

HUMAN RIGHTS COMMITTEE

Vasilskis v. Uruguay

Communication No. 80/1980

31 March 1983

VIEWS

Submitted by: Sergio Vasilskis, on behalf of his sister, Elena Beatriz Vasilskis

Alleged victim: Elena Beatriz Vasilskis

State party concerned: Uruguay

Date of communication: 3 November 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. 80/1980, initially submitted by Sergio Vasilskis 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 the communication (initial letter dated 3 November 1980 and further submissions dated 25 February and 28 November 1981 and 21 January 1983) is a Uruguayan national, residing at present in France. He submitted the communication on behalf of his sister, Elena Beatriz Vasilskis, a 29-year-old Uruguayan student at present imprisoned in Uruguay.

2.1 The author states that Elena Beatriz Vasilskis was arrested on 4 June 1972, on the charge of being a member of a clandestine group which was engaging in armed struggle as a form of political action (the Tupamaros National Liberation Movement). At this time she was allegedly tortured and forced to sign a confession which led to her conviction by a military tribunal of the first instance. The author claims that, in so far as the confession was illegally obtained and she is still suffering imprisonment, this violation of her rights has continued after 23 March 1976, the date of the entry into force of the Optional Protocol for Uruguay.

2.2 Elena Beatriz Vasilskis was allegedly held incommunicado for three months, whereas Uruguayan law only permits detention for 24 hours prior to being brought before a judge. Her case was not submitted to the military courts until September 1972, whereas the Constitution and the Code of Military Criminal Procedure prescribe a maximum intervening period of 48 hours. In the first months after her arrest she had no legal assistance.

2.3 The author bases his statements on the testimony of ex-prisoners who were in the same prison as his sister, who are now in Europe as refugees, and who allegedly witnessed the torture and maltreatment in prison at first hand and are prepared to testify to it, if necessary, before the Human Rights Committee. Furthermore, the author states that throughout the three months when she was held incommunicado, their father went without fail once a week to bring clean clothing and collect her laundry; this was done at a centralized military office, since his sister's exact whereabouts were not known. During that time their father was given parcels of clothing stained with blood, excrement and hanks of hair.

2.4 Judgement was pronounced by the court of first instance on 14 December 1977. She was sentenced to 28 years of rigorous imprisonment and 9 to 12 years of precautionary detention, to be added to her sentence and served in the same prison, for offences against the Constitution, robbery, kidnapping, complicity in murder and criminal conspiracy. The trial, on appeal, which took place in May 1980 allegedly violated Uruguayan law by raising the sentence from the 18 years demanded by the prosecutor to 30 years and 5 to 10 additional years of precautionary detention (medidas eliminativas de seguridad).

2.5 At neither trial, the author claims, did his sister enjoy an adequate defence. Her first attorney, Dr. Carlos Martinez Moreno, allegedly had to flee the country to avoid his own arrest; her second attorney, Dr. Adela Reta, was a law professor who, in view of the political climate, was allegedly forced to abandon all defence work in political matters. Subsequently, the Military Court appointed Colonel Otto Gilomen as defence counsel, although he was not a lawyer, owing to the fact that lawyers for the defence can hardly be found in political cases in Uruguay. The colonel remained on the case until the final judgement. The trial took place in secrecy and not even the closest relatives of the accused were present.

2.6 With respect to the conditions of her imprisonment, the author states that his sister is interned at the EMR No. 2 (Penal Punta de Rieles), which is used exclusively for the detention of women political prisoners and is not administered by special personnel instructed in the treatment of women prisoners, but by 'military personnel on short assignment. She occupies a cell with 14 other women prisoners. If she fails to perform her tasks she is allegedly punished by solitary confinement for up to three months and by

prohibition of visits, denial of cigarettes, etc. Visits may occur every 15 days and last only half an hour. The only persons authorized to visit her are close relatives, but no 'unrelated friends are allowed. The author claims that the worst part of his sister's imprisonment is the arbitrariness of the guards and the severity of the punishment for, inter alia, reporting to her relatives on prison conditions or speaking with other inmates at certain times. The inmates allegedly live in a state of constant fear of being again submitted to military interrogation in connection with their prior convictions or with alleged political activities in the prison. The author alleges that the penitentiary system is not aimed at reformation and social rehabilitation of prisoners but at the destruction of their will to resist. They are given a number and are never called by their name. Elena Beatriz Vasilskis is No. 433 of Sector B. Psychological pressures on the inmates are allegedly designed to lead them to denounce other inmates.

2.7 With respect to the state of health of his sister, the author states that she was in excellent physical health at the time of her arrest. He claims that as a direct consequence of torture and eight years' imprisonment (at the time of writing on 7 November 1980) she had diminished vision in both eyes and has lost 40 per cent of the hearing in her left ear. He states that she also suffers from Raynaud's disease, which may have been brought about by prolonged detention in a cold cell and by emotional pressure. Medicines sent to her for the relief of her condition were allegedly never delivered. The loss of hearing was established by a doctor at the Military Hospital between October and November 1979. Raynaud's disease was diagnosed by the cardio-vascular specialist at the military hospital in October 1979. Moreover, the food provided and the conditions of imprisonment are such that his sister has become extremely thin, has retracted gums and many cavities in her teeth. This is allegedly due to an unbalanced diet, deficient in protein and vitamins, and to the almost complete lack of exercise throughout the day, the intense cold (prisoners are forced to take cold baths in the dead of winter) and the total absence of natural light in the cells.

