Project: Factsheets on the Practice of the Human Rights Committee

Article 22, International Covenant on Civil and Political Rights

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Article 22

1. 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.
2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.
3. Nothing in this article shall authorize States Parties to the International Labour Organization Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

Table of Contents

1. Introduction: The right to freedom of association

The current factsheet analyzes the jurisprudence of the Human Rights Committee (the Committee) on Article 22 on freedom of association which constitutes a fundamental right that lies at the interface between civil and political rights and economic, social, and cultural rights. In highlighting the importance of this right, the Committee has stated that freedom of association, as guaranteed in Article 22 of the Covenant, constitutes a prerequisite for any democratic society and is paramount for expressing, promoting, and defending collective interests. So far, no general comment has been adopted on this article by the Committee.

2. Definition of freedom of association

Article 22 from the Covenant encompasses the right to freedom of association, a fundamental right that enables the possibility of establishing, organizing, and engaging in groups for a common purpose. The protective ambit of freedom of association also covers an economic right: the right to found and join labor unions. Under the scope of application of Article 22 falls, for instance, the protection of the right to be a member of a political party, a non-governmental organization, trade unions, or other types of organizations. As pointed out in other important documents, the right to freedom of association represents a *sine qua non condition* for a "vigorous democracy"[1] and the foundation for fulfilling other fundamental rights.

As inferred from the Committee's jurisprudence, freedom of association comprises the right to establish any form of organization and the organization's right to conduct its activities as stated in its statute. Moreover, Article 22 guarantees the protection of "all activities of an association," and its dissolution must comply with the conditions in paragraph 2 of the provision.[2]

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[1] Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, 1990 (hereafter: Copenhagen 1990), para. 26.

[2] *Korneenko et al. v. Belarus* (CCPR/C/88/D/1274/2004), para. 7.2.

3. Definition of associations

The concept of associations lies at the core of Article 22. As defined by the Venice Commission and the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), an association represents "an organized, independent, not-for-profit body based on the voluntary grouping of persons with a common interest, activity or purpose."[3] NGOs, trade unions, political parties, religious organizations, or human rights defenders are among the organizations covered by Article 22. In the Committee's view, the explicit reference to "democratic society" in Article 22 reflects that the existence and functioning of associations constitute the "cornerstone of any society."[4] The association's purpose and beliefs do not have to be in accordance with the ideas promoted by the government or the rest of the population. However, since freedom of association is not unrestricted, it is required that these are compliant with domestic laws and international standards.

Concerning the nature of associations and freedom of association's scope of application, the Committee affirmed in *Wallmann et al. v. Austria* that Article 22 solely applies to private associations "including for purposes of membership."[5] Furthermore, in *PS v. Denmark*, the Committee expressed the view that the contingency of the author's right to see his child on the non-participation in any forms of religious activities linked to a particular faith does not constitute a violation of freedom of association under Article 22.[6] Although not explicitly stated, the rationale here was most probably based on the fact that the case dealt with an issue pertaining to a family group; hence it did not suffice to be considered within the framework of freedom of association, but under the protective scope of Article 17 and 20. Moreover, since it was about family group, the issue at stake did not present any characteristics of the concept of association.[7]

Article 22 does not cover the spectrum of purposes that guide the associations' endeavors. However, even in the absence of an explicit mention related to different their *raison d'être,* it could be inferred from Article 16 of the American Convention on Human Rights (ACHR), that is analogous to Article 22 from the Covenant, that an association can be, for example, political, religious, ideological, economic, cultural, social, labour, student organizations, human rights organizations and so forth. The list is not exhaustive as the extent of organizational forms protected by freedom of association is very comprehensive. In this sense, as pointed out by Nowak, the scope of protection guaranteed to associations is not restricted to a specific legal form. However, juridical entities under public law such as, for instance, chambers, institutions, foundations, public corporations constitute the type of entities that do not fall under the protective framework of Article 22.[8]

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[3] OSCE/ODIHR and Venice Commission, *Joint Guidelines on Freedom of Association,* CDL-AD(2014)046 (Venice, 13-14 December 2014), p. 12.

[4] *Katsora, et al.* (CCPR/C/100/D/1383/2005), para. 8.2; *Zvozskov et al. v. Belarus* (CCPR/C/88/D/1039/2001).

[5] *Wallmann et al. v. Austria* (CCPR/C/80/D/1002/2001), para. 9.4.

[6] *PS v. Denmark* (CCPR/C/45/D/397/1990), para. 5.3.

[7] Sarah Joseph and Melissa Castan, *The International Covenant on Civil and Political Rights – Cases, Materials, and Commentary, 3rd Edition (1st July 2013), Part III, at 652.*

[8] Manfred Nowak, *U.N. Covenant on Civil and Political Rights: CCPR Commentary* (Kehl; Strasbourg; Arlington: Engel, 2005), 497-498, para. 6.

