

HUMAN RIGHTS COMMITTEE

Massera et al. v. Uruguay

Communication No. R.1/5

15 August 1979

VIEWS

Submitted by: Moriana Hernandez Valentini de Bazzano on her own behalf as well as on behalf of Luis Maria Bazzano Ambrosini, Martha Valentini de Massera and Jose Luis Massera

State Party concerned: Uruguay

Date of registered communication: 15 February 1977

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

Meeting on 15 August 1979;

Having concluded its consideration of communication No. R.1/5 submitted to the Committee by Moriana Hernandez Valentini de Bazzano 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 15 February 1977 and further letters dated 4 August 1977 and 6 June 1979) is a Uruguayan national, residing in Mexico. She submitted the communication on her own behalf, as well as on behalf of her husband, Luis Maria Bazzano Ambrosini, her stepfather, Jose Luis Massera, and her mother, Martha Valentini de Massera.

2. The author alleges, with regard to herself, that she was detained in Uruguay from 25 April to 3 May 1975 and subjected to psychological torture. She states that she was released on 3 May 1975 without having been brought before a judge.

The author claims that her husband, Luis Maria Bazzano Ambrosini, was detained on 3 April 1975 and immediately thereafter subjected to various forms of torture such as planton (the prisoner was forced to remain standing for 14 hours), electric shocks and bastinado (blows). He was accused of complicity in assistance to subversive association" for having participated in a spontaneous demonstration and was placed at the disposal of a military judge, although the accusation was consistently denied by the prisoner. Nevertheless the judge indicted him on the basis of his identification by a single alleged witness who did not, however, appear during the preliminary investigation in order to confirm his prior statement. After one year's detention, the judge granted him conditional release, but this decision could not be put into effect since, shortly before, the prisoner had been removed from the place of detention without the judge's knowledge and had been taken to a place unknown to the judge. Once he had been notified of his release, the victim was taken again to an unidentified place where he was held prisoner and confined incommunicado until, on 7 February 1977, he was tried on the charge of "subversive association" an offence punishable by three to eight years imprisonment. He remained confined together with four other political prisoners in a cell measuring 4.50 by 2.50 metres in conditions seriously detrimental to his health. In a communication addressed to Mrs. Moriana Hernandez de Bazzano, the victim's later stated that he had twice requested that the defendant should be granted provisional release, but without success. He also said that under Uruguayan law, the defendant should have been discharged, but that the Court had ordered the preliminary investigation to be closed without the Prosecutor requesting the gathering of any additional evidence.

The author claims that her stepfather, Jose Luis Massera, professor of mathematics and former Deputy to the National Assembly, was arrested on 22 October 1975 and held incommunicado until his detention was made known in January 1976. She claims that he was denied the right of habeas corpus before the civil and military courts and that an application to the Commission on Respect for Human Rights of the Council of State went unanswered. On 15 August 1976 he was tried by a military court on the charge of "subversive association" for being one of the leaders of a banned political party. The author further states that her stepfather suffered permanent damage as a result of torture. In her letter of 4 August 1977 she states that, having been forced to remain standing with his head hooded for long hours, he lost his balance, fell down and broke his leg which was not immediately taken care of, resulting in that leg being now several centimetres shorter than the other one. The author further submits that her stepfather remains imprisoned and that in his double quality as former Deputy and as an accused tried for a political offence, he has been deprived of all his political rights by a Government decree.

The author claims that her mother, Martha Valentini de Massera, was arrested on 28 January 1976 without any formal charges and that in September 1976 she was accused of "assistance to subversive association"?, an offence which carries a penalty of two to eight years imprisonment. She was not allowed to receive visits until November 1976, but had again been taken to an unknown place at the time of the submission of the communication in February 1977. In a subsequent letter of 6 June 1979 the author states that her mother was tried by a military court and sentenced to three and a half years imprisonment due to expire on 28 July 1979. Having been subjected to ill-treatment during her detention, her mother had furthermore suffered from the inadequate diet and the prevailing state of unhealthy working conditions, so that her health had been weakened.

