

LEGAL ANALYSIS ON THE BASIS OF THE NATIONAL AND INTERNATIONAL LEGAL INSTRUMENTS DISRESPECTED BY THE CUBAN AUTHORITIES IN DETRIMENT OF THE FUNDAMENTAL CITIZEN AND HUMAN RIGHTS OF JOSE DANIEL FERRER GARCÍA, LIDER OF THE PATRIOTIC UNION OF CUBA (UNPACU) AND OF FERNANDO GONZÁLEZ VAILLANT, JOSÉ PUPO CHAVECO AND ROILAN ZÁRRAGA FERRER, MEMBERS OF THE SAME ORGANIZATION.

For the following analysis we have first considered the national legal texts in hierarchical order:

A- The Constitution of the Republic of Cuba, effective as of February 24, 2019, in the following articles:

ARTICLE 7. The Constitution is the supreme legal norm of the State. All are obliged to comply with it. The provisions and acts of the State bodies, their directors, officials and employees, as well as organizations, entities and individuals must abide by its rulings.

ARTICLE 46. Everyone has the right to life, physical and moral integrity, freedom, justice, security, peace, health ...

ARTICLE 49. The house is inviolable. No one can enter the residence of others without the permission of the person who lives there, except by express order of the competent authority, with the legal formalities and for reasons previously defined by the law.

These constitutional precepts were clearly violated when: On October 1, 2019, in the city of Santiago de Cuba, combined forces of the Ministry of Interior, without a search or arrest warrant, raided the home of José Daniel Ferrer García, leader of UNPACU, and arrested him along with 7 other activists. Of these, 4 were released the same day. Fernando González Vaillant, José Pupo Chaveco and Roilan Zárraga Ferrer, in addition to the leader of UNPACU, remained in detention. The military did not say where they would take the detainees or what the reason for the arrest was. In addition to José Daniel's house, two more houses located on the same street as the first were also raided. The three houses serve as headquarters for the organization. During the raids, resources and means that were used for UNPACU opposition activism were confiscated. This police operation was the same as ones previously used against this organization, with a clear objective of political repression. Sandy Ramírez, one of the detained activists who was released that same day, said that an officer of the Ministry of Interior

threatened him with prison if he did not sign a false statement incriminating José Daniel for committing a common crime.

ARTICLE 94. Every person, as a guarantee of their legal certainty, enjoys due process in both the judicial and administrative fields and, consequently, is entitled to the following rights:

d) access to a competent, independent and impartial tribunal, where appropriate;

e) not be deprived of their rights except by a founded decision of the competent authority or final court ruling;

h) obtain compensation for material and moral damages and reparation for the damages received.

ARTICLE 95. In criminal proceedings, people also have the following guarantees:

a) not be deprived of liberty except by competent authority and for the legally established length of time;

c) they are presumed innocent until a final sentence is issued against them;

d) be treated with respect to their dignity and physical, psychological and moral integrity, and not to be a victim of violence or coercion of any kind to force them to declare guilt;

f) be informed about the charges against them;

h) communicate with their relatives or close friends, immediately, if they are detained or arrested;

The violation of these constitutional precepts is noticeable in the following facts:

On October 2, 2019, Nelva Ortega Tamayo, the wife of José Daniel Ferrer García, toured all the police units in the city in search of information on his whereabouts and that of the other detainees. In the first unit, known as Micro 9, she was told that she would be assisted the next day in the Provincial Unit of Criminal Instruction.

On October 4, 2019, his family managed to see him for 10 minutes in an office in front of a high-ranking officer who called himself Robert and introduced himself as a case instructor, in the Provincial Unit of Criminal Instruction. José Daniel told his wife that officers told him that his detention

was in retaliation for his activism, because they wanted him under control during the electoral process on October 10th, and because of his support for the US Government's measures against the Cuban regime. On that occasion they also allowed the family to visit Roilan Zárrega Ferrer briefly.