3.1 The right to join or not to join associations

Freedom of association entails both a positive and a negative right. The positive dimension of the associative freedom means the individual's right to affiliate to a particular organization of choice whereas the negative dimension of the right implies that no one can be compelled to join an association. In this sense, the volitional act of joining or not wanting to join an association lies at the core of Article 22 of the Covenant.

In one of the separate opinions in *Gauthier v. Canada*, it has been emphasized that the innate feature of the right not to join associations lies within the scope of Article 22 and that the imposition of membership as a precondition to joining the particular association represents coercion to join the respective group. In other words, it was asserted that freedom from coerced association falls under the application of Article 22. [9]

Moreover, as further expressed in Gauthier v. Canada, the general rule is that the right to freedom of association involves the State not being entitled to compel someone to be a part of an association. As conveyed in the separate opinion, sanctioning the opposition to be a member of an association constitutes an infringement of Article 22 of the Covenant. In this sense, the State party has to justify the compulsory membership and how this is viable in "a democratic society" in pursuing the "interest authorized by the Covenant."[10]

3.2 The right to join or not to join trade unions

Article 22(1) prescribes the right to form and join trade unions. The incorporation of freedom of trade unions within the same article indicates that the individual's right to form and join trade unions is essential to the right to freedom of association. The peculiarity of a trade union is that it represents an organization composed of employees whose objective is to safeguard the collective interest of its members.[11]

According to Article 8(1)(a) from the International Covenant on Economic, Social and Cultural Rights (ICESCR), the right to form and join trade unions has the scope of protecting and promoting economic and social interests, and it is "subject only to the rules of the organization concerned." The reference to the right to join a trade union in Article 22(1) does not go any further than stating the purpose of union membership, whereas its analogous provision explicitly prescribes the right to strike and the rights of trade unions to function without interference (except for those prescribed by law).

The right to strike, albeit not expressly prescribed, has been mentioned in concluding observations or annual reports that the Committee has issued. For instance, in the Concluding observations on the sixth periodic report of the Dominican Republic, the Committee has pointed out the State party's duty to "safeguard workers' freedom of association in practice, including the right to organize, the right to collective bargaining, and the right to strike."[12]

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[9] *Gauthier v. Canada* (CCPR/C/65/D/633/1995), (Individual opinion, by Committee member Rajsoomer Lallah, partly dissenting).

[10] Ibid., (Individual opinion Lord Colville, Elizabeth Evatt, Cecilia Medina Quiroga and Hipólito Solari Yrigoyen, partly dissenting).

[11] Sarah Joseph and Melissa Castan, *The International Covenant on Civil and Political Rights – Cases, Materials, and Commentary, 3rd Edition (1st July 2013), Part III, at 656.*

[12] UN Human Rights Committee (HRC): *Concluding Observations: Dominican Republic*, CCPR/C/DOM/CO/6, 27 November 2017, para 32; See also UN General Assembly, *Report of the Human Rights Committee*, A/34/40 (Romania), 1979, para. 160.

In the absence of an explicit provision for the right to strike in the ICCPR, the joint statement issued by the Human Rights Committee (HRC) and the Committee on Economic, Social and Cultural Rights (CESCR) sheds light on the importance of the right to strike and its interrelatedness to the freedom of trade unions. Accordingly, in the Committee's view, the right to strike represents a "corollary to the effective exercise of the freedom to form and join trade unions."[13]

Freedom to establish and join trade unions (freedom of trade unions) constitutes a *special case of freedom of association*, a so-called *sub-case of freedom of association*[14] and entails, as in the case of joining an association, a positive and negative freedom meaning that the volitional act leads the individual to either join or not join a trade union.

The Committee has emphasized the importance of the right to form and join trade unions under Article 22 to protect against "discrimination, harassment, intimidation, or reprisals."[15] A central case relating to trade unions is *J.B. et al. v. Canada* where the Committee was asked to decide on whether the right to strike falls under the ambit of Article 22. In the absence of an *expressis verbis* inclusion of the aforementioned right within freedom of association, the Committee has interpreted the scope of Article 22 by availing itself of Articles 31 and 32 of the Vienna Convention on the Law of Treaties, as well as the *travaux préparatoires* of the Covenant, particularly the discussions from the Commission on Human Rights and in the Third Committee of the General Assembly.[16] The conclusion of the Committee was that the right to strike does not constitute an integral part of associative freedom, since it is already expressly protected under article 8(1)(d) of the ICESCR. The rationale for this decision lies in the economic and social nature of the right to strike, which led to the majority's decision not to consider it a civil and political right.[17]

