SLAVERY, SERVITUDE AND FORCED LABOUR

III. JURISPRUDENCE

ICCPR

- *L. T. K. v. Finland* (185/1984), ICCPR, A/40/40 (9 July 1985) 240 at paras. 5.2 and 7.

...
5.2 The Human Rights Committee observes in this connection that, according to the author's own account he was not prosecuted and sentenced because of his beliefs or opinions as such, but because he refused to perform military service. The Covenant does not provide for the right to conscientious objection; neither article 18 nor article 19 of the Covenant, especially taking into account paragraph 3 (c) (ii) of article 8, can be construed as implying that right. The author does not claim that there were any procedural defects in the judicial proceedings against him, which themselves could have constituted a violation of any of the provisions of the Covenant, or that he was sentenced contrary to law.
...
7. The Human Rights Committee therefore decides:

The communication is inadmissible.

- *Van Grinsven v. The Netherlands* (1142/2002), ICCPR, A/58/40 vol. II (27 March 2003) 603 (CCPR/C/77/D/1142/2002) at paras. 2.1-2.3 and 5.6.

...
2.1 According to the author, in June 1998 the author's wife attempted to kill their two children. Subsequently, the children remained in the sole custody of the author, and his wife was made to follow psychiatric treatment. The author filed for divorce in December 1998.

2.2 In July 1999, the court (Rechtbank) in 's-Hertogenbosch awarded joint custody to the parents, but decided that the children should live with their mother. However, when the mother came to pick up the children from the author's house in August, the author killed her. The author claims that he killed his wife in order to protect his children from their mother. On 12 September 2001, on appeal the Court (Gerechtshof 's-Hertogenbosch) convicted the author of the murder of his wife. He was sentenced to 6 years' imprisonment.

2.3 On 13 March 2000, the first instance court (Rechtbank 's-Hertogenbosch) decided to withdraw child custody from the father and the author's application for visits and telephone contact with his children was denied. On 12 July 2000, the Court of Appeal (Gerechtshof 's-Hertogenbosch) ordered further examination of the children's situation and needs. Subsequently, in its decision of 2 January 2002, the Court of Appeal confirmed the lower

court's decision that it is in the interest of the children not to visit or to have telephone contact with their father. On 12 February 2002, the author's lawyer provided him with detailed advice on why an appeal in cassation would have no chance of success. He explained that since the author's complaint was based only on the court's evaluation of facts and evidence, it could not be appealed further.

...

5.6 With regard to the author's claim that he and his children were subjected to mental torture and cruel, inhuman and degrading treatment, the Committee notes that, in the circumstances of the case, the withdrawal of custody rights from the author, the refusal to let him meet and talk to his children, and the censoring of mail to his children, do not fall under the scope of article 7 of the Covenant. Furthermore, the Committee considers that the claim that the author and his children are being held in servitude of the state, in view of the factual circumstances of the case, does not fall within the scope of application of article 8 of the Covenant. Hence, these claims are incompatible with the Covenant and inadmissible under article 3 of the Optional Protocol.

...

- *Radosevic v. Germany* (1292/2004), ICCPR, A/60/40 vol. II (22 July 2005) 438 at paras. 2.1, 2.2, 2.4, 7.3 and 8.

...

2.1 The author served a prison term in Heimsheim prison in Germany from 10 March 1998 to 28 February 2003, when he was deported. The remainder of his prison term was suspended, provided that he would not return to Germany.

2.2 During imprisonment, the author performed work, as required under section 41 of the German Enforcement of Sentences Act. He was remunerated from April 1998 until August 1999 and again in April 2000, as well as from June until August 2001. The wages were calculated pursuant to section 200 of the Enforcement of Sentences Act, on the basis of 5 per cent of the base amount 2/ from April until August 1999 and in April 2000, and on the basis of 9 per cent of the base amount from June until August 2001. They ranged from about 180 to about 400 Deutsche Mark (DM) per month.

...

2.4 By judgement of 1 July 1998, the Federal Constitutional Court ruled that the constitutional principle of resocialization of prisoners requires adequate remuneration for their work; the Court set aside the calculation methods for the wages of prisoners laid down in section 200 of the Enforcement of Sentences Act (5 per cent of the base amount, despite the legislator's original intention progressively to raise the level of remuneration to 40 per cent of the base amount). It considered the average wages paid to prisoners under that legislation, which amounted to 1.70 DM per hour or 10 DM per day, or 200 DM per month,

in 1997, to be incompatible with the German Basic Law, in the absence of any other work-related benefits apart from the employer's contribution to the prisoner's unemployment insurance. The Court argued that "in the light of the amount paid for mandatory work performed by a prisoner, he cannot be convinced that honest work is an appropriate means for earning a living" after his release. However, it allowed the legislator a transitional period, to run until 31 December 2000, to introduce an adequate raise in the remuneration of work as well as revised provisions for social insurance coverage of such work.

...

7.3 The Committee...notes the author's claims that article 26, read in conjunction with article 8, paragraph 3 (c) (i), contains a right to adequate remuneration for work performed by prisoners, and that he was discriminated against in the enjoyment of that right because of the continued application of section 200 of the Enforcement of Sentences Act for a transitional period of two years and six months after the Constitutional Court had declared that provision incompatible with the constitutional principle of resocialization of prisoners. It considers that article 8, paragraph 3 (c) (i), read in conjunction with article 10, paragraph 3, of the Covenant requires that work performed by prisoners primarily aims at their social rehabilitation, as indicated by the word "normally" in article 8, paragraph 3 (c) (i), but does not specify whether such measures would include adequate remuneration for work performed by prisoners. While reiterating that, rather than being only retributory, penitentiary systems should seek the reformation and social rehabilitation of prisoners,13/ the Committee notes that States may themselves choose the modalities for ensuring that treatment of prisoners, including any work or service normally required of them, is essentially directed at these aims. It notes that the German Constitutional Court justified the transitional period, during which prisoners were continued to be remunerated on the basis of 5 per cent of the base amount, with the fact that the necessary amendment of section 200 of the Enforcement of Sentences Act required a reassessment by the legislator of the underlying resocialization concept. It further recalls that it is generally for the national courts, and not for the Committee, to review the interpretation or application of domestic legislation in a particular case, unless it is apparent that the courts' decisions are manifestly arbitrary or amount to a denial of justice.14/ The Committee considers that the author has not substantiated any such defects in relation to the Constitutional Court's decision to allow the legislator a transitional period until 31 December 2000 to amend section 200. Accordingly, this part of the communication is inadmissible under article 2 of the Optional Protocol.

8. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under article 2 of the Optional Protocol;

...

Notes

...

2/ Section 18 of Book IV of the German Social Security Code defines the base amount as follows: "Without prejudice to the specific provisions applicable to the different insurance systems, base amount within the meaning of the provisions on social security means the average amount of benefits payable under the statutory pensions insurance during the preceding calendar year, rounded up to the next highest amount which can be divided by 420."

...

13/ General comment 21 [44], 10 April 1992, at para. 10.

14/ Communication No. 1188/2003, *Riedl-Riedenstein et al. v. Germany*, decision on admissibility adopted on 2 November 2004, at para. 7.3; communication No. 1138/2002, *Arenz et al. v. Germany*, decision on admissibility adopted on 24 March 2004, at para. 8.6.