



**International covenant
on civil and political
rights**

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HUMAN RIGHTS COMMITTEE
Eighty-seventh session
10 – 28 July 2006

VIEWS

Communication No. 1157/2003

<u>Submitted by:</u>	Patrick Coleman (not represented by counsel)
<u>Alleged victims:</u>	The author
<u>State Party:</u>	Australia
<u>Date of communication:</u>	14 January 2003 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 97 decision, transmitted to the State party on 14 February 2003 (not issued in document form)
<u>Date of adoption of Views:</u>	17 July 2006

* Made public by decision of the Human Rights Committee.

Subject matter: Conviction and sentence for expression of political speech in pedestrian mall without permit necessary under council bylaw

Procedural issues: Admissibility *ratione personae* - sufficient quality of victim - substantiation, for purposes of admissibility – admissibility *ratione materiae*

Substantive issues: Freedom of expression – permissible limitations

Articles of the Optional Protocol: 1 and 2

Articles of the Covenant: 9, paragraphs 1 and 5, 15, paragraph 1, 19 and 21

On 17 July 2003, the Human Rights Committee adopted the annexed draft as the Committee's Views, under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 1157/2003. The text of the Views is appended to the present document.

[ANNEX]

ANNEX

Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political rights

Eighty-seventh session

concerning

Communication No. 1157/2003*

Submitted by: Patrick Coleman (not represented by counsel)
Alleged victims: The author
State Party: Australia
Date of communication: 14 January 2003 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 17 July 2006,

Having concluded its consideration of communication No. 1157/2003, submitted to the Human Rights Committee by Patrick Coleman under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and the State party,

Adopts the following:

* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Alfredo Castillero Hoyos, Ms. Christine Chanet, Mr. Maurice Glèlè Ahanhanzo, Mr. Edwin Johnson, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Michael O'Flaherty, Ms. Elisabeth Palm, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Hipólito Solari Yrigoyen, Ms. Ruth Wedgwood and Mr. Roman Wieruszewski.

Pursuant to rule 90 of the Committee's rules of procedure, Committee member Mr. Ivan Shearer did not participate in the adoption of the present decision.

The text of an individual opinion signed by Committee members Mr. Nisuke Ando, Mr. Michael O'Flaherty and Mr. Walter Kälin is appended to the present document.

Views under article 5, paragraph 4, of the Optional Protocol

1. The author of the communication, dated 14 January 2003, is Patrick John Coleman, an Australian national born on 22 November 1972. He claims to be victim of violations by Australia of article 9, paragraphs 1 and 5; article 15, paragraph 1; article 19 and article 21 of the Covenant. He is not represented by counsel.

Factual background

2.1 On 20 December 1998, the author delivered a public address at the Flinders Pedestrian Mall, Townsville, Queensland, without a permit. Standing on the edge of a water fountain in the mall with a large flag with a pole over his shoulder and then moving on to a concrete table close to the fountain, he loudly spoke for some 15 to 20 minutes on a range of subjects including bills of rights, freedom of speech and mining and land rights. On 23 December 1998, he was charged under section 8(2)(e) of *Townsville City Council Local Law No 39* ("the bylaw"), for taking part in a public address in a pedestrian mall without a permit in writing from the town council.¹ On 3 March 1999, the author was convicted in the Townsville Magistrates Court for delivery of an unlawful address and fined \$300, with 10 days imprisonment on default, plus costs.

2.2 On 7 June 1999, the Queensland District Court dismissed the author's appeal against conviction, rejecting the argument that, although acting alone, the author was protected by section 5(1) of the *Peaceful Assemblies Act 1992* (Queensland).² On 29 August 1999, he again delivered a speech at the same pedestrian mall. He was arrested pursuant to a warrant for non-payment of the original fine within a three month period and held in police custody for five days. For sitting on the ground and refusing voluntarily to accompany the police, he was charged with obstructing police under section 120(1) of the *Police Powers and Responsibilities Act 1997* (Queensland). On 2 September 1999, the author was transferred to Townsville Correctional Centre. The Centre's General Manager exercised his delegated authority under section 81 of the *Corrective Services Act 1988* to approve five days early discharge for the author, which resulted in release the same day.

2.3 On 6 December 1999, the author was convicted and fined \$400, with 14 days imprisonment on default, for obstruction of police. On 21 November 2000, the Queensland Court of Appeal, by a majority, dismissed his appeal against the original conviction under the bylaw, overturning the costs order. Assisted by legal aid, the author argued that the bylaw's prohibition amounted to an unconstitutional limitation of freedom of speech on political

¹ Section 8 of the bylaw provided at the material time as follows:

"(1) This bylaw does not apply to the setting up and use of booths for religious, charitable, educational or political purposes or of a booth to be used at or near a polling place for, or for a meeting in connection with, an election in respect of either House of the Commonwealth Parliament, the Legislative Assembly or a Local Authority.