Another pertinent case that shows the Committee's approach to trade unions is *Lopez Burgos v. Uruguay* where the Committee found that Mr. Lopez Burgos was persecuted by the Uruguayan government due to the trade union activities that he was engaged in. In the Committee's view this amounted to a violation of Article 22(1) of the Covenant. In this sense, the Committee noted that Article 22(1) in conjunction with article 19 (1) and (2) were violated because the victim has suffered persecution for his trade union involvement.[18]

At the European level, cases that raise issues related to union membership form an integrant part of the jurisprudence of the European Court of Human Rights (ECtHR or the Court). In the *Young, James and Webster v. the United Kingdom* case, the opposition to joining a trade union was deemed as having "detrimental effects," and the Court emphasized the volitional character of the right to join a trade union. In this regard, the ECtHR pointed that

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[13] Joint statement by the Committee on Economic, Social and Cultural Rights and the Human Rights Committee, *Freedom of association, including the right to form and join trade unions,* E/C.12/2019/3-CCPR/C/2019/1, para 4.

[14] Schabas, & Nowak, M. (2019). *U.N. International Covenant on Civil and Political Rights : Nowak's CCPR commentary / William A. Schabas.* (3rd revised edition), p.619.

[15] Joint Statement by the Committee on Economic, Social and Cultural Rights, Human Rights Committee, *Freedom of association, including the right to form and join trade unions,* E/C.12/2019/3-CCPR/C/2019/1.

[16] *J.B. et al. v. Canada* **(**CCPR/C/28/D/118/1982), para. 6.3.

[17] Supra note 11, *at 660-661.*

[18] *Delia Saldias de Lopez v. Uruguay*, Communication No. 52/1979, U.N. Doc. CCPR/C/OP/1 at 88 (1984), para. 13.

"[a]n individual does not enjoy the right to freedom of association if in reality the freedom of action or choice which remains available to him is either non-existent or so reduced as to be of no practical value." [19]

Although it was held that the applicants' right to freedom of association was violated, the most significant lacuna, in this case, was the Court's inability to determine whether the right to freedom of association includes the negative freedom not to join trade unions.

4. Restrictions on the freedom of association

The right to freedom of association is not absolute; hence, its protective scope can be limited under strict conditions. It is essential to note that, in line with the Committee's jurisprudence, any interference imposed on the freedom of association must be in concordance with the restrictive scope established in Article 22 of the Covenant. In this sense, Article 22, paragraph 2 of the Covenant, allows restrictions on the exercise of the right to freedom of association only if the limitation complies with the following three specific cumulative requirements:

(a) it must be provided by law;
(b) may only be imposed for one of the purposes set out in paragraph 2; and
(c) must be necessary in a democratic society for achieving one of these purposes.[20]

Providing objective justifications for limiting the right to freedom of association is insufficient.[21] Furthermore, the last sentence of Article 22(2) of the Covenant allows lawful restrictions on members of the armed forces and of the police in their exercise of the right to freedom of association.

This limitation clause contained in Article 22 corresponds to the limitation clause found in Article 21 of the Covenant and it is also formulated similarly to other Covenant articles, as Article 12(3), Article 18(3), and Article 19(3)).

The proportionality principle is highly relevant when discussing the limitations that can be imposed on the freedom of association. In this sense, the Committee has asserted that the "strict tests of necessity and proportionality" represent a prerequisite to comply with when inflicting restrictions on the right to freedom of association.[22]

According to the Committee, any constraint that hinders the exercise of the right to associate freely should comply with the necessity and proportionality requirements and "be guided by the objective to facilitate the right."[23] Furthermore, the legitimacy of the restriction does not make it justifiable. Imposing limitations on a right must provide an assurance that the objective sought through restricting it is effectively realized without surpassing the threshold of what is "necessary to achieve that objective." It is, therefore, essential to assess the degree

[19] *Young, James and Webster v United Kingdom* [1981] ECtHR, para. 43, 56.
[20] *Belyatsky v. Belarus* (CCPR/C/90/D/1296/2004), para. 7.3.
[21] *Raisa Mikhailovskaya and Oleg Volchek v. Belarus* (CCPR/C/111/D/1993/2010), para. 7.3.
[22] UN Human Rights Committee, *General Comment No. 34 on the Freedom of Expression and Opinion*, 12 September 2011, CCPR/C/GC/34, para. 22
[23] *Turchenyak et al. v. Belarus*, para. 7.4

of restrictiveness and whether the outcome sought by the limitation could be acquired through less constrictive and intrusive measures.[24]

4.1 Prescribed by law

The permissible limitation clause 'prescribed by law' that forms an integral part of the right to freedom of association encapsulates an important guarantee of the rule of law. In this sense, in its General Comment No.34 the Committee has noted :

> Restrictions must be provided by law (…). A norm, to be characterized as a *law,* must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly and it must be made accessible to the public.[25]

For a restriction on the right to freedom of association to be lawful, it is not enough by itself for the reasons provided by the State party to be prescribed by law: there must be arguments provided as to why this restriction is necessary for the interests of one of the purposes enumerated in Article 22(2) of the Covenant.[26]

In *M.A. v. Italy*, the authors of this communication were serving a sentence for trying to reorganize the dissolved fascist party which is prohibited under Italian penal law. The movement's purpose was "the elimination of the democratic freedoms and the establishment of a totalitarian regime."[27] Having regard to the limitations of Article 22(2) of the Covenant, the Committee concluded that the conviction was "justifiably prohibited by Italian law,"[28] most likely because the movement's purposes infringe many rights protected by the Covenant.

