117 at para. 18.2.

...
18.2 ...[T]he criminal proceedings initiated against David Cámpora in 1971 were not formally concluded at first instance until the military tribunal pronounced its judgement of 10 September 1980. Article 14 (7), however, is only violated if a person is tried again for an offence for which he has been finally convicted or acquitted. This does not appear to have been so in the present case. Nevertheless, the fact that the Uruguayan authorities took almost a decade until the judgement of first instance was handed down indicates a serious malfunctioning of the judicial system contrary to article 14 (3) (c) of the Covenant.

- *A. P. v. Italy* (204/1986), ICCPR, A/43/40 (2 November 1987) 242 at paras. 2.1, 2.2, 7.3 and 8.

...
2.1 The author states that he was convicted on 27 September 1979 by the Criminal Court of Lugano, Switzerland, for complicity in the crime of conspiring to exchange currency notes amounting to the sum of 297,650,000 lire, which was the ransom paid for the release of a person who had been kidnaped in Italy in 1978. He was sentenced to two years' imprisonment, which he duly served. He was subsequently expelled from Switzerland.

2.2 It is claimed that the Italian Government, in violation of the principle of *non bis in idem*, is now seeking to punish the author for the same offence as that for which he had already been convicted in Switzerland. He was thus indicted by an Italian court in 1981 (after which he apparently left Italy for France) and on 7 March 1983 the Milan Court of Appeal convicted him *in absentia*. On 11 January 1985, the Second Division of the Court of Cassation in Rome upheld the conviction and sentenced him to four years' imprisonment and a fine of 2 million lire.
...
7.3. ...[T]he Committee has examined the State party's objection that the communication is incompatible with the provisions of the Covenant, since article 14, paragraph 7, of the Covenant does not guarantee *non bis in idem* with regard to the national jurisdictions of two more States. The Committee observes that this provision prohibits double jeopardy only with regard to an offence adjudicated in a given State.

8. In 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*...

See also:

· *A. R. J. v. Australia* (692/1996), ICCPR, A/52/40 vol. II (28 July 1997) 205 (CCPR/C/60/D/692/1996) at para. 6.4.

· *Jijón v. Ecuador* (277/1988), ICCPR, A/47/40 (26 March 1992) 261 at para. 5.4.

...

5.4 ...[T]he Committee notes that article 14, paragraph 7, proscribes re-trial or punishment for an offence for which the person has already been convicted or acquitted. In the instant case, while the second indictment concerned a specific element of the same matter examined in the initial trial, Mr. Terán was not tried or convicted a second time, since the Superior Court quashed the indictment, thus vindicating the principle of *ne bis in idem*. Accordingly, the Committee finds that there has been no violation of article 14, paragraph 7, of the Covenant.

· *Strik v. The Netherlands* (1001/2001), ICCPR, A/58/40 vol. II (1 November 2002) 547 (CCPR/C/76/D/1001/2001) at para. 7.3.

...

7.3 With regard to the author's claims that he was punished several times for the same act, in decisions of 25 September 1990, 5 January and 8 June 1993 by his employer, that this was not repaired in spite of the Central Board of Appeal's ruling in his favour, and that the Central Board of Appeal by combining the penalty of resignation with other penalties, imposed a heavier penalty on him, than the one that was applicable at the time of the criminal offence, in violation of articles 14, paragraphs 6 and 7, and 15 of the Covenant, the Committee notes that these articles of the Covenant relate to criminal offences, whereas in the author's case only disciplinary measures were imposed and the material before the Committee does not show that the imposition of these measures related to a "*criminal charge*" or a "*criminal offence*" in the meaning of article 14 or 15 of the Covenant. This part of the claim is therefore outside the scope of the Covenant, and inadmissible, *ratione materiae,* under article 3 of the Optional Protocol.