(2) No person shall – (e) take part in any public demonstration or any public address.

(3) A person who desires to obtain a permit for the purposes of this bylaw shall make application in writing therefore in the prescribed form. The application shall be lodged with the Council [which may grant a permit, with or without conditions, or refuse it]

² Section 5(1) provides "A person has the right to assemble peacefully with others in a public place".

issues. The court's majority considered that the purpose of the bylaw served the legitimate end of preserving users of the small area of the pedestrian mall from being harangued by public addresses. The bylaw was also reasonably appropriate and adapted to serve that end as it covered "a very limited area, leaving plenty of opportunity for making such addresses in other suitable places". On 26 June 2002, the High Court in turn denied the author's further application for special leave to appeal.

The complaint

3.1 The author argues that his conviction and sentence for breach of the bylaw amounts to violations of articles 9, paragraphs 1 and 5, 15, paragraph 1, 19 and 21 of the Covenant. As to article 9, paragraph 1, he argues that the procedure for procuring a permit is arbitrary and entirely within official discretion. No procedure is set out and no grounds need to be provided for a decision. A denial of a permit is not limited to the grounds set out in article 19, paragraph 3. A permit may be revoked at any time. Similarly, the absence of criteria for a decision mean that the procedure cannot be considered "prescribed by law" under article 9, paragraph 1. The author also claims compensation under article 9, paragraph 5, on the basis of his allegedly unlawful detention. On article 15, he claims that he was found guilty even though had he conducted himself in the way he had with another person accompanying him, he would have been protected by section 5(1) of the *Peaceful Assemblies Act 1992*.

3.2 On article 19, the author asserts that, during his prosecution, no evidence was provided by the City Council that prosecution was necessary for any of the reasons set out in article 19, paragraph 3. He argues that he had a right to impart oral information, that he conducted himself in peaceful and orderly fashion and that he was not stopped by police present, who simply videotaped him. There were thus no permissible grounds of limitation in article 19, paragraph 3, that would apply. A permit cannot be required as a precondition for the exercise of this right. As to article 21, the author argues that he had a right to assemble with fellow citizens in a public area, whom he addressed in his speech. He cites in support the Committee's Views in Kivenmaa v Finland,³ where the Committee found in favour of a group of individuals who had hoisted a banner criticising a visiting head of state.

The State party's submissions on admissibility and merits and author's comments

4.1 By submission of 21 May 2004, the State party disputed both the admissibility and merits of the communication. Firstly, the State party argues the communication is inadmissible *ratione personae* insofar as it is directed against Sergeant Nicolas Selleres of the Queensland police, the Townsville City Council and the State of Queensland, these parties not being States parties to the Covenant. Secondly, in relation to the claims under articles 9, paragraph 5, and 15, the State party argues the author is not sufficiently personally affected to qualify as a victim, for admissibility purposes. On article 9, paragraph 5, he makes no reference to any act or omission of the State party, making no reference to any existence of lack of an enforceable right or remedy. Rather, he simply claims compensation as a remedy. In relation to article 15, the State party contends³ that the author's argument that if he had read out his speech with another person, the speech would have been protected under the *Peaceful Assembly Act 1992*, is irrelevant. The criminal offence with which the author was charged was an offence at the time of commission, and no question of retrospectivity arises.

³ Case No 412/1990, Views adopted on 10 June 1994.

4.2 Thirdly, the State party argues that the claims are insufficiently substantiated, for purposes of admissibility and/or inadmissible *ratione materiae*, comprising simply a series of assertions. In addition to the arguments already set out, the State party adds, on article 9, paragraph 1, that the author makes arguments solely in relation to the procedure for granting a permit, rather than in relation to his arrest and detention. On the claim under article 19, the author's contention that the City Council did not advance any reasons during the prosecution showing its necessity, in terms of article 19, goes simply to the trial conduct. This failure does not itself demonstrate that the bylaw failed to satisfy the requirements of article 19. As to the claim article 21, the State party argues that there was no assembly in the present case; the Magistrates Court finding, and as confirmed on appeal, that nobody stood and listened to what the author was saying, so as to constitute a gathering. The fact that other people were passing through the mall is not sufficient to constitute an assembly.

