

HUMAN RIGHTS COMMITTEE

Masslotti and Baritussio v. Uruguay

Communication No. R.6/25

26 July 1982

VIEWS

Submitted by: Initially submitted by Carmen Amendola Massiotti on behalf of herself and on behalf of Graciela Baritussio who later joined as submitting party

Alleged victims: Carmen Amendola Masslotti and Graciela Baritussio

State party concerned: Uruguay

Date of communication: 25 January 1978 (Date of initial letter)

Date of decision on admissibility: 24 April 1979

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

Meeting on 26 July 1982,

Having concluded its consideration of communication No. R.6/25, initially submitted by Carmen Amendola Massiotti 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 initial author of the communication, by the second alleged victim and by the State party concerned,

Adopts the following:

Views under article 5 (4) of the Optional Protocol

1.1 The initial author of the communication, Carmen Amendola Massiotti (initial letter dated 25 January 1978) is a 32-year-old Uruguayan national residing in the Netherlands.

1.2 The author alleges that she herself was arrested in Montevideo on 8 March 1975, that

she was kept incommunicado until 12 September that year and subjected to severe torture (giving detailed description) in order to make her confess membership in political organizations which had been declared illegal by the military regime. She states that on 17 April 1975 she was brought before a military judge and that her family was only informed the following day about her detention which had been denied by the military authorities. On 12 September she was again brought before a military judge and tried for 'assistance to illegal association' and 'contempt for the armed forces'. Until 1 August 1977 she served her sentence at the Women's prison "Ex Escuela Naval Dr. Carlos Nery" which she describes as an old building where pieces of concrete kept falling off the ceiling and on the prisoners. During the rainy period the water was 5 to 10 cm deep on the floor of the cells. In three of the cells, each measuring 4m by 5m, 35 prisoners were kept. The prison had no open courtyard and the prisoners were kept indoors under artificial light all day.

1.3 On 1 August the author was transferred to Punta Rieles prison. There she was kept in a hut measuring 5m by 10m. The place was overcrowded with 100 prisoners and the sanitary conditions were insufficient (one washbasin and four toilets). The prisoners were constantly subjected to interrogations, harassment and severe punishment. The officers in charge of S2 - military intelligence inside the prison - Major Victorino Vszquez and Lieutenant Echeverrla, themselves carried out the interrogations and also supervised torture. She also mentions that the prisoners were compelled to do hard labour which involved making roads inside the prison, putting up new prison buildings, mixing concrete, carrying heavy building materials, as well as gardening, cleaning and cooking for the detainees and the guards, i.e. a total of 800 persons, the last task being assigned to 10 women prisoners. The author points out that work was compulsory even for women who were ill or had physical infirmities. She adds that food was very poor (giving details).

1.4 The author further claims that, despite having served her sentence on 9 November 1977, she was kept in detention until 12 December 1977, when the choice was offered to her of either remaining in detention or of leaving the country. She opted for the latter and obtained political asylum in the Netherlands.

1.5 She alleges in this connexion that in the Paso de los Toros prison there were 17 women whose release had been signed by the military courts, but who continued to be imprisoned under the prompt security measures. She mentions in particular the case of Graciela Baritussio de Lopez Mercado.

2.1 With respect to Graciela Baritussio, a 34-year-old Uruguayan national, the author states that she was informed by the alleged victim's former defence counsel that she approved the author's acting on her behalf. She claims that the alleged victim is not in a position to act on her own behalf since this was not possible for a person detained under the prompt security measures. She further claims that Graciela Baritussio had no defence counsel at the time of the submission of the communication.

