

HUMAN RIGHTS COMMITTEE

Martins v. Uruguay

Communication No. R.13/57

23 March 1982

VIEWS

Submitted by: Sophie Vidal Martins

Alleged victim: The author of the communication

State party concerned: Uruguay

Date of communication: 13 August 1979 (date of initial letter)

Date of decision on admissibility: 2 April 1980

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 23 March 1982,

Having concluded its consideration of communication No. R.13/57 submitted to the Committee by Sophie Vidal Martins under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and by the state party concerned,

Adopts the following

Views under article 5(4) of the Optional Protocol

1. The author of this communication initial letter dated 13 August 1979 and a further letter dated 7 March 1981) is Sophie Vidal Martins, a Uruguayan national residing in Mexico. She works as a journalist and submits the communication on her own behalf.

2.1 She states that she is holding a Uruguayan passport which was issued by the Uruguayan

consulate in Stockholm (Sweden) in 1971 with a 10 years' validity upon condition that its validity would be confirmed after five years, i.e. on 28 January 1976. The author alleges that, living in France at that time, she applied to the Uruguayan consulate in Paris in June 1975 for renewal of her passport (renovacion). She claims that Uruguayan citizens living abroad could obtain a passport without any difficulties until August 1974, when a Government decree came into force which provided that the issuance of a passport was subject to the approval of the Ministry of Defence and the Ministry of the Interior. She further states that, not having received any reply to her first application for renewal of her passport which she had submitted in Paris in June 1975, upon her arrival in Mexico in October 1975 as correspondent of the French periodical Temoignage chrétien, she submitted an application to the Uruguayan consulate in Mexico on 16 November 1975. One month later she was informed orally that the consul had received a communication requesting him to "wait for instructions". He sent two cables in order to obtain these instructions in January and March 1977, but without result. In October 1978 the author applied to the Uruguayan consulate in Mexico for a new passport. Two months later she was informed orally that the Uruguayan Ministry of the Interior had refused to give its approval. She appealed against this decision on 13 December 1978 to the Minister of the Interior through the Uruguayan Embassy in Mexico. The Ambassador offered her a document which would have entitled her to travel to Uruguay but not to leave the country again. She did not accept this for reasons of personal security. On 28 February 1979 she received an official note from the Uruguayan Foreign Ministry refusing, without giving any reasons, to issue her with a passport.

2.2 The author considers the Uruguayan authorities' refusal to issue a passport to her was a "punitive measure" taken against her because of her former employment by the Uruguayan weekly, Marcha, which, together with 30 other newspapers, was prohibited by the authorities and whose director was living as a political refugee in Mexico. She claims that this constitutes a violation of articles 12 (2) and 19 of the International Covenant on Civil and Political Rights. The author adds that, according to her knowledge, she was never charged with any offence, either in Uruguay or abroad, and that she has never belonged to any political party.

2.3 The author does not mention whether she has had recourse to any further domestic remedy.

3.1 By its decision of 10 October 1979 the Working Group of the Human Rights Committee transmitted the communication under rule 91 of the provisional rules of procedure to the State party concerned requesting information and observations relevant to the question of admissibility. No such reply was received from the State party to this request.

3.2 The Human Rights Committee ascertained that the same matter had not been submitted to the Inter-American Commission on Human Rights.

3.3 Consequently 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, in the circumstances of the case, there was any effective domestic remedy available to the alleged victim 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.

3.4 On 2 April 1980, the Human Rights Committee therefore decided:

(a) That the communication was admissible;

(b) That, in accordance with article 4 (2) of the Protocol, the State party should 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;

(c) 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.

4. On 29 October 1980 the time-limit for the observations requested from the State party under article 4 (2) of the Optional Protocol expired. However, no submission has yet been received from the State party.

5.1 In a further letter dated 7 March 1981, the author of the communication notes the lack of a response from the Government of Uruguay and informs the Human Rights Committee that the numerous difficulties caused for her by the refusal of the Uruguayan authorities to extend the validity of her passport have considerably increased, thus seriously affecting not only herself but also other members of her family. The author claims in this connexion that after the death of her mother, Iclea Martins de Vidal, which occurred on 12 December 1979 in Uruguay, she and her brother became the sole heirs to their mother's estate and that the legal formalities in this respect have been completed before the appointed judge. Not being able to travel to Uruguay herself, She instructed a Mexican notary to take a number of necessary steps in order to terminate the regime of community property existing between her brother and herself. For this purpose, she requested the Uruguayan consul in Mexico to certify the signature of the competent Mexican official, Mr. Luis del Valle Prieto which the consul allegedly refused and still refuses to do, thus making it impossible for her and her brother to pursue the separation procedures further. The author points out that her request is covered by national legislation (Act No. 14,534 of 24 June 1976), in conformity with a treaty between Uruguay and Mexico signed in Panama on 29 January 1975 and ratified by the Government Council of Uruguay. She concludes that despite the efforts and demarches made, including those by the Mexican consul in Montevideo, it has not so far been possible for her and her brother to change the situation, adding that her brother, who lives in Uruguay, is in no way involved in any activity that might be held against her.

