

HUMAN RIGHTS COMMITTEE

Sequeira v. Uruguay

Communication No. 6/1977

29 July 1980

VIEWS

Submitted by: Miguel A. Millan Sequeira on 16 February 1977

Alleged victim: The author

State party: Uruguay

Date of adoption of views: 29 July 1980 (tenth session)

Views under article 5 (4) of the Optional Protocol

1. The author of this communication (initial letter dated 16 February 1977 and further letters dated 20 October 1977 and 4 April and 18 May 1978) is a Uruguayan national, residing in Mexico. He was twenty years old at the time of the submission of the communication in 1977.

2. The author states that he was arrested in Uruguay in April and released in May 1975 and that he was then rearrested on 18 September 1975 and detained until he escaped from custody on 4 June 1976. On both occasions, those apprehending him indicated that the reason for his arrests was that he was suspected of being a militant communist, which he denied. He alleges that he was subjected to torture during the first period of detention and again during the first 15 days after he was rearrested. He describes the alleged torture methods in some detail and named several officers responsible for the treatment. The author alleges that after he was rearrested he was initially kept incommunicado for 65 days and thereafter transferred to E1 Cilindro sports stadium in Montevideo which he claims was used for lowsecurity political detainees and where he remained for six months. He states that he was brought before a military judge on three occasions (23 October and 12 December 1975 and on 2 June 1976) but that no steps were taken to commit him for trial or to release him. On 4 June 1976 the author claims that he gained his freedom by escaping. The author claims that the following provisions of the International Covenant on Civil and Political Rights have been violated by the Uruguayan authorities: articles 7, 9, 10, 14 (1), (2), (3), 18 (1), (2), 19 (1), (2).

3. The author maintains that in practice there are no domestic remedies available in Uruguay because when applicable they are subjected to a very restrictive interpretation by the authorities concerned. He further states that the right of habeas corpus is denied to persons detained under "prompt security measures" (Medidas prontas de seguridad), which, he claims, constitutes an abusive interpretation of article 168 (17) of the Constitution. In addition, guarantees set forth in that article are allegedly never observed. He claims that he had no access to legal assistance while he was kept in detention, since the right to defence is not recognized by the authorities until a prosecution has been initiated. He states that he has not submitted his case to any other international organization.

4. 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.

5. By a note dated 27 October 1977, the State party objected to the admissibility of the communication on two grounds:

(a) The same matter had already been examined by the Inter-American Commission on Human Rights under cases Nos. 1968 and 2109;

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

6. On 26 January 1978, the Human Rights Committee

(a) Decided that case No. 1968 submitted to the Inter-American Commission on Human Rights on 26 July 1975, could not relate to events alleged to have taken place on or after 23 March 1976, the date on which the Covenant and the Optional Protocol entered into force for Uruguay and, therefore, did not preclude the Committee, under article 5 (2) (a) of the Optional Protocol, from consideration of the communication submitted to it on 16 February 1977;

(b) Requested clarification from the author of the communication about the other case allegedly concerning him before the Inter-American Commission on Human Rights (case No. 2109, October 1976); and

(c) Informed the State party that "unless the State party gives details of the remedies which it submits have 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", the communication will "not be considered inadmissible in so far as exhaustion of domestic remedies is concerned".

7. In response, the author informed the Committee that the only possible reference to him in case No. 2109 before the Inter-American Commission on Human Rights is a two-line statement in a list of several hundred persons allegedly arbitrarily arrested. The State party furnished a general description of the rights available to accused persons before the military criminal tribunals and the domestic remedies designed to protect and safeguard the right of

the accused under the Uruguayan judicial system. It also quoted article 17 of the Uruguayan Constitution concerning the remedy of habeas corpus. However, the State party did not specify which remedies have been available to the author in the particular circumstances of his case.

8. Commenting on the information concerning domestic remedies submitted by the State party, the author contended that the remedies listed by the State party were not applicable in his case, because he was not put to trial, and that he was barred from recourse to habeas corpus, as the authorities do not recognize the right to habeas corpus for those who are detained under the regime of "security measures".

9. In a decision adopted on 25 July 1978, the Human Rights Committee concluded:

(a) That the two-line reference to Millfin Sequeira in case No. 2109 before the Inter-American Commission on Human Rights--which case lists in a similar manner the names of hundreds of other persons allegedly detained in Uruguay--did not constitute the same matter as that described in detail by the author in his communication to the Human Rights Committee. Accordingly, the communication was not inadmissible under article 5 (2) (a) of the Optional Protocol. In arriving at this conclusion the Committee, however, indicated that it might be subject to review "in the light of further explanations relevant to this question which the State party may submit under article 4 (2) of the Optional Protocol";

(b) That article 5 (2) (b) of the Protocol did not preclude the Committee from considering a communication received under the Protocol, where the allegations themselves raised 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.

