

HUMAN RIGHTS COMMITTEE

Lichtensztejn v. Uruguay

Communication No. 77/1980

31 March 1983

VIEWS

Submitted by: Samuel Lichtensztejn

Alleged victim: The author of the communication

State party concerned: Uruguay

Date of communication: 30 September 1980 (date of initial letter)

Date of decision on admissibility: 25 March 1982

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

Meeting on 31 March 1983,

Having concluded its consideration of communication No. 77/1980 submitted to the Committee by Samuel Lichtensztejn 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

1.1 The author of the communication (initial letter dated 30 September 1980 and further letter of 6 July 1981) is Samuel Lichtensztejn, a Uruguayan citizen at present residing in Mexico. The author, former director and Dean of the Faculty of Economic Sciences and Administration and Rector of the University of the Republic of Uruguay submitted the communication on his own behalf, alleging that he is a victim of a breach by Uruguay of

articles 12 and 19 of the International Covenant on Civil and Political Rights. He stressed the fact that, with regard to his specific complaint, he comes within the jurisdiction of Uruguay.

1.2 The author claims that a valid Uruguayan passport has been denied him by the Uruguayan authorities without any explanation, allegedly to punish him for the opinions which he holds and which he has expressed concerning human rights violations in Uruguay, and to prevent him from continuing to exercise his freedom of expression.

2.1 The author states that, in the years before he left Uruguay, he was closely connected with university affairs. From 1970 to 1971, he was director of the Institute of Economics in the Faculty of Economic Sciences and Administration. For the greater part of 1972, he was Dean of the Faculty and in October of that year he was elected Rector of the University of the Republic of Uruguay. He was Rector until October 1973, when the Government interfered with the University and military forces took over its premises. He alleges that because he was restricted in the exercise of his rights, both as Rector and as a private citizen, he left the country in January 1974. He has been living in Mexico since February 1974.

2.2 The author states that while in Mexico, he took an active part in campaigns for the respect of human rights in Uruguay through national and international organizations, and that he denounced the alleged violation in Uruguay of university autonomy and the persecution of professors and students for ideological reasons. He assumes that his spoken and written opinions on these matters have been the cause of the Uruguayan Government's decision to refuse him a passport.

2.3 He describes the facts of his case as follows:

"(a) On 23 October 1968, I was granted passport No. 112-641 by the Uruguayan Ministry of Foreign Relations. On 27 December 1973, such passport was renewed by the Montevideo Police Headquarters for five years, finally expiring on 23 October 1978. In order to obtain a new passport, I went, on 16 October 1978 to the Consular Section of the Uruguayan Embassy in Mexico, and I completed the appropriate form of application. On 28 November 1978 I asked, in writing, for information on my application. On the same date the person in charge of the Consular Section of the Uruguayan Embassy in Mexico, Mr. Juan D. Oddone, replied, in writing, that by 'express order from the Chancellery, the granting of the passport was not authorized'. On 12 December 1978 and through the Uruguayan Embassy in Mexico, I sent a letter to the Uruguayan Minister of the Interior, General Linares Brum, asking him to reconsider the refusal to grant me a passport. Finally, on 30 March 1979, the Consular Section of the Uruguayan Embassy in Mexico informed me, in writing, that I 'should rely on the refusal'.

"(b) I asked Mr. Oddone how I could appeal against these decisions, but I was told that there was no other way to do so. No domestic remedy is available for this injury. It must be pointed out that, the Uruguay Government has, since 1973, practised legislation by decree immune for constitutional review and has arrested Uruguayan lawyers who bring cases against the Government. The inability of the courts in some cases to enforce their orders

against other departments of the Government, and the use of the doctrine of State security to remove questions from the competence of these courts or to allow the introduction of evidence, which is not disclosed to the opposing party, lead inevitably to the conclusion that any attempt to resolve this problem within the domestic judicial system would be futile and a waste of time.

"(c) On 15 December 1978, I received an identity and travel document from the Government of Mexico. Therefore, inasmuch as Uruguay's denial of a passport constitutes a denial of my rights under article 12 (2), the violation may be considered to have ended on that date. However, the violation did occur after the Covenant came into effect and there is no requirement that communications under the Optional Protocol set forth continuing violations. It must be noted that the violation of my right to be free to leave any country did not cease as a result of any change in position on the part of Uruguay, but as the result of a humanitarian act on the part of Mexico."

2.4 The author further maintains that the punitive effect of the denial of a passport did not cease with the acquisition of a substitute document from the Government of Mexico, but constitutes a continuing violation of article 19 of the Covenant.

2.5 Finally, the author states that he has not submitted the same matter to another procedure of international investigation or settlement.

