

## HUMAN RIGHTS COMMITTEE

### Fillastre and Bizouarn v. Bolivia

Communication No. 336/1988

5 November 1991

CCPR/C/43/D/336/1988\*

### VIEWS

*Submitted by: Nicole Fillastre (victim's wife)*

*Alleged victims: André Fillastre and Pierre Bizouarn*

*State party: Bolivia*

*Date of communication: 27 September 1988 (date of initial submission)*

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

Having considered communication No. 336/1988, submitted to the Committee for consideration under the Optional Protocol to the Covenant by Mrs. Nicole Fillastre on behalf of her husband, Mr. André Fillastre, and on behalf of Mr. Pierre Bizouarn,

Meeting on 5 November 1991,

Adopts the following:

#### **Views under article 5, paragraph 4, of the Optional Protocol**

The facts as presented by the author:

1. The author of the communication (initial submission dated 27 September 1988 and subsequent correspondence) is Nicole Fillastre, a French citizen residing in Le Havre, France. She submits the communication on behalf of her husband, André Fillastre, a French citizen and private detective by profession, currently detained at the prison of San Pedro in La Paz, Bolivia, together with another private detective, Pierre Bizouarn. By letter dated 25 May 1989, Mr. Bizouarn authorized Mrs. Fillastre to act on his behalf.

2.1 The author states that on 26 August 1987, André Fillastre and Pierre Bizouarn travelled to La Paz accompanied by Ms. Silke Zimmerman, a German citizen then residing in France. André Fillastre was travelling in his capacity as a private detective on behalf of Ms. Zimmerman, who had requested his services in order to find and repatriate her fouryear old son, Raphael Cuiza Zimmerman, living in Bolivia. Her son had allegedly been taken away from his mother by his Bolivian father, Jorge Cuiza, and flown to Bolivia.

2.2 On 3 September 1987, André Fillastre, Mr. Bizouarn and Ms. Zimmerman were arrested by the Bolivian police, after a complaint had been filed by the child's father, who claimed that they had manipulated their way into his home and started a brawl in which he was injured. The two detectives allegedly had abducted the child and left the home, together with the mother. Criminal proceedings were instituted against them. On 12 September 1987, the examining magistrate indicted the accused on three grounds: (a) kidnapping of a minor (secuestro y rapto propio), punishable under article 313 of the Bolivian Penal Code; (b) unauthorized entry into a home (allanamiento de domicilio o sus dependencias; article 298 of the Bolivian Penal Code), and (c) causing grievous bodily harm (lesiones graves y leves; article 271 of the Bolivian Penal Code). Allegedly, he did so without having interrogated the accused. Nevertheless, Ms. Zimmerman was released a few days later, apparently without plausible explanations. Messrs. Fillastre and Bizouarn, however, were placed under detention and imprisoned at the prison of San Pedro in La Paz, where they continue to be held.

2.3 With regard to the requirement of exhaustion of domestic remedies, the author states that the judicial proceedings against her husband and Mr. Bizouarn have been pending before the court of first instance since 12 September 1987. In this context, she indicates that, on 12 June 1990, the judge was expected to render his decision in the case but that, since the legal aid attorney assigned to her husband did not appear in court, he decided to further postpone the hearing.

#### The complaint:

3.1 It is submitted that Messrs. Fillastre and Bizouarn were not able to adequately communicate either with their lawyer or with the examining magistrate, before whom they were brought on 3 September 1988, one year after their arrest. In particular, it is alleged that the interpreter who had been designated to assist them could only speak English, a language they did not master. Further, they allege that their statements before the examining magistrate were not only recorded incorrectly but deliberately altered.

3.2 It is submitted that Messrs. Fillastre and Bizouarn were held in custody for ten days without being informed of the charges against them; this was reportedly confirmed by the arresting officer, upon interrogation by the examining magistrate. As to the circumstances of the investigatory phase of the judicial proceedings, the author claims that several irregularities occurred in their course. Furthermore, the court hearings allegedly were postponed repeatedly because either the legal aid attorney or the prosecutor failed to appear in court. More generally, the author claims bias on the part of the judge and of the judicial authorities. This is said to be evidenced by the fact that the Bolivian authorities allowed Ms. Zimmerman to leave Bolivia without any plausible justification and never sought her testimony before the examining magistrate, although she had been indicted together with Messrs. Fillastre and Bizouarn.

3.3 As to the conditions of detention at the prison of San Pedro, they are said to be inhuman and degrading. In this context, the author submits that, on account of the psychological stress as well as the poor conditions of detention, her husband has become addicted to alcohol and drugs and lost his will to live.