4.2 Necessary in a democratic society

In *Lee v. Republic of Korea*, the Committee has expressed its view regarding the reference to *democratic society* by pointing out that, "the existence and functioning of a plurality of associations, including those which peacefully promote ideas not favorably received by the government or the majority of the population, is one of the foundations of a democratic society."[29]

4.2.1 The interpretation of 'necessary in a democratic society' with regard to registration

The claim in *Zvozskov et al. v. Belarus* arose because authorities refused to register a non-governmental human rights public association. To decide on whether the refusal to register such organization restricted the author's right to freedom of association, the Committee interpreted the notion of "democratic society" in the context of Article 22 (2), holding that "The reference to *democratic society* in the context of Article 22 indicates, in the Committee's opinion, that the existence and operation of associations, including those which peacefully

[24] *Norwegian Confederation of Trade Unions (LO) and Norwegian Transport Workers' Union (NTF) v. Norway*, paragraph. 130; See also *Lee v. Republic of Korea* (CCPR/C/84/D/1119/2002), para 7.2.
[25] UN Human Rights Committee (HRC), CCPR *General Comment nr. 34,* Article 19, *Freedom of opinion and expression,* 12 September 2011, CCPR/C/GC/34, paras 24-25.
[26] *Katsora et al. v. Belarus* (CCPR/C/100/D/1383/2005), para. 8.3.
[27] *M.A. v. Italy,* Communication No. 117/1981, para. 7.2.
[28] Ibid., para. 13.3.
[29] *Lee v. Republic of Korea* (CCPR/C/84/D/1119/2002), para 7.2

promote ideas not necessarily favorably viewed by the government or the majority of the population, is a cornerstone of a democratic society."[30] Bearing the aforementioned facts in mind, the Committee concluded that the authors' rights under Article 22 had been violated. In this sense, despite the prescription of these restrictions by law:

> […] the State party has not advanced any argument as to why it would be necessary, for purposes of article 22, paragraph 2, to condition the registration of an association on a limitation of the scope of its activities to the exclusive representation and defence of the rights of its own members. Taking into account the consequences of the refusal of registration, *i.e*. the unlawfulness of operation of unregistered associations on the State party's territory, the Committee concludes that the refusal of registration does not meet the requirements of article 22, paragraph 2.[31]

The "necessary in a democratic society" restriction on freedom of association has to comply with the proportionality requirement and "the basic values of pluralism, tolerance, broadmindedness and people's sovereignty."[32] At the European level, the jurisprudence of the ECtHR has contributed to a better understanding of the scope of this restriction.[33] In this sense, in *Galstyan v. Armenia*, the ECtHR has noted:

> "When examining whether restrictions on the rights and freedoms guaranteed by the Convention can be considered *necessary in a democratic society* the Contracting States enjoy a certain but not unlimited margin of appreciation. It is, in any event, for the European Court to give a final ruling on the restriction's compatibility with the Convention and this is to be done by assessing the circumstances of a particular case."[34]

4.2.2 The interpretation of 'necessary in a democratic society' concerning the dissolution of a political party

More recently, in *Farah v. Djibouti*,[35] the Committee reiterated the interpretation of the notion of "democratic society" reached in *Korneenko et al. v Belarus.* The Committee concluded that the arbitrary dissolution of the political party for allegedly having undermined Djibouti's independence[36] amounted to a violation of Article 22 of the Covenant because political parties

[30] *Zvozskov et al. v. Belarus* (CCPR/C/88/D/1039/2001), para. 7.2.
[31] Ibid., para. 7.4.
[32] Schabas, & Nowak, M. (2019). *U.N. International Covenant on Civil and Political Rights : Nowak's CCPR commentary / William A. Schabas.* (3rd revised edition), p. 618
[33] Case-Law Guide on Article 11 of the European Convention on Human Rights/ Freedom of assembly and association, European Court of Human Rights,
[34] *Galstyan v. Armenia,* Application no. 26986/03, ECtHR, 2017, Para. 114; See also *Barraco v. France*, 2009, para. 42.
[35] *Farah v. Djibouti* (CCPR/C/130/D/3593/2019), para. 7.3.
[36] Ibid., para. 2.1 and 7.4.

are a "form of association essential to the proper functioning of democracy, and in light of the serious consequences that arise for the author."[37]

4.3 Restrictions under Article 22(2)

This section will highlight the practice of the Committee with regard to restrictions allowed under Article 22(2), in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

4.3.1 National security or public order

The ground of national security can only be invoked to justify a limitation on the right to freedom of association if there is a real and not hypothetical danger to the national security of a State party.