2.8 The author states that the same matter has not been submitted to any other international body.

2.9 The author alleges that the following articles of the Covenant have been violated, articles 2, 7, 10 and 14.

3. By its decision of 19 March 1981, the Working Group of the Human Rights Committee decided that the author was justified in acting on behalf of the alleged victim and 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. In its submission of 6 October 1981, the State party objected to the admissibility of the communication on the following grounds,

"The situation described in the communication does not constitute a violation occurring before the date on which the Covenant and the Optional Protocol entered into force and continuing after that date or having effects which in themselves constitute a violation. Miss

Vasilskis was convicted of serious offences under Uruguayan criminal law. She is not a political prisoner, as is incorrectly stated in the communication, nor was she in any way induced to confess her guilt. The living conditions in Military Detention Establishment (EMR) No. 2 are those normally prevailing for all female prisoners, that is to say, she is not subject to the slightest discriminatory treatment and it is completely untrue to state that she receives insufficient food or is subject to ill-treatment. With regard to her state of health, she suffers from Raynaud's disease and is receiving the necessary medical treatments her present condition can be described as compensated. The Government of Uruguay therefore rejects the assertions in the communication, which refer to non-existent violations of human rights."

5.1 On 28 November 1981, the author forwarded his comments in reply to the State party's submission of 6 October 1981. He reiterates the allegations made in his previous communications with respect to violations of articles 7 and 10 of the Covenant emphasizing that his sister has been imprisoned for nine and a half years, alleging that she is still subjected to cruel and degrading treatment such as endangers her life. He states further that during an inspection of her cell in October 1981, all reading material was taken away from her as well as all materials for manual labour which she had hitherto had. Since September 1981, family photographs sent to her by her parents allegedly have not been delivered to her. He rejects the State party's contention that his sister's situation does not constitute a violation of her rights subsequent to the entry into force of the Covenant and the Optional Protocol.

5.2 With respect to his allegation of discrimination, he indicates that he means discrimination with regard to political prisoners vis-a-vis common criminals, commenting that the former are subjected to worse treatment than the latter, and alleging in this connection violations of articles 2 and 26 of the Covenant.

5.3 With respect to his sister's state of health, the author deplors that the State party has not submitted any medical report.

6.1 With regard to article 5, paragraph 2 (a), of the Optional Protocol, the Human Rights Committee noted that the author's assertion that the same matter was not being examined under another procedure of investigation or settlement had not been contested by the State party.

6.2 With regard to the exhaustion of local remedies, the Committee was unable to conclude, on the basis of the information before it, that there were remedies available to the alleged victim which she should have pursued. Accordingly, the Committee found that the communication was not inadmissible under article 5, paragraph 2 (b) of the Optional Protocol.

6.3 On 25 March 1982, the Committee decided:

(a) That the communication was admissible in so far as it related to events said to have occurred on or after 23 March 1976 (the date of the entry into force of the Covenant and the Optional Protocol for Uruguay);

(b) That, in accordance with article 4, paragraph 2, of the Optional 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 matters that the State party be requested in this connection to enclose; (i) copies of any court orders or decisions relevant to this case, including the decision of the Supreme Military Tribunal, referred to in the communications and (ii) further information concerning the state 'of health of Elena Beatriz Vasilskis, including copies of the existing medical reports referred to in the communication.

7.1 In its submission under article 4, paragraph 2, of the Optional Protocol, dated 27 October 1982, the State party rejected the author's allegations that his sister was subjected to torture and ill-treatment and that her conviction was based on a forced confession, asserting that her confession was obtained without coercion and that her conviction rested on other evidence duly confirmed by means of proper procedures which according to Uruguayan law do not entail public trial by jury. With respect to the delay in commencing her trial, the State party referred to the extraordinary load placed on the Uruguayan judicial system by the numerous proceedings during the period of high seditious activity. Defence lawyers were not persecuted and those who left the country frequently did so because of their links with subversive groups. The increase of Miss Vasilskis' sentences was attributable to the emergence of fresh evidence which made the type of offence more serious.

7.2 The State party also rejects the author's description of Miss Vasilskis as a "political prisoner", emphasizing that she was involved in crimes such as murder, kidnapping and robbery.

7.3 With regard to her state of health, the State party indicates that she is submitted to periodical medical and dental examinations and that she receives special medical care where necessary, including treatment for Raynaud's disease.

7.4 Prison conditions are responsive to sociological and psychological studies intended to facilitate the rehabilitation of the prisoners, who are not subjected to a climate of arbitrariness or to forced labour.