3.4 Finally, the author claims that her countless efforts, since midSeptember 1987, to obtain her husband's release have not met with any response. She maintains that, notwithstanding the various promises made to her by the French authorities, no official attempt was made to obtain her husband's release, nor to improve the conditions of his detention.

The State party's information and observations:

4.1 The State party provides a chronology of the judicial proceedings in the case and indicates that a judgment at first instance may be expected by midAugust 1991. It notes that the preliminary investigations were initiated on 14 September 1987, with the consent of the examining magistrate (Juez Instructor en lo Penal); they were concluded by decision of 29 December 1988 (auto final), which committed Messrs. Fillastre and Bizouarn to stand trial for the offences referred to in paragraph 2.2 above. This decision was challenged by the alleged victims on 16 and 22 February 1989, respectively.

4.2 The proceedings were then transferred to the Magistrates Court (Juez Quinto de Partido en lo Penal). The State party indicates that the process of evidence gathering, reconstruction of the facts and hearing of witnesses has been protracted, but that it is approaching its final stage. Such delays as occurred are said to be partly attributable to the judge's desire to gather further evidence, which would enable him to render his judgment.

4.3 The State party points out that Messrs. Fillastre and Bizouarn are likely to be found guilty of the offences for which they were indicted, in particular the kidnapping of a minor (article 313 of the Penal Code); this offence is punishable by imprisonment of one to five years. In the event of their conviction, they would retain the right to appeal conviction and sentence (recurso de apelación), pursuant to articles 284 and 288 of the Bolivian Code of Criminal Procedure. In the event of an unsuccessful appeal, they would be able to subsequently request the cassation of the judgment of the Court of Appeal (recurso de nulidad), pursuant to article 296 of the Code of Criminal Procedure.

4.4 In respect of the author's claim of a violation of articles 14, paragraph 3(b) and (d), the State party contends that both Mr. Fillastre and Mr. Bizouarn have received legal assistance throughout the proceedings, not only from the French consulate in La Paz, but also from one privately and one courtappointed lawyer. The alleged victims have consistently assisted the court sessions, together with their representatives.

4.5 The State party further contends that since the authors were properly indicted and the judicial proceedings continue to take their normal course, the accused remain lawfully detained at the Prison of San Pedro in La Paz. The State party does not, however, indicate whether the accused were promptly informed of the charges against them, and whether they were brought promptly before a judge or other officer authorized by law to exercise judicial power.

4.6 As to the author's complaint about undue delays in the judicial proceedings, the State party points out that criminal investigations under Bolivian law are carried out in written form, which implies that administrative and other delays may occur. Furthermore, the absence of an adequate budget for a proper administration of justice means that a number of criminal cases and certain specific procedural phases of criminal proceedings have experienced delays.

4.7 The State party indicates that it has established a special commission of investigation to enquire into the author's allegation of ill-treatment and inhuman and degrading prison conditions. The report of this commission, whose findings are said to be confirmed by Messrs. Bizouarn and Fillastre, concludes that both prisoners are in good health and receive basic but adequate medical attention; that they are detained in the most comfortable sector of the San Pedro prison; that their diet is satisfactory; that they benefit from recreational facilities; and that they may communicate freely with friends, their relatives and their legal representatives.

#### Issues and proceedings before the Committee:

5.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

5.2 During its 40th session, the Committee considered the admissibility of the communication. It took note of the State party's observations and clarifications concerning the current status of the case before the Bolivian courts, observing that the victims were still awaiting the outcome of the proceedings instituted against them in September 1987, that is, more than three years after their arrest. In the circumstances, the Committee considered that a delay of over three years for the adjudication of the case at first instance, discounting the availability of subsequent appeals, was "unreasonably prolonged" within the meaning of article 5, paragraph 2(b), of the Optional Protocol. From the available information, the Committee deduced that such delays as had been encountered were neither attributable to the alleged victims nor explained by the complexity of the case. It therefore concluded that the requirements of article 5, paragraph 2(b), had been met.

5.3 The Committee considered that the communication should be examined on the merits as it appeared to raise issues under the Covenant in respect of the author's claims (a) that Messrs. Fillastre and Bizouarn were not promptly informed of the charges against them; (b) that they were not promptly brought before a judge and interrogated; (c) that they were not afforded adequate facilities for the preparation of their defence and were unable to properly communicate with counsel assigned to them; (d) that they were inadequately represented during the preliminary investigation; and (e) that they were being subjected to inhuman and degrading treatment.

5.4 On 6 November 1990, therefore, the Committee declared the communication admissible in so far as it appeared to raise issues under articles 9, paragraphs 2 and 3; 10, paragraph 1; and 14, paragraph 3(b), (c) and (d), of the Covenant.

6.1 The Committee has considered the present communication in the light of all the information provided by the parties, as provided for in article 5, paragraph 1, of the Optional Protocol.

