

HUMAN RIGHTS COMMITTEE

Carballal v. Uruguay

Communication No. 33/1978

27 March 1981

VIEWS

Submitted by: Leopoldo Buffo Carballal on 30 May 1978

Alleged victim: The author

State party: Uruguay

Date of adoption of views: 27 March 1981 (twelfth session)

Views under article 5 (4) of the Optional Protocol

1. The author of this communication, dated 30 May 1978, is Leopoldo Buffo Carballal, a 36-year-old Uruguayan national, residing in Mexico. He submitted the communication on his own behalf.

2.1 The author states the following:

2.2 Upon arriving in Argentina on 4 January 1976 (by legally crossing the border between Uruguay and Argentina), he was arrested without a warrant of arrest and handed over to members of the Uruguayan Navy, who took him back to the city of Paysandú, Uruguay. He was not informed of why he had been deprived of his liberty. A few days later he was transferred to Montevideo.

2.3 During the first period of detention, until 12 February 1976, he was repeatedly subjected to torture (blows, hanging from his hands and forced to stand motionless--"plantdn"--for long periods). On 12 February 1976, after having been forced to sign a statement to the effect that he had suffered no abuses, he was transferred to the military barracks of the Fifth Artillery. From there, he was taken to a large truck garage. The author describes the events as follows:

They moved us all to a large truck garage with a concrete roof and two big doors that were open summer and winter. We slept on the floor, which was covered with oil and grease. We had neither mattress nor blankets. For the first time since I was detained, I was allowed to

take a bath, although I had to put on the same clothes, soiled by my own vomit, blood and excrement. When I took off the blindfold I became dizzy. Later on, my family was allowed to send me a mattress. In this dungeon I remained incommunicado, sitting on the rolled-up mattress during the day, blindfolded and with my hands bound. We were allowed to sleep at night. The only food was a cup of soup in the morning and another at night. They would not allow our relatives to bring us food or medicine. I suffered from chronic diarrhoea and frequent colds.

2.4 On 5 May 1976 he appeared before a military court, and on 28 July 1976 he was brought before the court again to be notified that his release had been ordered.

2.5 In spite of the order for his release, he was still detained at the Fifth Artillery barracks under the régime of "prompt security measures" until 26 January 1977. He was, however, forbidden to leave Montevideo and ordered to report to the authorities every 15 days. He gained asylum in the Embassy of Mexico in Montevideo on 4 March 1977 with his wife and children. At the time his home was plundered and his belongings were taken away.

2.6 The author claims that during his detention he was effectively barred from any recourse, not only because he had no access to the outside world while he was held incommunicado (until 28 July 1976) but also, from then on, because of the interpretation given by the Uruguayan authorities to the relevant provision of the Constitution in respect of detention under "prompt security measures". He states that he was never charged with any offence under the law and alleges that the sole reason for the injustices inflicted upon him was his political opinions, the nature of which, however, he fails to specify.

2.7 He states that he did not receive any compensation after his release.

2.8 He submits that he was a victim of violations of articles 7, 9 (1, 2, 3, 4, 5), 10 (1 and 3), 12, 17 and 19 (1) of the International Covenant on Civil and Political Rights.

3. On 28 July 1978, 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 29 December 1978, the State party argued that the alleged violation took place on 4 January 1976, prior to the entry into force of the Covenant for Uruguay, and made the general observation that every person in the national territory has free access to the courts and to public administrative authorities and may exercise freely all the administrative and judicial remedies provided for under the legal system of the country.

5. On 24 April 1979, the Human Rights Committee,

(a) Having concluded that, although the date of arrest was prior to the entry into force of the Covenant for Uruguay, the alleged violations continued after that date,

(b) Being unable to conclude that, with regard to exhaustion of domestic remedies, on the

basis of the information before it, there were any further remedies which the alleged victim should or could have pursued,

Therefore decided:

(a) That the communication was admissible;

(b) 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.