3. By its decision of 24 October 1980, 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 of the communication.

4.1 By a note dated 5 June 1981, the State party objected to the competence of the Human Rights Committee' to consider the communication, stating that "the communication does not fulfil even the basic requirements for submission to the Committee", ... as "article 1 of the Optional Protocol only recognizes the competence of the Committee to receive and consider communications from individuals provided that these individuals fulfil the minimum requirement of being 'subject to its [the State Party's] jurisdiction' and this condition is not met by the present communication because Mr. Samuel Lichtensztein was outside the jurisdiction of the Uruguayan State when his petition was submitted." The State party concludes that "it is therefore inadmissible that the Committee should deal with communications of this kind, which run counter to its terms of reference and violate provisions of -international instruments".

4.2 However, the State party, while stressing its formal rejection of the admissibility of the communication before the Committee, then replies to the communication's content "strictly with a view to maintaining its continuing co-operation with the Committee in the promotion and defence of human rights ..." and submits that the allegations of violations of articles 12 and 19 of the Covenant by Uruguay are totally unfounded. In substantiation of this submission, the State party draws the Committee's attention to the author's actual enjoyment of the right to freedom of movement and to his activities abroad, mentioning as an example

his appearance on Cuban television on 12 May 1979, which in the State 'party's opinion negates the author's argument that he is prevented from travelling freely abroad. Reference is also made by the State party to the fact that the author freely left his country, Uruguay, through "normal channels" in January 1974, and that he has the constitutionally guaranteed right, as every Uruguayan citizen, to return to his country, with or without a passport. It is further pointed *out* in the State party's submission that the charges made by the author of the communication, namely, that he has been denied the right to express his opinions while in Uruguay and that the Government of Uruguay has therefore violated article 19 of the Covenant are based "exclusively on strictly personal judgements" and that ... "not the slightest evidence to prove and justify (the author's) allegations ..." are provided in the text of the communication.

5.1 On 6 July 1981, the author of the communication forwarded his comments in reply to the State party's submission of 5 June 1981.

5.2 He rejects the State party's formal contention that the communication is incompatible with and therefore inadmissible under the provisions of article 1 of the Optional Protocol because he did not come within its jurisdiction in the matter concerned- He argues that the views expressed by the Government of Uruguay are not only in contradiction with international law and common international practice, but also in contradiction with existing Uruguayan law. On this last point the author refers (a) to Decree No.' 614/967 of 12 September 1967, articles 1 and 6 (b), which provide that every citizen by birth has the right to a passport and that all the formalities required to obtain a passport can be completed outside Uruguay, and (b) to Decree No. 363/77 of 28 June 1977, article 1, which provides for the issue and renewal of passports for persons who "have permanent residence abroad". The author points out that the foregoing legal provisions make it clear that jurisdiction of the Uruguayan State, in the matter of issuing passports, does extend beyond its territory through its accredited consular offices abroad. He adds in this connection that it is the status of citizenship, and not that of residence, that is identified by a passport.

5.3 The author further states that he has never, through action or omission, raised any doubts with the Uruguayan authorities about his maintenance of Uruguayan citizenship. He furnishes copies of documents as proof that he fulfils whatever obligations concern him as a Uruguayan citizen abroad: one document, dated 30 November 1980, stating that he presented himself at the Uruguayan Consulate in Mexico to register legally his residence in Mexico, and the other document, dated 2 December 1980, to put on record his legitimate reason for not participating in the vote concerning the referendum held by the Government of Uruguay.

5.4 To complete his arguments, the author refers to the case of Guillermo Waksman (before the Human Rights Committee under case No. R. 7/31) which, similar to his own, concerned the renewal of a passport of a Uruguayan citizen living abroad and which after being declared admissible by the Human Rights Committee led to the issuance of a new passport to Mr. Waksman by the appropriate Uruguayan consular authorities. The author points out that the foregoing constitutes a conclusive precedent that, in a situation similar to his own, it has already been recognized by the Uruguayan authorities that Uruguayan citizens abroad

are under the jurisdiction of their State as far as passports are concerned.

5.5 In his response to the State party's submission regarding the contents of his communication, the author does not refute the State party's contention that he has been in a position to travel abroad on a number of occasions. He asserts, however, that this is due only to the issuance by the Mexican authorities, for humanitarian reasons, of an identity and travel document which cannot be regarded as an adequate substitute for a Uruguayan passport since it is subject to conditions and requirements which by no means remove the difficulties caused by the lack of a Uruguayan passport. He points out, for instance, that the Mexican document, which is issued to him as a foreigner at the discretion of the Mexican authorities, has only a short period of validity with no guarantee of renewal on its expiry and that he has had difficulties in obtaining a visa for some other countries on the basis of it.

