

HUMAN RIGHTS COMMITTEE

Oxandabarat v. Uruguay

Communication No. 103/1981

4 November 1983

VIEWS

Submitted by: Estela Oxandabarat on behalf of her father, Batlle Oxandabarat Scarrone

Alleged victim: Batlle Oxandabarat Scarrone

State Party concerned: Uruguay

Date of communication: 30 June 1981

Date of decision on admissibility: 27 October 1982

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

Meeting on 4 November 1983;

Having concluded its consideration of communication No. R.24/103 submitted to the Committee by Estela Oxandabarat 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 June 1981 and further letter dated 23 September 1982) is a Uruguayan national residing at present in Spain. She submitted the communication on behalf of her father, Batlle Oxandabarat Scarrone, alleging that he is imprisoned in Uruguay and that he is a victim of a breach by Uruguay of several articles (specified by the author) of the International Covenant on Civil and Political Rights.

1.2 The author states that her father, a 57-year-old Uruguayan national, had been personnel chief of the electric shop at the Administracion Nacional de Combustibles, Alcohol y Portland, co-founder of the Federacion de Empleados de ANCAP and President of the Convencion Nacional de Trabajadores for the Salto district. She states that because of his trade union activities he was arrested in June 1972 and kept incommunicado for six months at the Unidad Militar de Infanteria in Salto, where he was allegedly subjected to torture including physical beatings, electric shocks (picana) and immersion in water (submarino). He was then taken to the "Penal de Libertad" and submitted to military justice. Since he was detained under "prompt security measures" recourse to habeas corpus was not available. The author does not mention when sentencing by the military tribunal of first instance took place. A final sentence of 13 years' imprisonment was imposed in 1980 by the Supreme Military Tribunal of second instance. The author alleges that her father did not commit any act punishable under the law and that his trade union activities were protected by the Uruguayan constitution.

1.3 The author also submitted a copy of a statement written by Dr. J. J. Aren, a medical doctor who was himself a detainee at the Penal de Libertad, where he had the opportunity to examine several prisoners, including the alleged victim. The report states that in 1976-1977 Batlle Oxandabarat suffered a cranioencephalic traumatism and that since then his faculty of perceiving time and space is impaired. Moreover, as a result of prolonged imprisonment and ill-treatment, Batlle Oxandabarat suffers from physical and mental deterioration, anaemia and premature aging.

2. The author states that domestic remedies have been exhausted and indicates that the same matter has not been submitted under any other procedure of international investigation or settlement. She claims that her father is a victim of violations of articles 7, 9 (1), 9 (2), 9 (3), 9 (4), 10 (1), 10 (3), 14, 15, 17, 19, 21, 22 and 26 of the Covenant.

3. By its decision of 13 October 1981, the Working Group of 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. The Working Group also requested the State party to transmit to the Committee any copies of court decisions against Batlle Oxandabarat Scarrone, and to give the Committee information of his state of health.

4. In a submission dated 29 June 1982 the State party informed the Committee that Batlle Oxandabarat "was lawfully detained after being found to have committed offences expressly defined in the Ordinary Penal Code in force in Uruguay since 1934. Contrary to what was stated by the author of the communication, Oxandabarat was not harassed or arrested on account of his trade union activities; he had been a member of the Tupamaros National Liberation Movement since 1968 and his criminal activities included participation in the raid on the Salto branch of the Banco de la Republica and in the escape of two prisoners from Salto gaol. He was sentenced on 4 March 1980 by the court of second instance to 13 years rigorous imprisonment and to precautionary detention (medidas de seguridad eliminativas) of 1 to 2 years for the following offences: 'Criminal conspiracy' with the aggravating circumstances as set out in article 151 (1), (2) and (3), 'action to upset the Constitution in the

degree of conspiracy followed by criminal preparations', 'disloyal assistance and counselling', 'escape from custody', 'receiving stolen goods', 'theft', all in the Ordinary Penal Code." The State party further informed the Committee that the present state of health of Batlle Oxandabarat is good.

5.1 In a further letter dated 23 September 1982, the author claims that since the end of 1975 her father had not had counsel of his choice but a court-appointed lawyer; that the lawyer 'never visited her father nor informed him of developments in his case; that the conditions of his imprisonment have remained inhuman and have led to her father's progressive physical and mental deterioration, alleging that the prison regime to which her father is subjected is not designed to produce any kind of reform or rehabilitation but aims at his psychological and physical annihilation. She further alleges that many times when she went to the penitentiary to visit her father she was informed that he was being held incommunicado and could not be visited. She claims that medical care for the prisoners is inadequate, and resubmits a copy of the statement by Dr. J. J. Aren on her father's state of health (paragraph 1.3 above).