The Committee, therefore, decided:

(a) That the communication was admissible;

(b) That the text of this decision be transmitted to the State party and to the author;

(c) That in accordance with article 4 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;

(d) That any explanations or statements received from the State party be communicated to the author under rule 93 (3) of the provisional rules of procedure of the Committee.

10. Having received no submissions from the State party under article 4 (2) of the Optional Protocol, the Human Rights Committee decided on 18 April 1979:

1. That the State party be reminded that the sixmonth time-limit for the submission of its

explanation or statements under article 4 (2) of the Optional Protocol expired on 28 March 1979;

2. That the State party be requested to fulfil its obligations under article 4 (2) of the Optional Protocol without further delay and that its submission should reach the Committee in care of the Division of Human Rights, United Nations Office at Geneva, not later than six weeks from the date of the transmittal of, this decision to the State party, to afford adequate time for the author of the communication to submit, before the next session of the Committee, additional information or observations, as provided in rule 93 (3) of the provisional rules of procedure of the Committee;

3. That the State party be informed that the written explanations or statements submitted by it under article 4 (2) of the Optional Protocol must primarily relate to the substance of the matter under consideration, and in particular the specific violations alleged to have occurred and included copies of any court orders or decisions of relevance to the matter under consideration.

11. The six-week time-limit referred to in the Committee's decision expired over one year ago, on 2 July 1979. By notes dated 23 November 1979 and 13 February 1980, the State party requested the Committee to accord a reasonable extension of time for the submission of its explanations or statements under article 4 (2) of the Optional Protocol. The only submission received to date from the State party consists of a brief note, dated 10 July 1980, in which the State party requests the Committee to review its decision of 25 July 1978, by which the communication was declared admissible, arguing that although the reference to *Mill fin Sequeira* in case No. 2109 before the Inter-American Commission on Human Rights is only very brief, the mere fact that the issue was brought before the Inter-American Commission on Human Rights precluded the Human Rights Committee from considering the matter, in accordance with article 5 (2) (a) of the Optional Protocol. The Committee can see no justification for reviewing its decision on admissibility on this basis, for the reasons already set out in paragraph 9 (a) above.

12. The Human Rights Committee,

(a) Considering that this communication was received over three years ago,

(b) Considering that this communication was declared admissible two years ago and that the six-month time-period established by article 4 (2) of the Optional Protocol expired on 28 March 1979,

(c) Considering that the State party has not complied with the requirements of article 4 (2) of the Optional Protocol,

(d) Considering that there has been no response on the merits of the case from the State party even after further extensions of time,

(e) Considering that the Committee has the obligation, under article 5 (1) of the Optional

Protocol, to consider this communication in the light of all written information made available to it by the author and the State party,

Hereby decides to base its views on the following facts, which have not been contradicted by the State party:

Miguel Angel Millin Sequeira, 20 years old at the time of the submission of the communication in 1977, was arrested in April and released in May 1975, He was rearrested on 18 September 1975 and detained until he escaped from custody on 4 June 1976. On both occasions he was told that the reason for his arrest was that he was suspected of being "a militant communist". Although brought before a military judge on three occasions, no steps were taken to commit him for trial or to order his release. He did not have access to legal assistance and was not afforded an opportunity to challenge his arrest and detention.

13. The Human Rights Committee has been informed by the Government of Uruguay in another case (No. 9/1977), that the remedy of habeas corpus is not applicable to persons arrested under the "prompt security measures".

14. The Human Rights Committee has considered whether acts, which are prima facie not in conformity with the Covenant, could for any reasons be justified under the Covenant in the circumstances. The Covenant (art. 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.

15. As to the allegations of ill-treatment and torture, the Committee notes that they relate to events said to have occurred prior to 23 March 1976 (the entry into force of the Covenant and the Optional Protocol for Uruguay).

16. 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 these facts, in so far as they have occurred on or after 23 March 1976 (the date on which the Covenant entered into force in respect of Uruguay) or continued or had effects which themselves constitute a violation after that date, disclose violations of the Covenant, in particular of:

Article 9 (3), because Mr. Millin Sequeira was not brought to trial within a reasonable time;

Article 9 (4), because recourse to habeas corpus was not available to him;

Article 14 (1) and (3), because he had no access to legal assistance, was not brought to trial without undue delay, and was not afforded other guarantees of due process of law.

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