3. On 26 August 1977, 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.

4. By letter dated 27 October 1977 the State Party objected to the admissibility of the communication on three grounds:

(a) the same matter was already being examined by the Inter-American Commission on Human Rights;

(b) none of the alleged victims had exhausted all available domestic remedies;

(c) in so far as the author of the communication was concerned, the alleged violations are said to have taken place prior to 23 March 1976, the date on which the International Covenant on Civil and Political Rights and the Optional Protocol entered into force for Uruguay, and that they have not continued or had effects which themselves constitute a violation after that date.

5. On 1 February 1978, the Human Rights Committee:

(a) having ascertained that cases concerning the alleged victims, which had been before the Inter-American Commission on Human Rights, had been withdrawn and were no longer under active consideration by that body;

(b) being unable to conclude that, with regard to exhaustion of domestic remedies, on the basis of the information before it, there were any further remedies which the alleged victims should or could have pursued;

(c) accepting the contention of the State Party that in so far as the communication related to the alleged detention of the author, the Committee could not consider it since it concerned events which allegedly took place prior to the entry into force of the Covenant and the Optional Protocol in respect of Uruguay;

Therefore decided:

(a) that the author of the communication was justified by reason of close family connexion in acting on behalf of the other alleged victims;

(b) that the communication was inadmissible in so far as it related to the alleged detention of the author of the communication;

(c) that the communication was admissible in so far as it related to alleged violations of the Covenant in respect of the treatment of Luis Maria Bazzano Ambrosini, Martha Valentini de Massera and Jose Luis Massera;

(d) that the attention of the State Party be drawn to the concern expressed by the author of the communication for the health of Luis Maria Bazzano Ambrosini and Jose Luis Massera and that the State Party be requested to arrange for them to be medically examined and given all necessary

medication and treatment if this had not already been done;

(e) that the text of this decision be transmitted to the State Party, together with the text of the relevant documents, and to the author;

(f) that, in accordance with article 4 (2) of the Optional Protocol, the State Party 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 in so far as the communications related to Luis Maria Bazzano Ambrosini, Martha Valentini de Massera and Jose Luis Massera, and the remedy, if any, that may have been taken by it.

6. After expiry of the six-month time-limit, the State Party submitted its explanations, dated 16 November 1978, which consisted of a "Review of the rights of the accused in cases before a military criminal tribunal, and domestic remedies available to him for protecting and safeguarding his rights in the national courts of justice".

7. On 18 April 1979, the Committee decided that the submission of the State Party dated 16 November 1978 was not sufficient to comply with the requirements of article 4 (2) of the Optional Protocol, since it contained no explanations on the merits of the case under consideration and requested the State Party to supplement its submission by providing, not later than six weeks from the date of the transmittal of this decision to the State Party, observations concerning the substance of the matter under consideration.

8. The six-week extension granted by the decision of 18 April 1979 expired on 2 July 1979, but no response had reached the Division of Human Rights at the United Nations Office at Geneva by then, nor even by the time of the taking of this decision by the Committee.

9. The Human Rights Committee:

(a) considering that this communication was registered over two years ago

(b) considering that this communication was declared admissible more than one year ago and that the six-month time period required by article 4 (2) of the Optional Protocol expired in September 1978;

(c) considering that the State Party did not comply with the requirements of article 4 (2) of the Optional Protocol since its submission dated 16 November 1978 did not contain any explanations and statements clarifying the matter.

(d) considering that there has been no response from the State Party even after a further extension of six weeks;

(e) considering that the Committee has the obligation under article 5 (1) of the Optional Protocol, to consider this communication in the light of all written information made available to it by the author and the State Party;

hereby decides to base its views on the following facts which have not been contradicted by the State Party;