In *Jung-Hee Lee and 388 others. v. Republic of Korea*, the State party invoked the ground of national security to justify the dissolution of a political party. The State party submitted that there was a real danger to the national security of the State since the political party's activities and objectives aimed at the destruction of the fundamental democratic order and the use of violent means.[38] The Committee declared that the dissolution of a political party was necessary and proportionate to ensure public safety and the maintenance of the constitutional order and State.[39]

In contrast, in *Lee v. Republic of Korea,* the Committee found that the State party had not shown that the author's conviction for reasons of his membership as a representative of a student association was necessary to protect national security or any other purpose enumerated in Article 22(2) of the Covenant. In 1997, the Supreme Court of the Republic of Korea had ruled that *Hanchongnyeon* was an "enemy-benefiting group," and an anti-State organization within the meaning of Article 7 of the National Security Law.[40] The Committee established the following test regarding national security or democratic order: " The State Party must further demonstrate that the prohibition of the association and the criminal prosecution of individuals for membership in such organizations are in fact necessary to avert a real, and not only hypothetical danger to the national security or democratic order and that less intrusive measures would be insufficient to achieve this purpose."[41] Ultimately, the Committee held that the State party had failed to specify the precise nature of the threat posed by the author's membership in *Hanchongnyeon,* and concluded that this entailed a violation of Article 22(1) and (2) of the Covenant.[42]

The principle stated in *Lee v. Republic of Korea*, according to which the State party must prove that the interdiction of an association is grounded in an actual menace to democratic order or national security was recently reiterated in *Farah v. Djibouti*.[43] In this case, the

[37] Ibid., para. 7.2.

[38] *Jung-Hee Lee and 388 others. v. Republic of Korea* (CCPR/C/130/D/2776/2016), para. 7.5.

[39] Ibid., para. 7.7.

[40] *Lee v. Republic of Korea*, supra note 30, para. 2.2.

[41] Ibid., para. 7.2.

[42] Ibid., para. 7.3.

[43] *Farah v. Djibouti*, supra note 33, para. 7.

Committee found that the State party has failed to demonstrate the existence of a real threat to one of the legitimate purposes enumerated in Article 22(2) of the Covenant.[44]

A State Party cannot prohibit an individual or a group of individuals from starting a political party in the absence of any reasoning or explanation. In *Khairullo Saidov v Tajikistan*, the author of the communication alleged that his father, Mr. Saidov, was persecuted by the State party because he and his supporters wanted to found a new political party.[45] The author alleged that Mr. Saidov's rights under Articles 19 and 22 were arbitrarily restricted, since he was "prevented from expressing his political views and positions, including through his intention and efforts to start a new political party."[46] The Committee considered that "the threats and persecution that Mr. Saidov suffered in the hands of the authorities, and the cumulative violations of his procedural rights […] were the result of his efforts to exercise his freedom of expression and association under articles 19 and 22 of the Covenant."[47] Once again, the Committee reiterated the test in *Lee v. Korea* relating to national security or democratic order and considered that the restriction imposed on him was disproportionate and therefore constituted a violation of Article 22(1), since Mr. Saidov was prohibited from starting a political party in the absence of any explanation and legitimate ground from the State party.[48]

The dissolution of an association is the most severe restriction on freedom of association.[49] In *Belyatsky et al. v. Belarus*, the Committee found that the dissolution of a registered non-governmental human rights association and frequent persecution by the authorities amounted to a violation of Article 22 of the Covenant. The Committee recalled that, "the right to freedom of association relates not only to the right to form an association but also guarantees the right of an association freely carry out its statutory activities."[50] Applying the test found in *Lee v Republic of Korea*, the Committee concluded that the dissolution of the association because of the breach of electoral laws is disproportionate and does not meet the requirements of Article 22, paragraph 2 of the Covenant.[51] Similarly, in *Korneenko et al. v. Belarus*, the State party's authorities proceeded to the dissolution by a court order of a human rights association on the grounds of improper use of equipment received through foreign grants, production of propaganda materials and the conduct of propaganda activities, and for deficiencies in the association's documentation.[52] The Committee concluded that the author's rights under Article 22(1) of the Covenant had been violated, notably because of the lack of rationale as to why it was necessary, for purposes of Article 22, to proceed to the dissolution of the association.[53]

[44] *Ibid* at para. 7.3.
[45] *Khairullo Saidov v Tajikistan* (CCPR/C/122/D/2680/2015), para. 3.7.
[46] Ibid., para. 9.7.
[47] Ibid., para. 9.7.
[48] Ibid., para 9.9.
[49] Schabas, & Nowak, M. (2019). *U.N. International Covenant on Civil and Political Rights : Nowak's CCPR commentary / William A. Schabas.* (3rd revised edition. at p 624
[50] *Belyatsky v. Belarus* (CCPR/C/90/D/1296/2004), para. 7.2.
[51] Ibid., para. 7.5.
[52] *Korneenko et al. v. Belarus* (CCPR/C/88/D/1274/2004), para. 7.4.
[53] Ibid., para. 7.5.

