Australia: One Nation convictions quashed

Hanson verdict short-circuits political frame-up

Mike Head, Linda Tenenbaum
8 November 2003

An Australian Supreme Court on Thursday overturned the jailing of Pauline Hanson and David Ettridge, co-founders of the right-wing populist One Nation Party, concluding that there was no legal foundation whatsoever for their conviction on fraud charges.

It took less than a day for the three Queensland Court of Appeal judges to determine that the charges against the pair flew in the face of long-established legal principles. Their judgments confirmed what the WSWS and the Socialist Equality Party have consistently argued: that Hanson and Ettridge were railroaded to jail as the result of a concerted five-year political witchhunt, backed up by a series of legal travesties.

While the two have now been released from jail, their case demonstrates the lengths to which the Australian political and legal establishment will stoop to slander, discredit and silence any political formation that constitutes a challenge to the official parties or threatens the stability of the parliamentary status quo.

In August, Hanson and Ettridge were each sentenced to three years' jail without parole under the Queensland Criminal Code. Their alleged crime arose from registering Pauline Hanson's One Nation as a party under that state's electoral laws in December 1997. They were accused of supplying the names and addresses of 500 members whom a Supreme Court judge later ruled to be members of another entity, the Pauline Hanson Support Movement. Despite gaining no financial or personal benefit from the party's registration, the two were convicted, under the extremely vague wording of the Criminal Code's Section 408C, of "dishonestly gaining a benefit or advantage" by having the party registered.

Hanson and Ettridge immediately lodged appeals, against both their convictions and the severity of the sentences, but were denied bail by three appellate courts, including the Australian High Court, to prepare their cases. While the court eventually upheld their appeals, it nevertheless made clear they would receive no compensation for their 78 days—nearly three months—behind bars.

The frame-up of Hanson and Ettridge was based on fundamentally anti-democratic electoral laws requiring minor parties to lodge the names and addresses of hundreds of members in order to obtain registration. Similar registration and state funding laws were adopted at both state and federal level during the late 1980s and early 1990s to shore up the increasingly discredited major parties, while making it virtually impossible for ordinary people to register new parties.

These laws transformed the basic democratic right to organise a political party and stand for election under its name into a "benefit" bestowed by the state. The legislation opened registered parties up to official intrusion and arbitrary meddling in the name of verifying membership rolls and electoral expenses.

The One Nation frame-up reveals how these laws can be used to trigger politically damaging criminal prosecutions on the flimsiest of pretexts. During both the civil proceedings in 1999 and the criminal case this year, the only evidence advanced that Hanson and Ettridge had fraudulently registered One Nation was that they, along with fellow party founder David Oldfield, considered only the One Nation Management Committee (i.e., themselves) to be party members.

In other words, because of the alleged subjective attitude of the party leaders to the democratic rights of their members, their party was de-registered and they were sentenced to three years' jail.

There is no question but that Hanson, Ettridge and Oldfield were keen to retain control over One Nation, particularly against "infiltrators," i.e., political opponents whom they feared would join the party en masse to try and overturn both its leadership and its ultra-right policies. An autocratic structure was adopted aimed at stripping all other members of their rights under the party's constitution. As Court of Appeal judge Margaret McMurdo suggested, the purpose of this structure appeared to be "to confuse the membership and to entrench the Management Committee's grip on power under the party's Constitution". But that was an issue for the membership to deal with. The internal matters of a political party are not the business of the courts.

There was never any dispute that more than 1,000 people—twice the legal requirement under the Queensland Electoral Act—signed forms to register One Nation and regarded themselves as party members. The Court of Appeal reviewed, in its judgment, the process by which they had joined the party.

"On the evidence here, each person whose name appears on the contentious list provided to the Electoral Commissioner filled in an application form headed 'Pauline Hanson's One Nation,' which is the name of the political party, and sent it, as requested on the form, to 'Pauline Hanson's One Nation' at a post office address at Manly, New South Wales. The membership fee paid by those applicants was of the order of $40/50. The application was processed at the Manly office ... the applicant was issued with a receipt in the name of the political party, and a membership card..."

Applying "orthodox contract theory," the judges ruled that the "aggregation of these objective circumstances suggests strongly that the applicant offered to join the political party, which then communicated its acceptance of the offer by the provision of the membership card".

Thus, the list of signatories became members and *objectively* retained rights under the party constitution, regardless of the *subjective* intentions of the party's leaders or their subsequent conduct in seeking to deny those membership rights. The judges cited several leading cases that make this point legally indisputable. By not making this elementary legal distinction, the trial judge, District Court Chief Judge Patsy Wolfe, had erred.

In addition, Judge Wolfe had misdirected the jury by not explaining the irrelevance of the evidence given by a key witness in the earlier 1999 civil

case. Andrew Carne, former One Nation official, testified that Ettridge had requested him to submit a membership list for registration without regard to whether those on the list were actually members. This was "not evidence of the objective intention of the parties at the time of contracting to join [the party]".