On October 10, 2019, an officer verbally informed Nelva Ortega in the Provincial Unit of Criminal Instruction that the prosecution had issued a precautionary measure of provisional imprisonment for José Daniel and that he had been transferred the previous day to the Aguadores prison in Santiago de Cuba. He informed her that the other 3 detainees would suffer the same fate and also told her that she should pick up the official document from the prosecutor's office, which contains the precautionary measure, on Monday, October 14th in that same unit.

On October 11, 2019, José Daniel's family went to Aguadores Prison for the 30-minute regulated visit to which everyone who has just been transferred to a prison is entitled to, but the military denied them the visit.

On October 14, 2019, José Daniel's wife and his three minor children, including his 4-month-old baby, were arrested while they were going to pick up the prosecutor's document. An hour later they were released allowed to proceed. When they arrived at the Provincial Unit of Criminal Instruction, the case instructor did not receive them nor did he give them the prosecution document as he had promised and as dictated by the law. Upon leaving this unit, the family went to Aguadores Prison and insisted on see José Daniel, but the prison authorities refused, claiming that the next day they should return, because he would be allowed the regular visit as required by law.

On October 15, 2019, José Daniel's family returns to Aguadores prison to visit him. Upon arriving at the gate and giving the name of their prisoner, as is the procedure, the officer in possession of the file with the prisoners' names, after an exhaustive search, told Nelva Ortega that her husband did not appear as an inmate in that prison. That day, the authorities again refused to let them see José Daniel. Nelva Ortega was violently repressed and the military wanted to force her to undress in front of male officers to search her after a heated debate with the prison authorities. She was finally told that she was forbidden from entering the prison for a year and her cell phone was forcibly taken from her outside the prison when she made a call. It has not been returned yet.

On October 25, 2019, Nelva Ortega Tamayo is detained along with the three minor children of José Daniel, including her 4-month-old baby, while

protesting peacefully in a central park in Santiago de Cuba. The two teenagers, 17 and 14 years of age, were beaten during detention. Seven hours later they were released.

ARTICLE 96. Anyone who is deprived of liberty illegally has the right, by himself or through a third party, to establish a Habeas Corpus procedure before the competent court, in accordance with the requirements established by law.

The disrespect of this constitutional mandate was evident on October 18, 2019, when the Provincial Court of Santiago de Cuba denies the Habeas Corpus that José Daniel's wife had presented on his behalf the previous day; the clear partiality of the case is evidenced in the arguments presented by the court.

And on the 21st of the same month and year, in the same way the Provincial Court of Santiago de Cuba denied the Habeas Corpus that were presented on behalf of the 3 activists detained with José Daniel, a refusal based on identical arguments demonstrating the partiality of the judges. Also on this day, Nelva Ortega presents before this same court an appeal to their decision to reject the Habeas Corpus that she presented in favor of her husband. There they informed her that in a period of 30 days they would respond, being that the Habeas Corpus is a very summary process.

- The Criminal Procedure Law, in the following articles:

ARTICLE 241. No one can be arrested except in cases and with the formalities prescribed by the law.

ARTICLE 243. The police authority or agent has the obligation to detain:

1. Anyone found in any of the cases of the previous Article (previous article: 1. the one who attempts to commit a crime, at the time of committing it; 2. the offender found *in flagranti*; 3. one who by escaping has broken a penalty of deprivation of liberty or a detention security measure being served); has escaped while under detention or in provisional detention; or there is an arrest warrant against them;
2. the defendant for a crime against the security of the State;
3. the defendant for a crime whose possible penalty exceeds six years of deprivation of liberty (for this reason the Court fails to say the crime charged);

4. the accused for any crime provided that any of the following circumstances concur:

a) That the events have caused alarm or are among those that are frequently committed in the territory of the municipality (since the court does not reveal the crime for which the file of preparatory phase 135 of 2019 was initiated, we cannot determine this item).

b) That there are enough elements to presume that the accused will try to avoid the action of justice.