- (i) Luis Maria Bazzano Ambrosini was arrested on 3 April 1975 on the charge of complicity in "assistance to subversive association". Although his arrest had taken 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, his detention without trial continued after that date. After being detained for one year he was granted conditional release, but this judicial decision was not respected and the prisoner was taken to an unidentified place, where he was confined and held incommunicado until 7 February 1977. On that date he was tried on the charge of "subversive association and remained imprisoned in conditions seriously detrimental to his health. His lawyer twice attempted to obtain his provisional release, but without success.
- (ii) Jose Luis Massera, a professor of mathematics and former Deputy to the National Assembly, was arrested in October 1975 and has remained imprisoned since that date. He was denied the remedy of habeas corpus, and another application for remedy made to the Commission on Respect for Human Rights of the Council of State went unanswered. On 15 August 1976 he was tried on charges of "subversive association" and remained in prison. As a result of the maltreatment received; he has suffered permanent injury, as evidenced by the fact that one of his legs is several centimetres shorter than the other. In his double quality as former Deputy and as an accused tried for a political offence, he was deprived of all his political rights. a/
- (iii) Martha Valentini de Massera was arrested on 28 January 1976. In September 1976 she was charged with "assistance to subversive association". She was kept in detention and was initially held incommunicado. In November 1976 for the first time a visit was permitted, but thereafter she was again taken to an unknown place of detention. She was tried by a military court and sentenced to three and a half years imprisonment, due to expire on 20 July 1979.

10. 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 these facts in so far as they have occurred after 23 March 1976 disclose violations of the International Covenant on Civil and Political Rights, in particular:

- (i) with respect to Luis Maria Bazzano Ambrosini,
 - of article 7 and article 10 (1), because he was detained under conditions seriously detrimental to his health;
 - of article 9 (1), because he was kept in custody in spite of a judicial order of release;
 - of article 9 (3) and article 14 (1) (2) and (3), because he was not brought to trial within a reasonable time and was tried in circumstances in which he was denied the

requisite safeguards of fair trial;

of article 9 (4) because he was denied any effective remedy to challenge his arrest and detention;

of article 10 (1), because he was held incommunicado for months and was denied the right to be visited by any family member;

(ii) with respect to Jose Luis Massera,

of article 7 and article 10 (1), because during his detention he was tortured as a result of which he suffered permanent physical damage;

of article 9 (2), because he was not promptly informed of the charges brought against him;

of article 9 (3) and article 14 (1) (2) and (3), because he was not brought to trial within a reasonable time and was tried in circumstances in which he was denied the requisite safeguards of fair trial;

of article 9 (4), because he was denied any effective remedy to challenge his arrest and detention;

of article 10 (1), because for months he was denied the right to be visited by any family member;

of article 25, because of unreasonable restrictions on his political rights;

(iii) with respect to Martha Valentini de Massera,

of article 9 (2), because she was not promptly informed of the charges brought against her;

of article 10 (1), because for months she was held incommunicado and was denied visits by any family member;

of article 14 (1) (2) and (3), because she was tried in circumstances in which she was denied the requisite safeguards of fair trial;

and, accordingly, is of the view that the State Party is under an obligation to take immediate steps to ensure strict observance of the provisions of the Covenant and to provide effective remedies to the victims.

Notes:

a/ Institutional Act No. 4 of 1 September 1976:

(...) The Executive Power, in exercise of the powers conferred on it by the institutionalization of the revolutionary process,

DECREES:

Art. 1. The following shall be prohibited~ for a term of fifteen years, from engaging in any of the activities of a political nature authorized by the Constitution of the Republic, including the vote:

- (a) All candidates for elective office on the lists for the 1966 and 1971 elections of the Marxist and pro-Marxist Political Parties or Groups declared illegal by the resolutions of the Executive Power No. 1788/67 of 12 December 1967 and No. 1026/73 of 26 November 1973;
- (b) All persons who have been tried for crimes against the nation.

Art. 2. The following shall be prohibited, for a term of fifteen years, from engaging in any of the activities of a political nature authorized by the Constitution of the Republic, except the vote:

- (a) All candidates for elective office on the lists for the 1966 and 1971 elections of the Political Organizations which were electorally associated with the organizations mentioned in the preceding article, subparagraph (a), under the same coincidental or joint slogan or subslogan;
- (b) All persons who have been tried for offences against the Public Administration committed during the exercise of their political functions. (...)