6. The time-limit for the State party's submission under article 4 (2) of the Optional Protocol expired on 25 November 1979. By notes dated 23 November 1979 and 13 February 1980, the State party requested the Committee to accord a reasonable extension of time. The only submission received to date from the State party consists of a brief note, dated 7 July 1980, in which the State party reaffirms that the legal system in force affords every guarantee of due process and adds the following explanations:

The author's assertions about the conditions of his detention under the prompt security measures are completely unfounded, for in no Uruguayan place of detention may any situation be found which could be regarded as violating the integrity of persons. Leopoldo Burro Carballal was arrested on 4 January 1976 for his presumed connections with subversive activities and was interned under the prompt security measures; he was granted unconditional release on 28 June 1976. On 29 June 1976 the Fifth Military Court of Investigation closed the preliminary investigation proceedings for lack of evidence. Afterwards, Buffo Carballal took refuge in the Mexican Embassy before leaving for Mexico. The foregoing shows that justice in Uruguay is not arbitrary and that in the absence of any elements constituting proof of criminal acts, no one is deprived of his liberty. For all these reasons, the author's assertions, which are merely accusations devoid of all foundation, are hereby rejected.

7. The Human Rights Committee notes that it 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 detained under the "prompt security measures".

8. The Human Rights Committee has received no further correspondence from the author subsequent to his original communication of 30 May 1978. Letters addressed to him by the Secretariat have been returned by the Mexican postal authorities as unclaimed.

9. The Human Rights Committee, considering 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, hereby decides to base its views on the following facts which have been essentially confirmed by the State party, are unrefuted or are uncontested, except for denials of a general character offering no particular information or explanation. Leopoldo Buffo Carballal was arrested on 4 January 1976 and held incommunicado for more than five

months, much of the time tied and blindfolded, in several places of detention. Recourse to habeas corpus was not available to him. He was brought before a military judge on 5 May 1976 and again on 28 June or 28 July 1976, when an order was issued for his release. He was, however, kept in detention until 26 January 1977.

10. As to the allegations of torture, the Committee notes that they relate explicitly to events said to have occurred prior to 23 March 1976 (the date on which the Covenant and the Optional Protocol entered into force for Uruguay). As regards the harsh conditions of Mr. Buffo Carballal's detention, which continued after that date, the State party has adduced no evidence that the allegations were duly investigated. A refutation in general terms to the effect that "in no Uruguayan place of detention may any situation be found which could be regarded as violating the integrity of persons" is not sufficient. The allegations should have been investigated by the State party, in accordance with its laws and its obligations under the Covenant and the Optional Protocol.

11. The Human Rights Committee has considered whether acts and treatment which prima facie are 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". The Covenant (art. 4) allows national measures derogating from some of its provisions only in strictly defined circumstances, and the Government has not made any submission of fact or law to justify 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.

12. The Human Rights Committee has duly taken note of the State party's submission that Leopoldo Burro Carballal was arrested and detained for his presumed connection with subversive activities. Such general reference to "subversive activities" does not, however, suffice to show that the measures of penal prosecution taken against Leopoldo Buffo Carballal were compatible with the provisions of the Covenant. The Covenant provides in article 19 that everyone shall have the right to hold opinions without interference and that the freedom of expression set forth in paragraph 2 of that article shall be subject only to such restrictions as are necessary (a) for respect of the rights and reputations of others or (b) for the protection of national security or of public order (*ordre public*), or of public health, or morals. To date, the State party has never explained the scope and meaning of "subversive activities", which constitute a criminal offence under the relevant legislation. Such an explanation is particularly necessary in the present case, since the author of the communication contends that he has been prosecuted solely for his opinions.

13. 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:

Articles 7 and 10 (1), because of the conditions under which Mr. Buffo Carballal was held during his detention;

Article 9 (1), because he was not released until approximately six or seven months after an order for his release was issued by the military court;

Article 9 (2), because he was not informed of the charges brought against him;

Article 9 (3), because he was not brought before a judge until four months after he was detained and 44 days after the Covenant entered into force for Uruguay;

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

Article 14 (3), because the conditions of his detention effectively barred him from access to legal assistance.

14. The Committee, accordingly, is of the view that the State party is under an obligation to provide effective remedies, if applied for, including compensation for the violations which Mr. Buffo Carballal has suffered, and to take steps to ensure that similar violations do not occur in the future.