5.2 A copy of the author's submission of 7 March 1981 has been forwarded to the State party. No comments have been received from the State party in this respect either.

6.1 The Committee has considered the present communication in the light of all information

made available to it, as provided in article 5 (1) of the Optional Protocol. The Committee notes that no submissions have been received from the State party in this case, particularly as to the reasons for refusal for an ordinary passport or the reasons for the offer of only a restricted travel document.

6.2 The Committee decides to base its views on the following facts that can be deduced from the author's submissions which also include official documents issued by the Uruguayan authorities in the case: Sophie Vital Martins, a Uruguayan citizen residing at present in Mexico, and holder of a passport issued in 1971 in Sweden with a 10 years' validity upon condition that its validity be confirmed after five years, was refused such confirmation by the Uruguayan authorities without explanation several times between 1975 and 1977. In 1978 the author then applied for a new passport at the Uruguayan consulate in Mexico. According to the author, issuance of a passport is subject to the approval of the Ministry of Defence and the Ministry of the Interior. Two months after her application, Sophie Vidal Martins was informed that the Ministry of the Interior had refused to approve the issue to her of a new passport. She then appealed against this decision which later was officially reconfirmed by the Uruguayan Foreign Ministry without any reasons given. The author was offered a document which would have entitled her to travel to Uruguay, but not to leave the country again. The author declined this offer for reasons of personal security.

6.3 After the death of her mother in Uruguay in December 1979 when the legal questions concerning an inheritance arose between the author and her brother who is a resident of Uruguay, Sophie Vidal Martins was unable in the circumstances described above to go to Uruguay to settle these questions herself, but authorized a Mexican notary, Luis del Valle Prieto, to act on her behalf. As is necessary in such cases, the signature of the notary had to be certified by the Uruguayan consul in Mexico. The consul, however, refused without reason to certify Mr. Valle Prieto's signature, although Mrs. Martins requested him to do so in conformity with (i) Uruguayan legislation (Act No. 14,534 of 24 June 1976) and (ii) a treaty between Uruguay and Mexico which was ratified by the current Government Council of Uruguay. The inheritance settlement thus continues to remain unresolved, to the author's detriment and the detriment of her brother.

7. The Human Rights Committee has examined, ex officio, whether the fact that Sophie Vidal Martins resides abroad affects the competence of the Committee to receive and consider the communication under article 1 of the Optional Protocol, taking into account the provisions of article 2 (1) of the Covenant. Article 1 of the Optional Protocol applies to individuals subject to the jurisdiction of the State concerned who claim to be victims of a violation by that State of any of the Covenant rights. The issue of a passport to a Uruguayan citizen is clearly a matter within the jurisdiction of the Uruguayan authorities and he is "subject to the jurisdiction" of Uruguay for that purpose. Moreover, a passport is a means of enabling him "to leave any country, including his own", as required by article 12 (2) of the Covenant. It therefore follows from the very nature of the right that, in the case of a citizen resident abroad it imposes obligations both on the State of residence and on the State of nationality. Consequently, article 2 (1) of the Covenant cannot be interpreted as limiting the obligations of Uruguay under article 12 (2) to citizens within its own territory.

8. As to the allegations made by the author with regard to a breach of article 19 of the Covenant, they are in such general terms and seem to be of such secondary nature in the case that the Committee makes no finding in regard to them.

9. 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 a violation of article 12 (2) of the Covenant, because Sophie Vidal Martins was refused the issuance of a passport without any justification therefor, thereby preventing her from leaving any country including her own.

10. Accordingly, the Committee is of the view that the State party is under an obligation pursuant to article 2 (3) of the Covenant to provide Sophie Vidal Martins with effective remedies which would give her the possibility of enjoying the rights under article 12 of the Covenant, including a passport valid for travel abroad.