

HUMAN RIGHTS COMMITTEE

de Bouton v. Uruguay

Communication No. 37/1978

27 March 1981

VIEWS

Submitted by: Esther Soriano de Bouton on 7 June 1978

Alleged victim: The author

State party: Uruguay

Date of adoption of views: 27 March 1981 (twelfth session)

Views under article 5 (4) of the Optional Protocol

1. The author of this communication, dated 7 June 1978, is Esther Soriano de Bouton, a Uruguayan national, residing in Mexico. She submitted the communication on her own behalf.

2.1 The author alleges that she was arrested in Montevideo, Uruguay, on 19 February 1976 by members of the "Fuerzas Conjuntas" (Joint Forces), with no warrant of arrest being shown to her. She was allegedly kept in detention, without charges, for eight months and then taken before a military court which, within one month, decided she was innocent and ordered her release. However, the release was allegedly only effected one month later, on 25 January 1977.

2.2 The author claims that she was detained at three different places (one called "El Galpon", another "La Paloma", with the third one being not known to her by name) and that she was subjected to moral and physical ill-treatment during detention.

2.3 She states, inter alia, that once she was forced to stand for 35 hours, with minor interruptions; that her wrists were bound with a strip of coarse cloth which hurt her and that her eyes were continuously kept bandaged. During day and night she could hear the cries of other detainees being tortured. During interrogation she was allegedly threatened with "more effective ways than conventional torture to make her talk".

2.4 The author states that, due to the continuing threats and tension, she signed a paper

which she could not read, apparently confessing that she had attended "certain meetings" in 1974. She was then transferred to a detention centre called "La Paloma" where she allegedly was told by an official that "people came to recover from the ill-treatment suffered at the first place" ("El Galp6n"). She claims that at this second place of detention she and the other detainees continued to be subjected to inhuman and degrading treatment.

2.5 In September 1976 the author, together with other women, was taken to a third place where conditions grew worse. There she was allegedly kept sitting on a mattress, blindfolded, not allowed to move, for many days. She was allowed to take a bath every 10 or 15 days. After approximately one month at this detention centre, by the end of which she had completed eight months in detention, absolutely incommunicado, she was brought before a military court and the next day the incommunicado order was lifted. Nevertheless, it took the court another month to decide that the author was innocent of any offence and order her release. She was released on 25 January 1977, nearly one year after her arrest.

2.6 The author therefore alleges that in violation of the International Covenant on Civil and Political Rights, she suffered arbitrary arrest, detention without charges and cruel and inhuman treatment. She further claims that during her detention she was kept incommunicado, and thus deprived of any contact with her family, lawyers or other persons who could file a recourse on her behalf, and that the recourse of habeas corpus is not accepted by the Uruguayan courts under the regime of "prompt security measures". She claims that other recourses were not applicable, since once she was taken before a judge he ordered her release. Finally, she alleges that it is impossible to expect that under the present Uruguayan Government compensation for the wrongs inflicted on her would be granted.

2.7 The author maintains that although she was arrested a few days before the entry into force of the Covenant for Uruguay, her detention and the alleged events took place for the most part after 23 March 1976. She states that she has not submitted her case to any other international body.

3. On 27 October 1978, the Human Rights Committee decided to transmit the communication to the State party, under rule 91 of the provisional rules of procedure, requesting information and observations relevant to the question of admissibility. No reply was received from the State party to this request.

4. The Committee found, on the basis of the information before it, that it was not precluded by article 5 (2) (a) of the Optional Protocol from considering the communication. The Committee was also unable to conclude that there were effective domestic remedies, available to the alleged victim in the circumstances of her case, which she had failed to exhaust. Accordingly, the Committee found that the communication was not inadmissible under article 5 (2) (b) of the Optional Protocol.

5. On 24 April 1979, the Human Rights Committee therefore decided:

1. That the communication was admissible;

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

3. That the State party be informed that the written explanations or statements submitted by it under article 4 (2) of the Protocol must primarily relate to the substance of the matter under consideration, and in particular the specific violations of the Covenant alleged to have occurred. The State party was requested, in this connection, to enclose copies of any court orders or decisions of relevance to the matter under consideration.

