

HUMAN RIGHTS COMMITTEE

Ramirez v. Uruguay

Communication No. R. 1/4

23 July 1980

VIEWS

Submitted by: William Torres Ramirez

State party concerned: Uruguay

Date of communication: 13 February 1977

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

Meeting on 23 July 1980

Having concluded its consideration of communication No. R.1/4 submitted to the Committee by William Torres Ramirez 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;

Aadopts the following:

Views under article 5(4) of the Optional Protocol

1. The author of this communication (initial letter dated 13 February 1977 and further letters dated 22 October 1977, 5 April 1978 and 20 May 1978) is a Uruguayan national, residing in Mexico. He submitted the communication on his own behalf.

2. The author claims that on 6 December 1975 he was arrested in his house in Montevideo by four men in civilian clothes and that he was brought to the "Batallon de Infanteria No. 13", also called "La Maquina". He describes various forms of torture to which detainees were allegedly subjected and, in particulars in his own case the use of submarino (suffocation in water), planton (he was forced to remain standing for four days), hanging (by

his arms, which were tied together, for about 36 hours) and blows (on one occasion he was allegedly beaten with such brutality that he had to be transferred to the military hospital).

After being detained for almost one month, he was forced to sign a written declaration stating that he had not been mistreated during his detention and he had to answer a questionnaire about his activities as member of the Communist Party. On 31 December 1975, he was transferred to the "Regimiento de Artilleria No. 1" in La Paloma, Cezzo. He states that the conditions of detention there were, to begin with, a little bit better than in "La Maquina", but after February 1976 they worsened. He alleges that detainees were continuously kept blindfolded, that they were subjected to ill-treatment (lack of food and clothing) and torture (beatings, "plantones") and that over a period of six months they were allowed to leave their cells for 15 minutes of recreation only eight times. In La Paloma he was again forced to sign a written declaration that he had not been mistreated and subjected to torture.

The author states that in February 1976 he was brought before a military Judge for interrogation and in June 1976 he was again brought before the same Judge who ordered his release subject to appearance at a later stage. He was, however, still kept in detention. He claims that he never had any legal assistance, that he was never tried as no charges were brought against him, and that he was informed by the court that, if he made any change to his previous written statements, he would be tried for perjury which was an offence punishable by imprisonment for a period of from three months to eight years.

He further alleges that on 1 July 1976 he was transferred to disciplinary block "B" in another sector of La Paloma where there were nine cells, the largest measuring 1.2 by 2 metres with two prisoners in each cell.

He states that on 6 August 1976 he was released and one month later he obtained political asylum in Mexico.

Mr. Torres Ramirez claims that the way he was treated during his detention virtually excluded any possibility of his having recourse to a legal counsel. With regard to the exhaustion of domestic remedies he comments that the only decision which the court made in his case was the one ordering his release~ consequently he states that recourse to habeas corpus was not applicable to his case, since he was detained under the "Prompt Security Measures".

Finally, Mr. Torres Ramirez states that he did not receive any compensation after his release.

He submits, therefore, that he was a victim of violations of articles 7, 9 (1, B and 5), 10 (1 and B), 14 (B (b), (c), (d), (e) and (g)), 18 (1 and 2) and 19 of the International Covenant on Civil and Political Rights.

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 two grounds:

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

(b) the alleged victim had not exhausted all available domestic remedies.

5. On 26 January 1978, the Human Rights Committee informed the State party that, in the absence of more specific information concerning the domestic remedies said to be available to the author of this communication, and the effectiveness of those remedies as enforced by the competent authorities in Uruguay, the Committee was unable to accept that he had failed to exhaust such remedies and the communication would therefore not be considered inadmissible in so far as exhaustion of domestic remedies was concerned, unless the State party gave details of the remedies which it submitted had been available to the author in the circumstances of his case, together with evidence that there would be a reasonable prospect that such remedies would be effective.

6. By letter dated 5 April 1978 Mr. Torres Ramirez informed the Committee that his case had been withdrawn from consideration by the Inter-American Commission on Human Rights.

7. By letter dated 14 April 1978 the State party submitted information which consisted of a general description of the rights available to accused persons in the military criminal tribunals and of the domestic remedies at their disposal as means of protecting and safeguarding their rights under the Uruguayan Judicial system. However, it did not specify which remedies were available to the author in the particular circumstances of his case.

8. By letter dated 20 May 1978 Mr. Torres Ramirez submitted that the remedies listed by the State party were not applicable in his case because he had not been put on trial and he was barred from recourse to habeas corpus because he was detained under the "Prompt Security Measures". He pointed out that none of the other remedies listed by the State party could have been utilized in the situation.