4.3 On the merits, the State party submits that the complaint, in relation to article 9, has insufficient evidentiary foundation to enable proper consideration of the merits and in any event has not been violated. An assertion that the permit procedure was arbitrary has no impact on the arrest of a person in accordance with the sentence imposed for breach of the bylaw. The author did not show that his detention was marked by capriciousness, unreasonableness and lack of proportionality so as to bring it within the scope of the article. The arrest was made, pursuant to a judicial warrant, in accordance with normal police procedure applicable to fine defaulters. The fine and default sanction of imprisonment was imposed by the Magistrates Court after the author specifically rejected a community service option or good behaviour bond. The District Court, on appeal, considered the sentence appropriate. Moreover, the author was released after serving half his sentence.

4.4 On article 9, paragraph 5, the author makes no allegations that reveal a violation of the right to claim compensation before a domestic authority for unlawful arrest. As to article 15, the State party also contends that the claim has insufficient evidentiary foundation to enable proper consideration of the merits and in any event has not been violated. The author argues that if circumstances had been different, he would not have been convicted under the bylaw. This does not address any act or omission of the State, nor does it suggest that the crime of delivering an unlawful address was not an offence when it was committed.

4.5 On article 19, the State party also contends that the claim has insufficient evidentiary foundation to enable proper consideration of the merits and in any event has not been violated. The State party argues that the restriction on speech is plainly provided for by law in the form of the bylaw. The town council adopted a policy in relation to the mall in question in April 1983, approving use of the mall for public forums and being designed to maximise the use of the mall for public benefit without unduly affecting public enjoyment of the area. The permit system allows the council to consider whether a proposal is likely to impact on the public amenity enjoyed by small number of users (such as undue noise, crowding, impact on commercial activity or safety hazards). The restrictions in place were aimed at orderly use of the mall by the public as a whole. In any event, the State party notes that the permit system is not required for the use of booths or meetings, as exempted in section 8(1) of the bylaw (see footnote 1). Thus, there is no a blanket restriction on the right to freedom of expression.

4.6 As to article 21, the State party argues that "assembly" necessarily requires that more than one person gathers. It invokes academic commentary to the effect that "only intentional, temporary gatherings of several persons for a specific purpose are afforded protection of

freedom of assembly”.⁴ In the State party’s view, the author’s address did not satisfy this requirement. The Magistrates Court considered that there was no “company of persons gathered together for the same purpose”, finding it “quite obvious” that “there was absolutely no assembly or gathering of persons at any stage”. The District Court, on appeal, agreed the author was “acting alone”. The Court of Appeal, in turn, confirmed that members of a speaker’s audience, passively listening, cannot be considered to be taking part in it.

Author’s comments on the State party’s submissions

5.1 By letter of 18 June 2004, the author responded, disputing the State party’s submissions. As to admissibility *ratione personae*, the author confirms that he regards Australia as the State party responsible for the acts of subordinate officers and governments, also invoking article 50 of the Covenant. He notes that following the events for which he was convicted, following public interventions, the town council decided to erect and has erected a “speaker’s stone” in the mall. He also notes that the town council and police sought to recover substantial costs incurred in the proceedings, failure of payment of which would lead to bankruptcy proceedings against him. He notes that bankruptcy would also result in his loss of political rights to run for elected office which he currently enjoys.

5.2 As to his individual claims, the author argues, under article 9, paragraph 5, that he unsuccessfully pursued all available domestic remedies against his conviction and thus no compensation can be procured in Australia; rather, he would be regarded as a vexatious litigant. He thus asks the Committee to order compensation for the violations suffered. Under article 15 and 19, he argues that as under international law he was permitted to engage in the peaceful conduct he did, his conviction was not properly grounded in law, as required by article 15.

5.3 By letter of 27 July 2004, the author provided a sequestration order of the Federal Court, sequestering his estate subsequent to the author’s bankruptcy.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with article 93 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

6.2 On the State party’s objection to the communication’s admissibility *ratione personae*, the Committee notes that, both on ordinary rules of State responsibility and in light of article 50 of the Covenant, the acts and omissions of constituent political units and their officers are imputable to the State. The acts complained of are thus appropriately imputed *ratione personae* to the State party, Australia.

6.3 On the claim under article 9, paragraph 5, the Committee notes that the author seeks compensation for the underlying alleged violations of articles 15, 19 and 21 of the Covenant, rather than in respect of a failure of the national authorities to provide compensation for his arrest for failing to pay the initial fine imposed by a court by way of sentence. This separate

⁴ Nowak, M.: *CCPR Commentary* (1st edition, NP Engel, Kehl), at 374.

claim under article 9, paragraph 5, is therefore insufficiently substantiated, for purposes of admissibility, and is thus inadmissible under article 2 of the Optional Protocol.