4.3.2 The protection of public health and public morals

In *Malakhovsky and Pikul v. Belarus*, the State party noted that numerous violations of health and fire regulations recorded at the Minsk Vaishnava community's premises created a threat to the life and health of the participants and neighbors.[54] Consequently, the Committee on Religions and Nationalities (C.R.N) refused to register the statute of this religious association.[55] The Committee found a violation of Article 18 of the Covenant and therefore did not consider it necessary to consider the potential violation of Article 22.[56] Nevertheless, this case illustrates what can constitute a valid public health motive.

4.3.3 The protection of the rights and freedoms of others

There can be a lawful restriction on the right to freedom of association "[i]n instances where associations advocate national, racial or religious hatred within the meaning of Article 20(2) […] The rationale includes the rights and freedoms of others."[57]

In *Vladimir Adyrkhayev, Behruz Solikhov and "The Religious Association of Jehovah's Witnesses in Dushanbe"*(RAJW) *v. Tajikistan*, the State party has outlawed and refused to register this religious organization without justifying why its banning was necessary and why it constituted a permissible restriction for the protection of the rights and freedoms of others under Article 22(2). As such, the Committee found that the limitation placed on their right to freedom of association led to a "de facto unlawfulness" of the religious association on the State's territory and impeded the authors from enjoying their right to freedom of association.[58]

4.4 Refusal to register an association

The Committee has held that a State party cannot refuse to register an association (e.g., non-governmental organization, human rights association, public association, etc.) without providing any arguments as to why it is necessary for the interests of one of the purposes set out in Article 22(2), and as to why such refusal was a proportionate response in the circumstances.[59] The consequences of the denial of the registration (e.g., the denial of registration leads directly to the operation of the association being unlawful[60]) must also be taken into account to determine whether the requirements of Article 22 are respected.

However, the State party can refuse to register an association if it has established requirements to obtain a state registration when those requirements are not accompanied by unreasonable conditions.[61] In *V.B. et al. v. Belarus*, it was found reasonable for the State to

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[54] *Malakhovsky and Pikul v. Belarus* (CCPR/C/84/D/1207/2003), para 5.5.
[55] Ibid., para. 5.5.
[56] Ibid., para. 7.
[57] Paul M. Taylor, Article 22: Freedom of Association. In *A Commentary on the International Covenant on Civil and Political Rights: The UN Human Rights Committee's Monitoring of ICCPR Rights*, Cambridge: Cambridge University Press at pp. 626 – 627.
[58] *Vladimir Adyrkhayev, Behruz Solikhov and "The Religious Association of Jehovah's Witnesses in Dushanbe" v. Tajikistan*, (CCPR/C/135/D/2483/2014, Views of 7 July 2022, para. 9.9
[59] See *Vladimir Romanovsky v. Belarus* (CCPR/C/115/D/2011/2010), para. 6.4; *Sergey Kalyakin v. Belarus* (CCPR/C/112/D/2153/2012), para. 9.3; *Katsora et al. v. Belarus* (CCPR/C/100/D/1383/2005), para. 8.3; *Raisa Mikhailovskaya and Oleg Volchek v. Belarus* (CCPR/C/111/D/1993/2010), para. 7.4; *Zvozkov et al. v. Belarus* (CCPR/C/88/D/1039/2001), para. 7.4.
[60] *Sergey Kalyakin v. Belarus*, supra note 56, para. 9.4.
[61] *V.B. et al. v. Belarus* (CCPR/C/133/D/2709/2015), para. 6.7.

expect the applicants to submit correct and comprehensive information in their application for registration.[62]

In *Natalya Pinchuk v. Belarus*, the Committee found that the refusal of Belarusian authorities to register the Viasna or Nasha Viasna association amounted to a violation of the author's right to freedom of association.[63] The Committee stated that even though the reasons provided by the State party are prescribed by law, the State party did not provide a sufficient argument as to why the refusal is legitimate or necessary in the interests of one of the purposes enumerated in Article 22(2), and the refusal of registration led directly to the unlawfulness of the unregistered organization's activities.[64]

In *M.T. v Uzbekistan*, the author was detained, charged, indicted, convicted, and imprisoned for establishing an unregistered public organization.[65] The Committee noted that the State party had not given any specific arguments and only stated that no violations of the author's rights had taken place.[66] Consequently, the Committee considered that there was a violation of the author's rights under articles 9, 14, 19, and 22 of the Covenant.[67]