5.6 The author adds that the example of his appearance on Cuban television quoted by the State party in its submission in support of its assertion that he does undertake activities abroad and is in a position to travel freely, is not correct as he has never travelled to Cuba, his Mexican travel documents being available as a proof that he was in Mexico on the date indicated by the State party in its submission.

5.7 In commenting on the State party's assertion that he freely and through normal channels left his country in 1974, the author claims that although he left through normal channels he did not leave Uruguay "freely", but that he was driven to do so by the lack of guarantees in Uruguay for his rights as a citizen and Rector of the University and, by way of illustration, he refers to his detention in Uruguay for two months, without trial, and to the refusal of the Uruguayan authorities to re-instate him as Rector or Professor at the University and to allow him to publish articles in the press of his country.

5.8 The author further dismisses as irrelevant to his case the State party's contention that every Uruguayan citizen has the constitutional right to return to his country, because this does not address the point at issue in his communication, namely the right to enter and leave any country, including his own, with a valid Uruguayan passport.

5.9 The author also repeats the assumption, made in his initial communication, that the refusal by the Uruguayan authorities, without giving any reasons, to grant him a passport is motivated by his critical political attitude towards the Uruguayan Government and he maintains, therefore, that in addition to a breach of article 12, there has also been a breach of article 19 of the Covenant in his case.

6.1 When considering the admissibility of the communication, the Human Rights Committee did not accept the State party's contention that it was not competent to deal with the communication because the author did not fulfil the requirements of article 1 of the Optional Protocol. In that connection, the Committee made the following observations: article 1 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. Consequently, the Committee found that it followed from the very nature of that right that, in the case of a citizen resident abroad, article 12 (2) imposed obligations both on the State of residence and on the State of nationality and that, therefore, article 2 (1) of the Covenant could not be interpreted as limiting the obligations of Uruguay under article 12 (2) to citizens within its own territory.

6.2 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 this case, there were effective domestic remedies available to the alleged victim which he had failed to exhaust. Accordingly, the Committee found that the communication was not inadmissible under article 5 (2) (b) of the Optional Protocol.

6.3 On 25 March 1982, 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 its

(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.

7. On 2 December 1982, the time-limit for the observations requested from the State party under article 4 (2) of the Optional Protocol expired. No further submission has been received from the State party.

8.1 The Human Rights 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.

8.2 The Committee decides to base its views on the following facts which appear to be uncontested: Samuel Lichtensztejn, a Uruguayan citizen residing in Mexico since 1974, was refused issuance of a new passport by the Uruguayan authorities when his passport expired on 23 October 1978. His application for a new passport at the Uruguayan Consulate in Mexico was rejected without any substantive reasons being given, it being merely stated that by "express order from the Chancellery, the granting of the passport was not authorized". He then requested reconsideration of this decision from the Uruguayan Minister of the Interior. He was subsequently informed by the Uruguayan Consulate in Mexico that he "should rely on the (earlier) refusal". In December 1978, the author was issued an identity and travel document by the Mexican authorities which, however, could not be regarded as a sufficient

substitute for a valid Uruguayan passport (see para. 5.5 above).

8.3 As to the alleged violation of article 12 (2) of the Covenant, the Committee observed in its decision of 25 March 1982 (see para. 6.1 above) that a passport is a means of enabling an individual "to leave any country, including his own" as required by that provision: consequently, it follows from the very nature of that right that, in the case of a citizen resident abroad, article 12 (2) imposes obligations on the State of nationality as well as on the State of residence and therefore 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. On the other hand, article 12 does not guarantee an unrestricted right to travel from one country to another. In particular, it confers no right for a person to enter a country other than his own. Moreover, the right recognized by article 12 (2) may, in accordance with article 12 (3), be subject to such restrictions as are "provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the Covenant". There are, therefore, circumstances in which a State, if its law so provides, may refuse passport facilities to one of its citizens. However, in the present case, the State party has not put forward any such justification for refusing to issue a passport to Samuel Lichtensztejn. The facilities afforded by Mexico do not in the opinion of the Committee relieve Uruguay of its obligations in this regard.

8.4 As to the allegations made by the author with regard to a breach of article 19 of the Covenant, which were refuted by the State party, the Committee observes that these allegations are couched in such general terms that it makes no findings 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 found by it disclose a violation of article 12 of the Covenant, because Samuel Lichtensztejn was refused the issuance of a passport without any justification, thus preventing him from fully enjoying the rights under article 12 of the Covenant.

10. Accordingly, the Committee is of the view that the State party is under an obligation to provide Samuel Lichtensztejn with effective remedies pursuant to article 2 (3) of the Covenant.