6.4 As to the author's claim under article 15, the Committee notes that the offence for which the author was convicted was a criminal offence at the time of the conduct in question, and thus this claim is also inadmissible under article 2 for insufficient substantiation. As to the claim under article 21, the Committee observes that the author was, on the evidence found by the domestic courts, acting alone. In the Committee's view, the author has not advanced sufficient elements to show that an "assembly", within the meaning of article 21 of the Covenant, in fact existed. This claim is, accordingly, also inadmissible for insufficient substantiation, under article 2 of the Optional Protocol.

6.5 In the Committee's view, the author has sufficiently substantiated, for purposes of admissibility, the claims under articles 9, paragraph 1, and 19, and proceeds to its examination on the merits.

Consideration of the merits

7.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as provided in article 5, paragraph 1 of the Optional Protocol.

7.2 The Committee notes that the author's arrest, conviction and sentence undoubtedly amounted to a restriction on his freedom of expression, protected by article 19, paragraph 2, of the Covenant. The basis for restriction, set out in the bylaw, was prescribed by law, which leads to the question of whether the restriction was necessary for one of the purposes set out in article 19, paragraph 3, of the Covenant, including respect of the rights and reputations of others or public order (*ordre public*).

7.3 The Committee notes that it is for the State party to show that the restriction on the author's freedom of speech was necessary in the present case. Even if a State party may introduce a permit system aiming to strike a balance between an individual's freedom of speech and the general interest in maintaining public order in a certain area, such a system must not operate in a way that is incompatible with article 19 of the Covenant. In the present case, the author made a public address on issues of public interest. On the evidence of the material before the Committee, there was no suggestion that the author's address was either threatening, unduly disruptive or otherwise likely to jeopardise public order in the mall; indeed, police officers present, rather than seeking to curtail the author's address, allowed him to proceed while videotaping him. The author delivered his speech without a permit. For this, he was fined and, when he failed to pay the fine, he was held in custody for five days. The Committee considers that the State party's reaction in response to the author's conduct was disproportionate and amounted to a restriction of the author's freedom of speech which was not compatible with article 19, paragraph 3, of the Covenant. It follows that there was a violation of article 19, paragraph 2, of the Covenant.

7.4 In view of this finding under article 19, paragraph 2, of the Covenant, the Committee need not separately address the author's claim under article 9, paragraph 1.

8. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the

facts as found by the Committee reveal violations by Australia of article 19, paragraph 2, of the Covenant.

9. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy, including quashing of his conviction, restitution of any fine paid by the author pursuant to his conviction, as well as restitution of court expenses paid by him, and compensation for the detention suffered as a result of the violation of his Covenant right.

10. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, and to provide an effective and enforceable remedy in case a violation has been established, the Committee wishes to receive from the State party, within 90 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the Committee's Views.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

APPENDIX**Concurring opinion of Committee members Mr. Nisuke Ando, Mr. Michael O'Flaherty and Mr. Walter Kälin**

While we concur in the result that the Committee has reached in this case, we reach that conclusion for different reasons than those employed by the majority. In our view, it is important to note the existence of a permit system in this case, which enables the State party's authorities to strike a balance, consistent with the Covenant, between freedom of expression and countervailing interests. The author, however, in declining to seek a permit, accordingly deprived the State party's authorities of the opportunity to reconcile the interests at issue in this particular case. We regret that the Committee has not weighed this aspect of the case in its reasoning. We would note, in addition, that the decision should not be read as a rejection of permit systems that are in place in many States parties to strike appropriate balances not only in the area of freedom of expression, but in other areas such as freedom of association and assembly. On the contrary, the establishment of such systems, in principle, is wholly consistent with the Covenant, and has additional advantages of fostering clarity, certainty and consistency, as well as providing an easier means of review by the local courts and in turn the Committee of a decision by the authorities to decline a particular exercise of the right, rather than being left, as in this case, with an assessment of the raw primary facts standing alone. It is of course clear that such a permit system must allow for full enjoyment of the right in question, and be administered consistently, impartially and sufficiently promptly.

In this case, however, on the basis of the posture of the case as it is before the Committee, we would emphasise the following elements. The author's arrest, fine and imprisonment for failure to pay the fine are, in combination, the State party's response to the conduct engaged in by the author – in sum, these actions are a considerable infringement of the author's right to freedom of expression which must be justified in the light of the requirements of article 19 of the Covenant. In our view, the totality of the State party's action lies in such disproportion to the author's original underlying conduct that we are not satisfied that the State party has shown the necessity of these restrictions on the author's expression. The reasons advanced by the State party for the restriction, while wholly legitimate, are not in themselves sufficient to show their necessity in each case. It is the absence of the demonstration of the necessity in the present circumstances for the substantially punitive reaction of the State party to the author's conduct that accordingly leads us to agree with the Committee's eventual conclusion.

[signed] Nisuke Ando
[signed] Walter Kälin
[signed] Michael O'Flaherty

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]