4.5 Lawful restrictions on members of the armed forces and the police

The last part of Article 22(2) of the Covenant states that, "[t]his article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right."[68]

So far, the Committee has not been asked to adjudicate any individual case based on this specific issue. Accordingly, the jurisprudence of the Committee does not provide an interpretation of what constitutes a lawful restriction on members of the armed forces and the police in the exercise of their right to freedom of association. However, it seems that these restrictions must be prescribed by law, but may not be bound by "any requirement of proportionality or reasonableness."[69]

5. ILO Conventions

Article 22(3) of the Covenant expressly provides that the States parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize are not entitled under the provision above to "take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice the guarantees provided for in that Convention."

In *J.B. et al. v. Canada*, the authors, members of the Executive Committee of the Alberta Union of Provincial Employees, claimed that the prohibition to strike for provincial public employees in the Province of Alberta, which was provided by law, constituted a breach by

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[62] Ibid., para. 6.7.
[63] *Natalya Pinchuk v. Belarus* (CCPR/C/112/D/2165/2012), para. 8.4-8.5.
[64] Ibid., para. 8.5.
[65] *M.T. v. Uzbekistan* (CCPR/C/114/D/2234/2013), para. 3.9.
[66] Ibid., para. 7.8.
[67] Ibid., para. 7.8.
[68] UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999 at Art 22 (2).
[69] Sarah Joseph and Melissa Castan, *The International Covenant on Civil and Political Rights - Cases, Materials, and Commentary, 3rd Edition (1st July 2013), Part III, 19 at 652.*

Canada of Article 22 of the Covenant.[70] In 1977, the Canadian Labour Congress, on behalf of the Alberta Union of Provincial Employees, complained that this prohibition of strikes for public employees contained in the law was not complying with Article 10 of ILO Convention No. 87.[71] Two other similar complaints were lodged in the following years. The Committee concluded that the communication was inadmissible, because it was not compatible with the provisions of the Covenant. However, the individual opinion of Mrs. Higgins and Messrs. Lallah, Mavrommatis, Opsahl, and Wako provides an interesting analysis of Article 22(3) and interprets this provision in a way that is coherent with the provisions of the ILO Conventions:

> […] the ILO finding is based on the furtherance and defence of interests of trade-union members; and article 22 also requires us to consider that the purpose of joining a trade union is to protect one's interests. Again, we see no reason to interpret article 22 in a manner different from ILO when, addressing a comparable consideration. In this regard we note that article 22, paragraph 3, provides that nothing in that article authorizes a State party to ILO Convention No. 87 to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention. […] We cannot see that a manner of exercising a right which has, under certain leading and widely ratified international instruments, been declared to be in principle lawful, should be declared to be incompatible with the Covenant on Civil and Political Rights.[72]

6. The relationship between freedom of association and other articles of the Covenant

Freedom of association is not only an expression of a well-functioning and healthy democracy, but it also represents a quintessential element for the enjoyment of other human rights. The right to freedom of association is intrinsically linked to a range of other provisions from the Covenant, particularly to freedom of expression (Article 19), the right to peaceful assembly (Article 21), and the right to participate in public affairs (Article 25). The fact that freedom of association cannot be considered in a vacuum and is hence interdependent on the abovementioned rights renders this right an essential constituent of the human rights apparatus.

The interrelatedness of freedom of association and peaceful assembly has been referred to both in the Committee's jurisprudence and its General Comments which clearly indicates that these rights are intertwined and contingent on each other. In this sense, in its General Comment No. 37, the Committee has stated that the protection of freedom of association alongside freedom of expression and political participation engenders the "full protection" of the right to freedom of assembly.[73]

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[70] *J.B. et al. v. Canada* (CCPR/C/28/D/118/1982), para. 1.2.

[71] Ibid., para. 2.2.

[72] *J.B. et al. v. Canada* (CCPR/C/28/D/118/1982), Individual opinion submitted by Ms. Rosalyn Higgins, Mr. Rajsoom Lallah, Mr. Andreas Mavrommatis Mr. Torkel Opsahl and Mr. S. Amos Wako,para. 7 and para 8.

[73] UN Human Rights Committee (HRC), *General comment No.* 37 (2020) on the right of peaceful assembly (Art. 21), CCPR/C/GC/37, para 9; See also UN Office of the High Commissioner for Human Rights, *Draft Guidelines for States on the Effective Implementation of the Right to Participate in Public Affairs : report of the Office of the United Nations High Commissioner for Human Rights*, A/HRC/39/28, para. 14.