Justice McMurdo also implicitly threw doubt on the 1999 verdict by noting that Carne was not called to give evidence in the subsequent criminal trial because the investigating police officer had assessed him as "having absolutely no credit".

These factors alone, the judges said, justified quashing the convictions and ordering that no re-trial take place.

But they went even further. Chief Justice Paul de Jersey concluded that the "preponderance of the available evidence" indicated that the party's recruits probably became members of both the party and the Pauline Hanson Support Movement. Nevertheless, even if they were deemed only to be members of the support group, that would still mean they were members of a "related political party" under the Queensland Electoral Act, entitling One Nation to be registered.

Ettridge raised this precise issue at an early stage in the criminal trial, yet Judge Wolfe decided not to refer it to the jury to consider. By itself, this defect also "warranted the quashing of the convictions".

In addition, Justice de Jersey ruled that Judge Wolfe had failed to instruct the jury that Ettridge, who was One Nation's chief administrator, could not be convicted of "aiding" Hanson unless it was proved that he knew her actions had a dishonest purpose.

In other words, on every single count, the Court of Appeal tore the convictions to pieces, making clear they had no legal basis whatever.

The obvious question remained—why and how were Hanson and Ettridge jailed in the first place? "Members of the public will undoubtedly, however, query why the crystallisation of the appellants' current position need have awaited a lengthy trial—approximately five weeks, and then an appeal," de Jersey acknowledged.

There was, he noted, "no easy answer to that question". He sought to blame the pair's lack of experienced legal counsel at their trial, as well as poor preparation and presentation of the case by the state's Director of Public Prosecutions (DPP). He suggested that government under-funding of the DPP's office had prevented it from hiring "highly talented lawyers" who could have avoided "the present difficulty".

It is simply not plausible to attribute the legally indefensible deregistration of a political party and the wrongful jailings of two opposition politicians to these factors alone. As the WSWS has meticulously documented, their imprisonment was the culmination of a protracted political, media and legal campaign that began after One Nation shocked ruling circles by attracting nearly 25 percent of the vote in the June 1998 Queensland state elections. There was deep-going concern throughout the political establishment that if replicated nationally, such a result could see not only the ousting of the Howard government at the upcoming federal elections, but the destabilising of the entire political system.

Unable and unwilling to oppose Hanson's xenophobic and racialist politics, the Howard government turned to ruthless, backroom methods to demolish One Nation as an organisation, and to vilify and politically destroy its leaders.

In a revealing conclusion to her judgement, Justice McMurdo attempted to distance the judiciary from the political witchhunt, going out of her way to indicate that the court's overturning of the convictions was not affected by political considerations. She lashed out at various government leaders, including Howard and New South Wales Premier Bob Carr, for commenting publicly on the severity of the sentences handed down by the District Court.

The politicians' comments "could reasonably be seen as an attempt to influence the judicial appellate process and to interfere with the independence of the judiciary for cynical political motives". She warned that "a failure by legislators to act with similar restraint in the future, whether out of carelessness or for cynical short-term political gain, will only undermine confidence in the judiciary and consequentially the democratic government of this state and nation".

The fact remains, however, that the jailing of Hanson and Ettridge cannot be explained as an extraordinary series of breakdowns in the legal understanding of prosecutors, lawyers and judges. The record shows that the courts played a crucial role in a political witchhunt that was specifically aimed at undermining fundamental democratic rights.

Those involved in the campaign to organise and bankroll the legal actions against One Nation included Prime Minister John Howard's protégé Tony Abbott, who is now a leading minister in the federal government, several National Party leaders, former Labor federal minister John Wheeldon and ex-state Liberal leader Peter Coleman, the father-in-law of Treasurer Peter Costello, along with well-known business figures in several states.

Officials of the Queensland state Labor government, notably the DPP, the Police Commissioner and the Electoral Commissioner, Des O'Shea, made highly-political decisions to prosecute Hanson and Ettridge, a process that involved widely-publicised and prejudicial police raids on the party's offices and on One Nation's remaining federal Senator Len Harris.

In the wake of the Court of Appeal ruling, Howard and Queensland Labor Premier Peter Beattie strenuously denied there had been any political interference in the case. But the facts speak otherwise. Moreover, it beggars belief that the decisions to prosecute in such a politically sensitive and high-profile case were made without consultation, whether formal or informal, with government leaders, both state and federal.

The Court of Appeal decision has short-circuited, for now, a dangerous precedent for the frame-up and persecution of any political opponents of the current political setup. But the profoundly anti-democratic electoral laws that became the vehicle for the political victimisation of Hanson and Ettridge remain on the books, and there is no guarantee that similar operations—perhaps better resourced and prepared—will not be undertaken in the future.

The WSWS and the Socialist Equality Party reject entirely the political outlook and policies of the One Nation party and its leadership. Our demand for the release of Hanson and Ettridge and the quashing of their convictions flowed directly from our commitment to and defence of fundamental democratic rights. The operation mounted against the two must sound a warning of the methods being prepared against any party that advances, unlike One Nation, a genuinely progressive alternative to the current crisis-ridden economic and social order.