8.1 In a further letter dated 21 January 1983, the author refers to the State party's submission under article 4, paragraph 2, and claims that it does not adequately answer the specific complaints of violations raised in his communication, which the State party simply rejects without giving any explanation. He reiterates that his sister was tortured, forced to confess, kept incommunicado, that her trial was unduly delayed, that defence attorneys have been so intimidated by the Uruguayan authorities that they are no longer willing to defend persons like Miss Vasilskis.

8.2 With respect to her state of health, the author indicated that the State party has failed to identify the medication given to Miss Vasilskis and complains that medication prescribed for her by French doctors and forwarded to her were not allowed by prison authorities. In substantiation of his allegations that prison conditions are such as to cause a worsening of her state of health, the author quotes a long statement by Renata Gil, a former cell-mate of

Miss Vasilskis, according to which the prisoners are deprived of natural light and fresh air except during one hour per day, and all windows have been covered with plastic sheets.

8.3 With respect to the treatment of prisoners at Punta de Rieles, the author refers to the sanctions imposed on some of them following the visit there in January 1982 of Mr. Rivas Posada, Special Representative of the Secretary-General of the United Nations. According to Mrs. Zdenka Starke, the mother of one of the prisoners there, many of the prisoners were beaten up with clubs, items of their personal property were confiscated, and their food was thrown on the floor of the cells. Such punishment was inflicted because the prisoners had made declarations to Mr. Rivas Posada.

9.1 The Human Rights Committee, having examined the present communication in the light of all the information made available to it by the parties as provided in article 5, paragraph 1, of the Optional Protocol, hereby decides to base its views on the following facts, which have not been contradicted by the State party.

9.2 Events prior to the entry into force of the Covenant: Elena Beatriz Vasilskis was arrested on 4 June 1972 on the charge of being a member of the Tupamaros National Liberation Movement. She was held incommunicado for three months and her case was not submitted to the military courts until September 1972.

9.3 Events subsequent to the entry into force of the Covenant: Judgement was pronounced by the court of first instance on 14 December 1977. She was sentenced to 28 years of rigorous imprisonment and 9 to 12 years of precautionary detention. The trial on appeal took place in May 1980 and the sentence was raised to 30 years and 5 to 10 additional years of precautionary detention (medidas eliminativas de seguridad). The Military Court appointed Colonel Otto Gilomen as defence counsel, although he was not a lawyer. The trial took place in secrecy and not even the closest relatives of the accused were present.

10.1 In formulating its views, the Human Rights Committee also takes into account the following considerations, which reflect a failure by the State party to furnish the information and clarifications necessary for the Committee to formulate final views on a number of important issues.

10.2 In operative paragraph 2 of its decision of 25 March 1982, the Committee requested the State party to enclose: (a) copies of any court orders or decisions relevant to the case, and (b) further information concerning the state of health of Elena Beatriz Vasilskis, including copies of the existing medical reports. The Committee notes with regret that it has not received any of these documents.

10.3 With respect to the state of health of the alleged victim, the Committee finds that the author's precise allegations, which include allegations that her treatment in prison has contributed to her ill-health, called for more detailed submissions from the State party. With regard to general prison conditions, the State party has made no attempt to give a detailed description of what it believes the real situation to be. Similarly, with respect to general prison conditions and the serious allegations of ill-treatment made by the author, the State

party has adduced no evidence that these allegations have been adequately investigated. A refutation of these allegations in general terms, as contained in the State party's submissions, is not sufficient.

10.4 With regard to the burden of proof, the Committee has already established in its views in other cases (e.g., R.7/30) that said burden cannot rest alone on the" author of the communication, especially considering that the author and the State party do not always have equal access to the evidence and *that* frequently the State party alone has access to relevant information. It is explicitly stated in article 4, paragraph 2, of the Optional Protocol that the State party concerned has the duty to contribute to clarification of the matter. In the circumstances, the appropriate evidence for the State party to furnish to the Committee would have been the medical reports on the state of health of Elena Beatriz Vasilskis specifically requested by the Committee in its decision of 25 March 1982. Since the State party has deliberately refrained from providing such expert information, in spite of the Committee's request, the Committee cannot but draw conclusions from such failure.

11. The Human Rights Committee, acting under article 5, paragraph 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 violations of the International Covenant on Civil and Political Rights, particularly of:

articles 7 and 10, paragraph 1, because Elena Beatriz Vasilskis has not been treated in prison with humanity and with respect for the inherent dignity of the human person;

article 14, paragraph 1, because there was no public hearing of her case;

article 14, paragraph 3 (b) and (d) , because she did not have adequate legal assistance for the preparation of her defence;

article 14, paragraph 3 (c), because she was not tried without undue delay.

12. The Committee, accordingly, is of the view that the State party is under an obligation to take immediate steps (a) to ensure strict observance of the provisions of the Covenant and to provide effective remedies to the victim, and, in particular, to extend to Elena Beatriz Vasilskis treatment as laid down for detained persons in article 10 of the Covenants (b) to ensure that she receives all necessary medical cares (c) to transmit a copy of these views to hers (d) to ensure that similar violations do not occur in the future.