6.2 With respect to the allegation of a violation of article 10 of the Covenant, the Committee observes that the author has not corroborated, in a manner sufficiently substantiated, her claim that the prison conditions at the penitentiary of San Pedro are inhuman and do not respect the inherent dignity of the human person. The State party has endeavoured to investigate this claim, and the findings of its commission of inquiry, which have not been refuted either by the authors or by the alleged victims, conclude that Messrs. Fillastre and Bizouarn benefit from basic amenities during detention, including medical treatment, adequate diet, recreational facilities as well as contacts with their relatives and representatives. In the circumstances, the Committee concludes that there has been no violation of article 10.

6.3 As to the alleged violation of article 14, paragraph 3(b) and (d), the Committee reaffirms that it is imperative that accused individuals be afforded adequate time for the preparation of their defence, and that they be provided with free legal assistance if they cannot themselves afford the services of a legal representative. In the present case, it is uncontested that legal assistance was provided to both Mr. Fillastre and Mr. Bizouarn. Nor has the State party's claim that the alleged victims have benefitted from such assistance throughout the proceedings, and that they have been able to attend hearings before the court together with their representatives, been refuted. In these circumstances, the Committee does not find that either article 14, paragraph 3(b), or article 14, paragraph 3(d), has been violated.

6.4 As to the alleged violation of article 9, paragraphs 2 and 3, the Committee observes that the author has stated in general terms that her husband and Mr. Bizouarn were held in custody for ten days before being informed of the charges against them, and that they were not brought promptly before a judge or other officer authorized by law to exercise judicial power. It remains unclear from the State party's submission whether the accused were indeed brought before a judge or judicial officer between their arrest, on 3 September 1987, and 12 September 1987, the date of their indictment and placement under detention, pursuant to article 194 of the Bolivian Code of Criminal Procedure. The Committee cannot but note that there has been no specific reply to its request for information in this particular respect, and reiterates the principle that, if a State party contends that facts alleged by the author are incorrect or would not amount to a violation of the Covenant, it must so inform the Committee. The pertinent factor in this case is that both Mr. Fillastre and Mr. Bizouarn allegedly were held in custody for ten days before being brought before any judicial instance and without being informed of the charges against them. Accordingly, while not unsympathetic to the State party's claim that budgetary constraints may cause impediments to the proper administration of justice in Bolivia, the Committee concludes that the right of Messrs. Fillastre and Bizouarn under article 9, paragraphs 2 and 3, have not been observed.

6.5 Under article 9, paragraph 3, anyone arrested or detained on a criminal charge "shall be entitled to trial within a reasonable time...". What constitutes "reasonable time" is a matter of assessment for each particular case. The lack of adequate budgetary appropriations for the administration of criminal justice alluded to by the State party does not justify unreasonable delays in the adjudication of criminal cases. Nor does the fact that investigations into a criminal case are, in their essence, carried out by way of written proceedings, justify such delays. In the present case, the Committee has not been informed that a decision at first instance had been reached some four years after the victims' arrest. Considerations of evidence-gathering do not justify such prolonged detention. The Committee concludes that there has been, in this respect, a violation of article 9, paragraph 3.

6.6 The author has further alleged that her husband and Mr. Bizouarn have not been tried, at first instance, for a period of time that she considers unreasonably prolonged. Under article 14, paragraph 3(c), the victims have the right to "be tried without undue delay". The arguments advanced by the State party in respect of article 9, paragraph 3, cannot serve to justify undue delays in the judicial proceedings. While the accused were indicted on several criminal charges under the Bolivian Criminal Code on 12 September 1987, the determination of these charges had not resulted in a judgment, at first instance, nearly four years later; the State party has not shown that the complexity of the case was such as to justify this delay. The Committee concludes that this delay violated the victims' right under article 14, paragraph 3(c).

7. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, finds that the facts before it reveal a violation of articles 9, paragraphs 2 and 3, and 14, paragraph 3(c), of the Covenant.

8. In accordance with the provisions of article 2 of the Covenant, the State party is under an obligation to take effective measures to remedy the violations suffered by Messrs. André Fillastre and Pierre Bizouarn. The Committee has taken note of the State party's information that the offence for which the authors have been indicted under article 313 of the Bolivian Criminal Code is punishable by imprisonment of one to five years, and observes that the authors have already been detained for a period of four years and two months. In the circumstances, the State party should grant the authors a remedy in the form of their immediate release, and ensure that similar violations do not occur in the future.

9. The Committee would wish to receive information, within 30 days, on any relevant measures adopted by the State party in respect of the Committee's Views.

[Done in English, French, Russian and Spanish, the English text being the original version.]

#### Footnotes

\* Made public by decision of the Human Rights Committee