6.1 On 23 November 1979, two days before expiry of the six-month time-limit, the State party informed the Human Rights Committee, through its Chairman, that its submission under article 4 (2) of the Optional Protocol would be presented "as soon as possible".

6.2 On 13 February' 1980, the State party, again through the same channels, informed the Committee that, due to reasons of a-technical nature, its submission was not ready and requested "a reasonable" extension of time for its submission.

7. On 10 July 1980, the State party submitted its observations under article 4 (2) of the Optional Protocol. It informed the Committee that Mrs. Soriano de Bouton was arrested on 12 February 1976 under the "prompt security measures" because of "presumptive connections with subversive activities"; that on 2 December 1976 a military judge ordered her "conditional" release ("libertad con cardeter de emplazada") of which Mrs. Soriano was informed the same day. The State party further submits that, on 11 February 1977, Mrs. Soriano applied for authorization to leave Uruguay for Mexico, which was granted to her the same day. It categorically refuted the allegations of mistreatment made by the author of the complaint, declaring that in all Uruguayan prisons the personal integrity of all detainees is guaranteed. In this connection, the State party asserted that members of diplomatic missions in Uruguay as well as members of international humanitarian organizations are free to visit any detainee, without any witnesses, and it referred, for example, to a recent visit by the International Committee of the Red Cross.

8. The Committee has been informed by the Government of Uruguay in another case (No. 9/1977) that the remedy of habeas corpus is not applicable to persons arrested under "prompt security measures".

9. The Committee has considered the present communication in the light of all information made available to it by the parties, as provided in article 5 (1) of the Optional Protocol.

10. The Committee decides to base its views on the following facts which have either been essentially confirmed by the State party or are uncontested except for denials of a general character offering no particular information or explanation: Esther Soriano de Bouton was arrested on 12 February 1976, allegedly without any warrant. Although her arrest took place before the coming into force of the International Covenant on Civil and Political Rights and of the Optional Protocol thereto on 23 March 1976 in respect of Uruguay, her detention

without trial continued after 23 March 1976. Following her arrest, Esther Soriano de Bouton was detained for eight months incommunicado, before she was taken before a military court which, within one month, decided that she was innocent and ordered her release. Her release was effected one month later on 25 January 1977.

11. As regards the serious allegations of illtreatment made by Mrs. Soriano de Bouton, the State party has adduced no evidence that these allegations have been investigated. A refutation of these allegations in general terms, as contained in the State party's submission of 10 July 1980, is not sufficient.

12. The Human Rights Committee has considered whether acts and treatment, which are prima facie not in conformity with the Covenant, could for any reasons be justified under the Covenant in the circumstances. The Government, in its submission, has referred to the provisions of Uruguayan law, such as the "prompt security measures". However, the Covenant (art. 4) does not allow national measures derogating from any of its provisions except in strictly defined circumstances and the Government has not made any submissions of fact or law to justify such derogation. Moreover, some of the facts referred to above raise issues under provisions from which the Covenant does not allow any derogation under any circumstances.

13. The Human Rights Committee, acting under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts as found by it, in so far as they have occurred after 23 March 1976 (the date on which the Covenant entered into force in respect of Uruguay), disclose violations of the Covenant, in particular of:

Articles 7 and 10 (1), on the basis of evidence of inhuman and degrading treatment of Esther Soriano de Bouton;

Article 9 (1), because she was not released until one month after an order for her release was issued by the military court;

Article 9 (3), because she was not brought before a judge until eight months after she was detained; Article 9 (4), because recourse to habeas corpus was not available to her.

14. Accordingly, the Committee is of the view that the State party is under an obligation to provide Esther Soriano de Bouton with effective remedies, including compensation, for the violations which she has suffered and to take steps to ensure that similar violations do not occur in the future.