9. On 25 July 1978, the Human Rights Committee:

(a) having concluded that article 5 (2) (a) of the Protocol did not preclude it from declaring the communication admissible, although the same matter had been submitted to another procedure of international investigation or settlement, if the matter had been withdrawn from and was no longer under active consideration in the other body at the time of the Committee's decision on admissibility;

(b) having concluded that article 5 (2) (b) of the Protocol did not preclude it from considering a communication received under the Protocol where the allegations themselves raise issues concerning the availability or effectiveness of domestic remedies and the State party, when expressly requested to do so by the Committee, did not provide details on the

availability and effectiveness of domestic remedies in the particular case under consideration;

Therefore decided:

- (a) that the communication was admissible;
- (b) that the text of this decision be transmitted to the State party, together with the text of the relevant documents, and to the author;
- (c) 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 and the remedy, if any, that may have been taken by it.

10. On 18 April 1979, the Committee decided to remind the State party that the six-months time limit for the submission of its explanations or statements under article 4 (2) of the Optional Protocol had expired on 28 March 1979 and requested the State party to submit, 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, including copies of any court orders on decisions of relevance to the matter under consideration.

11. The Committee's decision of 18 April 1979 was transmitted to the State party on 18 May 1979. The six weeks referred to therein therefore expired on 2 July 1979. More than three months after that date a further submission, dated 11 October 1979, was received from the State party.

12. In its further submission of 11 October 1979 the State party while repeating the views expressed in its submission of 14 April 1978, namely that the question of admissibility should be reviewed by the Committee in the light of the explanations given by the State party on domestic procedures available to the accused and reaffirming its conviction that its reply of 14 April 1978 should have been sufficient to settle the matter once and for all, added the following explanations:

Mr. Ramirez was arrested on 6 December 1975 and detained under the "Prompt Security Measures" for presumed connexion with subversive activities. The case was taken over by the Military Presiding Judge of first sitting.

On 24 June 1976, an order was issued for his release subject to appearance at a later date, and on 3 August 1976 the proceedings relating to his case were closed.

On 21 October 1976, he took refuge in the Mexican embassy, and left for that country one week later.

As to the accusations of supposed violations of the Covenant, the State party claimed those to be groundless, irresponsible and entirely unproved and, by way of example, submitted the

following information as an invalidation of the falsehoods:

- (i) In Uruguay, physical coercion is expressly prohibited by article 26 of the Constitution and article 7 of Act No. 14,068 and any official who exceeds his powers and assaults a human being is criminally and civilly liable as well as incurring administrative responsibility and being subject to dismissal;
- (ii) In Uruguay, there are no crimes of opinion and no persons are arrested for their ideas, but a person who invokes a philosophy or ideology which is revolutionary or disruptive of the social order freely established by the overwhelming majority of the people is and remains a common criminal. This means that the references to articles 18 and 19 of the Covenant are totally inappropriate;
- (iii) Administrative detention under the "Prompt Security Measures" does not require the existence of an offence, but simply serious and imminent danger to security and public order;
- (iv) Act No. 14,068 on the security of the State of 10 July 1972 places under the Jurisdiction of the military courts persons who commit military offences, even if they are civilians, and this clearly explains why Mr. Torres Ramirez, who was arrested for presumed subversive activities, was placed under their jurisdiction;
- (v) The body of provisions which constitute the military codes (Military Penal Code, Code on the Organization of the Military Courts and Code of Military Penal Procedure) define in detail the scope of action of the various organs of the military courts in such a way that the exercise of the jurisdictional function is hedged about by complete guarantees.

13. 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.

14. With regard to the exhaustion of domestic remedies, the Committee has been informed by the Government of Uruguay in another case (R.2/9) that the remedy of habeas corpus is not applicable to persons arrested under the "Prompt Security Measures". Mr. Torres Ramirez stated that he could not avail himself of any other judicial remedy because he was never put on trial. There is no evidence from which the Committee can conclude that there was any other domestic remedy available to him which he should have exhausted.

15. The Committee therefore 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: William Torres Ramirez was arrested on 6 December 1975. He was brought before a military judge in February 1976 and again on 24 June 1976 when an order was issued for his release subject to appearance at a later date. He was however kept in detention until 6 August 1976. During his detention he did not have access to legal counsel. He had no legal possibility to apply for habeas corpus.

16. As regards the allegations of ill-treatment the Committee notes that in his communication of 13 February 1977, the author named the senior officer responsible for the ill-treatment which he alleged that he received from January 1976 to June 1976. The State party has adduced no evidence that these allegations have been duly investigated in accordance with the laws to which it drew attention in its submission of 11 October 1979. A refutation of these allegations in general terms is not sufficient. The State party should have investigated the allegations in accordance with its laws and its obligations under the Covenant and the Optional Protocol.

17. 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 has referred to provisions of Uruguayan law, including the Prompt Security Measures. However, the Covenant (article 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.

18. 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 what these facts, in so far as they continued or 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) because of the treatment he received up to June 1976;

of article 9 (1) because he was not released for six weeks after his release was ordered by the military Judge;

of article 9 (4) because recourse to habeas corpus was not applicable in his case;

of article 14 (3) because he did not have access to legal assistance.

19. The Committee, accordingly, is of the view that the State party is under an obligation to provide the victim with effective remedies, including compensation, for the violations which he has suffered and to take steps to ensure that similar violations do not occur in the future.