5.2 With respect to the criminal proceedings against her father, the author claims that although they started before the entry into force of the Covenant for Uruguay (23 March 1976), the critical phase of the trial, evaluation of evidence allegedly obtained by torture, and sentencing took place after the Covenant had entered into force.

6. On the basis of the information before it, the Committee found that it was not precluded by article 5 (2) (a) of the Optional Protocol from considering the communication, as there was no indication that the same matter had been submitted to another procedure of international investigation or settlement. The Committee was also unable to conclude that in the circumstances of this case there were effective 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.

7. On 27 October 1982, the Human Rights Committee therefore decided:

(1) That the communication was admissible so far as it related to events which allegedly continued or took place after 23 March 1976, the date on which the Covenant and the Optional Protocol entered into force for Uruguay;

(2) 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;

(3) That the State party be informed that the written explanations or the statements submitted by it under article 4 (2) of the Optional Protocol must relate primarily to the substance of the matter now under consideration. The Committee stressed that, in order to perform its responsibilities, it required specific responses to the allegations which had been made by the author of the communication, and the State party's explanations of the actions taken by it;

(4) That the State party be again requested to furnish the Committee with (a) specific information on the state of health of Batlle Oxandabarat and the medical treatment given to him, and (b) copies of any court decisions taken against Batlle Oxandabarat, including the decision of the military court first instance.

8.1 In its submission under article 4 (2) of the Optional Protocol, dated 27 May 1983, the State party informed the Committee 'that Mr. Oxandabarat Scarrone was at no time subjected to physical maltreatment and that he was detained not because of his trade union activities, but after being found to have committed offences established by the Uruguayan legal system, on which the Committee has already been informed. With regard to Mr. Oxandabarat's health, on 26 December 1975 he was discharged after having been treated with Calciparine and Tromexan for a pulmonary illness. Check-ups on his health were subsequently made at the polyclinic of EMR No. 1. In December 1981 he was treated at the surgical polyclinic for haemorrhoida prolapse. A haemorrhoidectomy was carried out, with good post-operative recovery, and a rectosigmoidoscopy showed no pathological lesions. He continues to undergo examinations and is being treated with Fluxan and Hemuval. The finding of the latest general examination is that he is in good health."

8.2 No additional information or observations have been received from the author in this connection.

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 (1) of the Optional Protocol, hereby decides to base its views on the following facts, which appear to be uncontested.

9.2 Batlle Oxandabarat was a trade-union leader and had been a member of the Tupamaros National Liberation Movement since 1968. He has been kept in detention continuously since he was arrested in June 1972. A final sentence of 13 years' imprisonment was imposed on 4 March 1980 by the court of second instance. He did not have counsel of his choice, but a court-appointed lawyer, who did not visit him nor inform him of developments in the case.

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 and by the author to furnish the information and clarifications necessary for the Committee to formulate final views on all allegations.

10.2 In operative paragraph 4 of its decision of 13 October 1981 and again in operative paragraph 4 of its decision on admissibility of 27 October 1982, the Committee requested the State party to enclose copies of any court decisions taken against Batlle Oxandabarat, including the decision of the military court of first instance. The Committee notes with deep concern that in spite of its repeated requests in this case and in many other cases, no such documents have ever been received from the State party. The Committee recalls in this connection the assurances given to it by the Representative of the Government of Uruguay on 8 April 1982 (see summary record of the Committee's 359th meeting, document CCPR/C/SR.359, para. 17) that these documents are readily available to any interested party.

In the light of these assurances given before the Committee by the Representative of the Government of Uruguay, and which assurances the Committee does not wish to doubt were given in good faith, it is all the more disturbing that, 18 months later, not a single such document has been received from the State party, in spite of the Committee's continued and repeated requests. In these circumstances and considering that the State party has never offered any explanation as to why the documents in question have not been made available to it, the failure to produce these documents inevitably raises serious doubts concerning them. If reasoned decisions exist, it is not understandable why such pertinent information is withheld. The lack of precise information seriously hampers the discharge of the functions of the Committee under the Optional Protocol.

10.3 With respect to the state of health of the alleged victim, the Committee finds that the information before the Committee in regard to the treatment of Mr. Oxandabarat after 23 March 1976 (the date on which the Covenant and the Optional Protocol entered into force for Uruguay) does not justify a finding of a violation of article 10 (1) of the Covenant.

11. 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, disclose violations of the International Covenant on Civil and Political Rights, particularly of:

- Article 14, paragraph 3 (b), because Batlle Oxandabarat did not have adequate legal assistance for the preparation of his defence;
- Article 14, paragraph 3 (c), because he was not tried without undue delay.

12. The Committee, accordingly, is of the view that the State party is under an obligation to provide Batlle Oxandabarat with effective remedies, and, in particular, to ensure that he continues to receive all necessary medical care and to transmit a copy of these views to him.