

HUMAN RIGHTS COMMITTEE

D. C. B. v. Uruguay

Communication No. 131/1982*

17 January 1985

ADMISSIBILITY & DISCONTINUED

Submitted by: N. G. (name deleted)

Alleged victim: D.C.B.

State party: Uruguay

Date of communication: 29 December 1982

Declared admissible: 25 July 1984 (twenty-second session)

Admissibility Decision - case subsequently discontinued

1.1. The author of the communication (initial letter dated 29 December 1982 and further letters of 30 May 1983 and 4 January 1984) is N.G., an Austrian citizen (since 1981), residing at present in Austria. She submits her communication on behalf of D.C.B., a Uruguayan worker detained in Libertad prison.

1.2. The author alleges that Mr. D.C.B. was arrested by members of the Uruguayan security forces in front of his place of work in Montevideo on 23 March 1982. His family was informed only eight months later of his detention at Libertad prison to which he allegedly was transferred after having been held incommunicado and under torture at the Cavalry Regiment No. 4. (His family could discern torture marks when first visiting him in prison.) The author further states that prison visits for the family are rare and take place without direct contact with the prisoner, by telephone, in wire-tapped booths, under the control of women prison guards. The author adds that after each visit the tape-recorded conversations are studied by psychiatrists. She also states that every two weeks Mr. D.C.B. is permitted to write a one-page letter to his family, which is, however, subject to arbitrary censorship by prison officials. (The author encloses a copy of the only letter received by Mr. D.C.B.'s family by the time of the submission of the case to the Human Rights Committee. Mr. D.C.B. had not yet been brought to trial.)

1.3. As far as the exhaustion of domestic remedies is concerned, Mrs. N.G. affirms that a request for habeas corpus submitted by the family immediately after Mr. D.C.B.'s disappearance and a solicitud

de aprecio introducido un mes después no tuvo resultado; y que en consecuencia todos los recursos domésticos disponibles han sido agotados en el caso.

1.4. El autor también afirma que, antes de presentar el caso ante el Comité de Derechos Humanos, se habían realizado esfuerzos, sin éxito, para llevar el caso ante el Comité Internacional de la Cruz Roja, Amnistía Internacional y la Cruz Roja Austriaca.

1.5. El autor afirma que el Sr. D. C. B. es víctima de una violación por Uruguay de los artículos 2, 3, 7, 9, 10, 16, 19 y 26 del Pacto Internacional de Derechos Civiles y Políticos.

2. Por su decisión del 17 de marzo de 1983, el Grupo de Trabajo del Comité de Derechos Humanos transmitió la comunicación de acuerdo con el artículo 91 de las reglas provisionales de procedimiento a la Parte interesada, solicitando información y observaciones relevantes para la admisibilidad de la comunicación y pidiendo copias de cualquier orden o decisión relevante para el caso. El autor también fue solicitado para proporcionar información detallada sobre los fundamentos y circunstancias que justifican su actuación en nombre de la víctima alegada.

3. En respuesta a la solicitud del Grupo de Trabajo, el autor informó al Comité por carta del 30 de mayo de 1983 que estaba actuando a solicitud de la familia de la víctima alegada, en vista de su larga amistad con ellos. Además, el autor proporcionó el nombre y la dirección de la esposa de la víctima alegada, en caso de que el Comité deseara contactar con ella para verificar la autoridad del autor para presentar una comunicación en nombre del Sr. D. C. B. Por carta fechada el 16 de junio de 1984, la esposa de la víctima alegada confirmó la autoridad del Sr. N. G. para actuar en el caso ante el Comité de Derechos Humanos.

4. En su presentación de acuerdo con el artículo 91, fechada el 8 de noviembre de 1983, la Parte interesada se opone a la admisibilidad del caso porque "los recursos procesales apropiados en esta instancia no han sido agotados, ya que el caso está pendiente de sentencia". El Gobierno de Uruguay también comenta sobre la presentación del autor, afirmando que "considera que el lenguaje de la comunicación es inapropiado, ya que utiliza expresiones como 'campo de concentración' para referirse al Establecimiento de Detención Militar No. 1, que amply cumple con los requisitos de un centro de detención que es un modelo de su tipo. Además, se debe enfatizar que el Sr. D. C. B. no fue sometido a ningún tipo de coerción física o psicológica y fue tratado en todo momento de acuerdo con las disposiciones legales aplicables. Por último, se debe señalar que esta persona fue sometida a juicio por los delitos de 'asociación subversiva' y 'acción para alterar la Constitución en el grado de conspiración seguida por actos preparatorios', según el Código Penal Militar."