In line with the preamble of the Human Rights Council resolution 15/21, freedom of association and the right of peaceful assembly represent "essential components of democracy, providing individuals with invaluable opportunities to, inter alia, express their political opinions, engage in literary and artistic pursuits and other cultural, economic and social activities, engage in religious observances or other beliefs, form and join trade unions and cooperatives, and elect leaders to represent their interests and hold them accountable."[74]

The OSCE/ODIHR and Venice Commission have emphasized the partial dependability of freedom of expression and opinion (Article 10 of the ECHR and Article 19 of the ICCPR) upon freedom of association by affirming the necessity of guaranteeing this right as "a tool to ensure all citizens are able to fully enjoy their rights of expression and opinion, whether practiced collectively or individually."[75]

In its General Comment No. 25, the Committee has emphasized the interconnection between freedom of expression, assembly, and association and the need to safeguard them in their entirety by pointing out that these rights represent prerequisites for the "exercise of the right to vote."[76] . Similarly, in the words of the Special Rapporteur on the rights to freedom of assembly and association, protecting the right to freedom of association and assembly means a prerequisite for fulfilling a broad spectrum of civil, economic, social, and political rights.[77] The fact that freedom of association and freedom of assembly are enshrined in both the UDHR, Article 20 and the ECHR, Article 11 (within the same article and under the exact same wording according to which "everyone has the right to freedom of peaceful assembly and association") expresses the symbiosis between the two rights.[78]

The Committee has recalled that although the Covenant does not expressly direct its provisions to legal entities, the nature of numerous rights recognized by the Covenant is that of being enjoyed collectively with others. The right to freedom of thought, conscience, and religion (Article 18), the right to freedom of association (Article 22), and the rights belonging to minorities (Article 27) are included under the ambit of collective rights. In this regard, the Committee's exclusive competence in examining individual complaints (article 1 Optional Protocol) does not preclude individuals whose rights are infringed by the actions or omissions related to legal entities in lodging the complaint with the Committee.[79]

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[74] UN Human Rights Council, Resolution adopted by the Human Rights Council on 6 October 2010, *The rights to freedom of peaceful assembly and of association,* A/HRC/RES/15/21.

[75] Joint OSCE/ODIHR and Venice Commission Guidelines on Political Party Regulation (Warsaw: ODIHR, 2011), para. 37.

[76]UN Human Rights Committee (HRC), *General Comment No. 25: The right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25)* :12/07/96. CCPR/C/21/Rev.1/Add.7, para. 12.

[77] UN General Assembly, *Protection of human rights in the context of peaceful protests during crisis situations*, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément Nyaletsossi Voule, 16 May 2022, A/HRC/50/42.

[78] Manfred Nowak, *U.N. Covenant on Civil and Political Rights: CCPR Commentary* (Kehl; Strasbourg; Arlington: Engel, 2005), 496, para. 1.

[79] UN Human Rights Committee (HRC), *General comment no. 31 [80], The nature of the general legal obligation imposed on States Parties to the Covenant*, 26 May 2004, CCPR/C/21/Rev.1/Add.13, para 9,. For the full text of the Committee's General Comments, see https://www.ohchr.org/en/treaty-bodies/ccpr/general-comments.

7. Concluding remarks

The Committee's jurisprudence on Article 22 represents an essential resource in understanding the various facets of this salient right. However, many claims of violations of Article 22 were deemed inadmissible by the Committee under article 2 of the Optional Protocol, because the authors of the communication had not sufficiently substantiated the claim for purposes of admissibility.[80]

Freedom of association is undoubtedly a fundamental right whose protective ambit is contingent upon the realization of a whole spectrum of other human rights such as, for instance, the right to equality, the right to participate in public affairs, freedom of expression and opinion, and freedom of peaceful assembly. Infringement of the right to freely associate is among the violations of the Convention rights that underlies numerous individual complaints brought before the Committee. However, in its case law, freedom of association has a relatively narrow and passing interpretation that contributes to a lack of clarity regarding the tenets of this right.

Despite its irrefutable importance, the Committee has never issued a General Comment on the provisions on freedom of association. This would provide important clarifications on the interpretation of Article 22, the significance of freedom of association, the States parties' duties pertaining to this right, and its implementation.

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[80] See *Sharmila Tripathi v. Nepal* (CCPR/C/112/D/2111/2011), para. 6.5; *Titiahonjo v. Cameroon* (CCPR/C/91/D/1186/2003), para. 5.4; *S.G. v. Canada* (CCPR/C/126/D/2454/2014), para. 7.6; *F.A.H. and others v. Colombia* (CCPR/C/119/D/2121/2011), para. 8.6; *M. v. Belgium* (CCPR/C/113/DR/2176/2012), para. 6.4; *E.Z. v. Kazakhstan* (CCPR/C/113/D/2021/2010), para. 7.7; *K.A. v. Belarus (CCPR/C/118/D/2112/2011)*, para. 7.4.

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