ARTICLE 218. It may also be ordered, in the cases indicated in article 215, to enter and search, by day or night, if urgency makes it necessary, in any building or closed place or part of it, that is the dwelling of a Cuban citizen or of a foreigner residing in Cuba, but always preceded by the consent of the interested party.

In the absence of consent, an informed resolution from the Instructor is required, with the approval of the Prosecutor, a copy of which will be submitted to the person concerned when proceeding to the search. In this case, the search cannot be done outside the hours between five in the morning and ten at night.

It is presumed that one who gives consent, as required for the person executing the raid and search to be allowed, executes on their part the necessary acts that depend on them so that the constitutional guarantee of the inviolability of domicile can take effect.

ARTICLE 219. The resolution that provides the raid and search determines its precise purpose, the reasons that justify adopting the measure, and the building or closed place to be verified. It also contains the name of the official or police officer designated for this procedure, when not carried out by the authority itself.

ARTICLE 220. The search is practiced in the form that is less burdensome, avoiding useless steps, as well as not extending it to extremes outside the strict object of the investigation of the crime.

B. Regulation of the Penitentiary System in the following article:

ARTICLE 64. Inmates have the following rights:

a) Having permanent access to written information on the internal regulation of the place of internment, and especially on their legal situation and related to established rights, benefits, obligations and prohibitions.

b) Receiving a family visit upon admission or after being transferred from the place of internment.

- c) Receiving food, clothing and medical and dentistry assistance.
- d) Receive general teaching, comprehensive general education, vocational and technical training, as well as certificates of schooling or trades acquired.
- e) Practice or enjoy artistic, sports, cultural and recreational activities.
- f) Be taken outside the place of internment when security conditions so permit.
- g) Interview with their lawyers to receive legal assistance.
- k) Receive and send mail.
- l) Make authorized phone calls to family and friends.
- m) Access library services and possess books, study material and authorized documents,
- n) Enjoy daily outdoor exercise,
- p) Receive individual or collective religious assistance,
- q) Receive visits by family, spouse and friends who exert positive influence on persons deprived of liberty and consuming during such visits authorized food and drinks,
- r) Receive authorized products and items,
- t) Make complaints, requests or appeals verbally or in writing to the authorities, using the appropriate channels and receive attention and answers to them.

International Legal Instruments also violated:

A-The Universal Declaration of Human Rights, in the following articles:

ARTICLE 3. Everyone has the right to life, liberty and security of their person.

ARTICLE 5. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

ARTICLE 8. Everyone has the right to an effective remedy before the competent national tribunals, to protect them against acts that violate their fundamental rights granted by the constitution or by law.

ARTICLE 9. No one may be arbitrarily detained, imprisoned or banished.

ARTICLE 10. Everyone has the right, under conditions of full equality, to be heard publicly and fairly by an independent and impartial tribunal, for the determination of their rights and obligations or for the examination of any accusation against them in criminal matters.

B- The International Covenant on Civil and Political Rights in:

ARTICLE 9 .1. *Everyone has the right to liberty and personal security. No one may be subjected to arbitrary detention or prison. No one may be*

deprived of liberty, except for the causes established by law and in accordance with the procedure established therein.

2. Any detained person shall be informed, at the time of their arrest, of the reasons for the same, and notified, without delay, of the accusation made against them.

3 - Any person detained or imprisoned due to a criminal offense shall be brought promptly before a Judge or other official authorized by law to exercise judicial functions, and shall have the right to be tried within a reasonable period of time or to be released. The preventive detention of persons to be tried should not be the general rule, but their freedom may be subject to guarantees that ensure the defendant's appearance at the trial, or at any other time during the legal proceedings and, when appropriate, for the execution of the ruling.

4. Any person who is deprived of liberty by virtue of detention or imprisonment shall have the right to appeal before a court, so that it may decide as soon as possible on the lawfulness of his detention and order his release if the detention is not lawful.

5. Any person who has been illegally detained or imprisoned shall have the effective right to obtain reparation.