5.1. En una presentación adicional fechada el 4 de enero de 1984, el autor comenta sobre la presentación de la Parte interesada y afirma que los prisioneros políticos en el "Centro de Detención Militar No. 1" sufren violencia física y psicológica, como se ilustra en los siguientes ejemplos generales:

A. El uso selectivo y arbitrario de castigo, que incluye el confinamiento por hasta tres meses consecutivos en "celdas de castigo", agravado por el hecho de que los prisioneros no están generalmente informados de las razones de tal castigo. Naturalmente, esto implica que no es posible evitar tal castigo.

B. Of the same order are the surprise searches of cells carried out at night, during which personal belongings are stolen and/or destroyed, and the super-aggressiveness of the guards on duty.

C. In addition, there are many cases in which the officer responsible for the custody and welfare of prisoners has himself participated in the interrogation and torture of a prisoner at other detention centres, a practice which generates pathological anxiety in the prisoner.

D. Another variety of violence is the obligatory sharing of a cell with prisoners who are under psychiatric treatment. One well-known case is that of José M. S., who refused to share his cell with someone who, as well as being a danger to a normal prisoner, was putting his own mental health at risk; as a result, José M. S. was held in a punishment cell for 130 days and, on conviction, exactly two years more were added to his sentence.

E. Needless to say, medical assistance is in flagrant contradiction with Hippocratic ethics, since prisoners suffering from psychological problems or psychiatric illnesses (mainly on the second floor) are not allowed out for more than one hour per day and are given no treatment other than the enforced injection of psychotropic drugs, which are very dangerous because of their side-effects.

With regard to the psychological variety of torture, mention may be made of:

- (a) The arbitrary suspension of family visits;
- (b) The arbitrary suspension of correspondence;
- (c) The excessive censorship of correspondence;
- (d) The strict ban on any communication between prisoners, including prisoners linked by family ties;
- (e) Degrading work by way of punishment.

5.2. With regard to the specific case of the alleged victim, the author refers to a letter dated 21 Nov., 1982 from Dr. B. C. B. stating that when he visited his brother and client in jail, "I also witnessed the torture to which he was subjected". No details are however provided in this respect.

6. On the basis of the information before it, the Committee finds that it is not precluded by article 5 (2) (a) of the Optional Protocol from considering the communication, as there is no indication and the State party has not claimed that the same matter is currently being examined under another procedure of international investigation or settlement. As to the question of exhaustion of domestic remedies, the Committee notes that, although the trial of D. C. B. is pending, the allegations of violations of the Covenant relate to his detention incommunicado for eight months, from March to November 1982, during which time his whereabouts were not made known to his family and to ill-treatment in prison, in respect of which the State party has not shown that there is or was an effective domestic remedy which the alleged victim has failed to exhaust. The Committee therefore is unable to conclude that in the circumstances of this case there are domestic remedies which could have been effectively pursued with respect to these alleged violations. Accordingly, the Committee

finds that the communication is not inadmissible under article 5 (2) (a) and (b) of the Optional Protocol.

7. The Human Rights Committee therefore decides:

(1) That the author is justified in acting on behalf of D.C.B.

(2) That the communication is admissible with respect to allegations of ill-treatment and detention incommunicado;

(3) That, in accordance with article 4 (2) of the Optional Protocol, the State party shall be requested to submit to the Committee, within six months of the date of the transmittal to it of this decision, written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by it;

(4) That the State party be informed that the written explanations or statements submitted by it under article 4 (2) of the Optional Protocol must relate primarily to the substance of the matter under consideration. The Committee stresses that, in order to perform its responsibilities, it requires specific responses to the allegations which have been made by the author of the communication and the State party's explanations of the actions taken by it. The State party is again requested to enclosed, copies of any court orders or decisions of relevance to the matters under consideration, and also (a) to inform the Committee whether the alleged victim has been brought before the military judge of first instance in person and what are the relevant laws and practices in this respect and (b) to inform the Committee as to the outcome of the trial of first instance of D.C.B. and whether the judgement of the court of first instance is subject to appeal;

(5) That any explanations or statements received from the State party shall be communicated by the Secretary-General under rule 93 (3) of the provisional rules of procedure of the Committee to the author, with the request that any comments which she may wish to submit thereon should reach the Human Rights Committee in care of the Centre for Human Rights, United Nations Office at Geneva, within six weeks of the date of transmittal;

(6) That this decision be communicated to the State party and to the author of the communications.

At its twenty-fourth session the Committee discontinued examination of communication No. 131/1982 following the receipt of a letter from the author, dated 17 January 1985, indicating that the alleged victim had been released and requesting the Committee to consider the case closed.

*/ Not previously published in the annual report of the Human Rights Committee.