2.2 The Committee subsequently ascertained that Graciela Baritussio had been released from prison and lived in Sweden. She was contacted and informed the Committee that she wished to join as a co-author of the communication submitted on her behalf by Carmen Amendola

Massiotti. In addition, she furnished the following information (letter of 29 January 1981, enclosing a letter from her former defence lawyer, Mario Dell'Acqua): she was arrested on 3 September 1972, tried by a military judge on 5 February 1973 for "complicity in a subversive association" and brought in April 1973 to the Punta Rieles prison where she served her two year prison sentence. On 15 August 1974 she was brought to the same military court as before in order to sign the documents for her provisional release. She also mentions that she had qualified legal assistance from the time of her trial until 15 August 1974, her defence lawyer being Mario Dell'Acqua. The defence lawyer adds in his statement that the decision of 15 August 1974, granting her provisional release became enforceable and final in 1975. Graciela Baritussio continues that she was informed by the prison authorities on 3 October 1974 that she would be released, but instead she was brought without any explanations to another military detention centre. There she remained for another three years. On 6 October 1977 she was transferred to another military establishment in the interior of the country which was being used as a prison for women detained under the security measures. On 8 August 1978 the governor of the establishment informed her that she was going to be released. Her release took place on 12 August 1978. She adds that she lived during these four years in a state of total insecurity in view of the fact that the military authorities could move her anywhere in the country without any possibility of a legal recourse against these measures. She also mentions the situation of the relatives of the detainees who could only obtain evasive replies from the military authorities.

3.1 With respect to domestic remedies, Carmen Amendola Masszottz claims that they do not exist in Uruguay for persons detained under the prompt security measures as they cannot act on their own behalf and lawyers cannot act without the risk of being themselves detained, as happened allegedly to one of Graciela Baritussio's lawyers. She further claims that copies of decisions of military tribunals are not made available to any person. This information was basically confirmed in the statement by the defence lawyer Mario A. Dell'Acqua (enclosed with Graciela Baritussio's letter of 27 January 1981) who adds that once the document for Graciela Baritussio's provisional release had been signed and also after the judgement in that respect had been rendered final and enforceable in 1975, he made numerous representations to the responsible military judges. He was informed that if the prison authorities did not comply with the court's release order, the judges could do no more.

3.2 Carmen Amendola Massiotti does not specify which articles of the International Covenant on Civil and Political Rights she alleges to have been violated in her own case, but claims that most of them have been violated. Regarding Graciela Baritussio, she alleges that articles 2, 3, 6, 7, 8, 9, 10, 14 and 15 of the Covenant have been violated. She states that to her knowledge, the same matter has not been submitted under another procedure of international investigation or settlement.

4. By its decision of 26 July 1978, the Human Rights Committee, having decided that the author of the communication was also justified in acting on behalf of the second alleged victim, Graciela Baritussio, transmitted the communication under rule 91 of the provisional rules or procedure to the State party concerned, requesting information and observations relevant to the question of admissibility of the communication.

5. By a note dated 8 January 1979, the State party objected to the admissibility or the communication on the following grounds: (a) that the date of arrest or Carmen Amendola Massiotti preceded the entry into force of the Covenant for Uruguay on 23 March 1976, (b) that she did not apply for any remedy, and (c) with respect to Graciela Baritussio that she did not avail herself of any or the remedies generally available to persons imprisoned in Uruguay.

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

(a) That the communication was admissible;

(b) 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 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. The State party was requested, in this connexion, to enclose copies of any court orders or decisions of relevance to the matter under consideration.

7.1 In its submission under article 4 (2) of the Optional Protocol dated 9 October 1980, the State party informed the Committee, inter alia, that Carmen Amendola Massiotti had qualified legal assistance at all times, the defending counsel of her choice being Milton Machado Mega; that, having served her sentence, she regained her full freedom and left for the Netherlands on 11 December 1977. With respect to Graciela Baritussio, the State party stated that she also received qualified legal assistance, the defending counsel of her choice being Mario Dell'Acqua, that on 15 August 1974 She was granted provisional release and left for Sweden on 10 July 1979. The State party further contended that there was no justification for the continued consideration of the case. The alleged victims were not under the jurisdiction of the State accused. To consider the communication further would therefore be incompatible with the purpose for which the Covenant and its Protocol were established, namely, to ensure the effective protection of human rights and to bring to an end any situation in which these rights were violated. The State party concluded that in this case no de facto situation existed to warrant findings by the Committee, and that consequently, by Intervening, the Committee would not only be exceeding Its competence but would also be departing from normally established legal procedures. By a note dated 23 July 1982, the State party reiterated its arguments with respect to Graciela Baritussio and stated that according to article 1 of the Optional Protocol, the Committee had competence to receive and consider communications from individuals only if these individuals were subject to the jurisdiction of the State party which allegedly committed the violation of human rights. Graciela Baritussio, however, had left Uruguay for Sweden and therefore did not fulfil this requirement.

7.2 With respect to the State party's submission under article 4 (2) of the Optional Protocol

that consideration of the communication should be discontinued, the Committee notes that the victims were under the jurisdiction of Uruguay while the alleged violations took place. The Committee therefore rejects the contention of the State party that further consideration of the case would be beyond its competence or contrary to the purposes of the International Covenant on Civil and Political Rights and the Optional Protocol thereto.

8. No further submission was received from the author of the initial communication, Carmen Amendola Massiotti, after her second communication dated 5 May 1978.

9. 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.

10. The Committee decides to base its views on the following facts which are not in dispute or which are unrepudiated or uncontested by the State party except for denials of a general character offering no particular information or explanation:

With respect to Carmen Amendola Massiotti:

11. Carmen Amendola Massiotti was arrested in Montevideo on 8 March 1975, kept incommunicado until 12 September that year and subjected to severe torture. On 17 April 1975 she was brought before a military judge. On 12 September she was again brought before a military judge and tried for 'assistance to illegal association' and 'contempt for the armed forces'. Until 1 August 1977 she served her sentence at the women's prison "Ex Escuela Naval Dr. Carlos Nery". During the rainy period the water was 5 to 10 cm deep on the floor of the cells. In three of the cells, each measuring 4m by 5m, 35 prisoners were kept. The prison had no open courtyard and the prisoners were kept indoors under artificial light all day. On 1 August 1977 Carmen Amendola Massiotti was transferred to Punta Rieles prison. There she was kept in a hut measuring 5m by 10m. The place was overcrowded with 100 prisoners and the sanitary conditions were insufficient. She was subjected to hard labour and the food was very poor. The prisoners were constantly subjected to interrogations, harassment and severe punishment. Despite having served her sentence on 9 November 1977, she was kept in detention until 11 or 12 December 1977 when the choice was offered to her of either remaining in detention or leaving the country. She opted for the latter and obtained political asylum in the Netherlands.

With respect to Graciela Baritussio:

12. Graciela Baritussio was arrested in Uruguay on 3 September 1972, tried by a military judge on 5 February 1973 for 'complicity in a subversive association' and brought in April 1973 to the Punta Rieles prison where she served her two years prison sentence. On 15 August 1974 she was brought to the same military court as before in order to sign the documents for her provisional release. The decision granting her provisional release became enforceable and final in 1975. Graciela Baritussio, however, remained in detention. On 6 October 1977 she was transferred to another military establishment in the interior of the country which was being used as a prison for women detained under the security measures.

On 8 August 1978 the governor of the establishment informed her that she was going to be released. Her release took place on 12 August 1978. Once the document for Graciela Baritussio's provisional release had been signed and after the decision became final and enforceable in 1975, her defence lawyer had made numerous representations to the military judges responsible for her case. He was informed that, if the prison authorities did not comply with the court's release order, the judges could do no more.

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 the Committee, in so far as they continued or occurred after 23 March 1976 (the date on which the Covenant and the Optional Protocol entered into force for Uruguay) disclose the following violations of the International Covenant on Civil and Political Rights,

In the case of Carmen Amendola Massiotti

of articles 7 and 10 (1), because the conditions of her imprisonment amounted to inhuman treatment;

of article 9 (1), because she continued to be detained after having served her prison sentence on 9 November 1977;

In the case of Graciela Baritussio

of article 9 (1), because she was subjected to arbitrary detention under the *prompt security measures* until 12 August 1978 after having signed on 15 August 1974 the document for her provisional release}

of article 9 (4) in conjunction with article 2 (3), because there was no competent court to which she could have appealed during her arbitrary detention.

14. The Committee, accordingly, is of the opinion that the State party is under an obligation to provide the victims with effective remedies, including compensation, for the violations they have suffered. The State party is also urged to investigate the allegations of torture made against named persons in the case.