

HUMAN RIGHTS COMMITTEE

Pietraroia v. Uruguay

Communication No. 44/1979

27 March 1981

VIEWS

Submitted by: Alba Pietraroia in January 1979

Alleged victim: Rosario Pietraroia, also known as Rosario Roya Zapala (author's father)

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 the communication (initial letter dated January 1979 and further letters dated 11 June and 13 August 1979 and 18 August 1980) is a Uruguayan national, residing in Peru. She submitted the communication on behalf of her father, Rosario Pietraroia (or Roya) Zapala, a 68-year-old Uruguayan citizen, a former trade-union leader and alternate member of the Chamber of Deputies in the Uruguayan Parliament, at present detained in Uruguay. She states that from his' early youth her father had worked as a lathe operator, that he had held the post of General-Secretary of the National Union of Metal and Allied Workers and that he had been Vice-President of the Trade Unions International of Workers in the Metal Industry.

2.1 The author claims that her father was arrested in Montevideo on 19 January 1976 without any court order. She further alleges that her father was held incommunicado and virtually in isolation, since not only the place in which he had been imprisoned but also the fact of his arrest was kept absolutely secret for four months. She submits that, thereafter, the family received indirect confirmation of the fact that he was alive and in detention, her mother being visited by two officials asking for her husband's clothes. After two further months the author's mother was permitted to see him for the first time. The author submits that she is not in a position to give precise details of the treatment her father suffered during that first period of his detention but that, at least on two occasions, he was committed to the military hospital, which, according to the author, is done only in extremely serious cases.

2.2 She further states that after six months in administrative detention, her father was

charged on 10 August 1976 by a military court with the alleged offences under the Military Penal Code of "subversive association" ("asociación subversiva") and "an attack on the Constitution in the degree of conspiracy" (' atentado a la Constitución en grado de conspiración') and that, in May 1977, the military prosecutor called for a penalty of 12 years' rigorous imprisonment, a sentence which was pronounced by a military judge in September 1978. In this connection, the author submits that her father did not enjoy a position of equality before the court which tried him, because persons arrested on charges of trade-union or political activities are subjected to systematic discrimination before the military courts, i.e., that they are not presumed innocent before the trial. She further states that her father has been prosecuted and held guilty for acts which were not illegal at the time when they were committed. She submits that he was not given a public hearing, since the trial took place in writing, the accused not being present, and that not even the judgement was made public in such cases. She further alleges that the tribunal was not a competent tribunal, since under the Constitution military judges are prohibited from trying civilians. She also claims that the choice of defence counsel was prevented by the systematic harassment of lawyers who tried to take up cases of political prisoners. The author further states that the case is now before the military court of second instance, beyond which it could not go, and that her father is at present held in the "military detention establishment" at Libertad, after having been held before in various other military units.

2.3 The author also points out that her father's right to take part in public affairs was suspended for a period of 15 years up to September 1991 under the provision of the "Institutional Act No. 4" ¹ dated 1 September 1976, ordering the suspension of all political rights of "all candidates for election office, appearing in the 1966 and 1971 election lists of Marxist or pro-Marxist parties or political groups declared illegal by Executive Power resolutions No. 1788/67 of 12 December 1967 and No. 1026/73 of 26 November 1973".

2.4 The author declared that the complaint on behalf of her father had not been submitted for examination under any other procedure of international investigation or settlement. With regard to domestic remedies, the author alleged that there were no effective local remedies, habeas corpus not being applicable under "prompt security measures" when the prisoner was before a military judge, but that, nevertheless, an appeal against the sentence of the first military instance had been lodged, although no appeal was possible against the procedure that led to the sentence of 12 years' imprisonment.

2.5 The author claims that the following provisions of the International Covenant on Civil and Political Rights have been violated by the Uruguayan authorities in respect of her father: 2; 7; 9 (1), (2), (3), (4) and (5); 10 (1), (2) and (3); 12 (2); 14 (1), (2), (3) and (5); 15; 17; 18 (1); 19 (1) and 22 (1 and 3).

3. By its decision of 24 April 1976 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, and requested the author to furnish additional information regarding the progress and outcome, if any, of the appeal lodged and in substantiation of her claim that there were no effective remedies to be exhausted in the case.

4. In response to the Human Rights Committee's request, the author, in her letter dated 11 June 1979, claimed that "judicial" remedies under the military process consisted solely of an appeal against the decision. She stated that that remedy had been used in her father's case, but that it remained ineffective, no decision having been given to date. The author further drew attention to her father's state of health, claiming that he was suffering from various disorders, one of which threatened to blind him. She requested the Committee to call upon the State party to report promptly on her father's state of health.

5. The State party, in its response dated 13 July 1979, stated that the case of Rosario Pietraroia Zapala had been submitted to the Inter-American Commission on Human Rights for consideration. The State party further submitted that Rosario Pietraroia Zapala had been arrested on 7 March 1976 for involvement in subversive activities and detained under emergency measures, that he had been charged ("procesado") on 10 August 1976 before the examining magistrate of the Military Court for of fences committed contrary to articles 60 (V), "subversive association", and 60 (XII) in conjunction with 60 (i).clause 6 of the Military Criminal Code, "conspiracy to violate the Constitution, followed by acts preparatory thereto". The State party further stated that Rosario Pietraroia Zapala had been sentenced on 28 August 1978 to 12 years' imprisonment, that the legal proceedings instituted against him had been entirely consistent with the provisions of the Uruguayan legal code, that he had appeared before a court as soon as his trial began on 10 August 1978 ² and that for his alefence he had benefited at all times from the legal constitutional guarantees.

6. On 14 August 1979, the Human Rights Committee,

(a) Having noted, as regards the question of exhaustion of domestic remedies, that the State party had not raised any objection to the admissibility of the communication on this ground, and

(b) Having ascertained that the case concerning Rosario Pietraroia, which had been submitted to the Inter-American Commission of Human Rights under case No. 2020, had been effectively withdrawn,

Therefore decided:

1. That the communication was admissible;
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 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 of the Covenant alleged to have occurred. That the State party be requested, in this connection, to enclose copies of any court orders or decisions of relevance to the matter under consideration;

4. That the attention of the State party be drawn to the concern expressed by the author of the communication with regard to the state of health of her father and that the State party be requested to furnish information to the Committee thereon.

7. In a further letter, dated 13 August 1979, the author submitted her comments on the State party's submission under rule 91 of the Committee's provisional rules of procedure. Those comments were received after the adoption of the Committee's decision on 14 August 1979. The author reiterated that her father was arrested on 19 January 1976 and that for nearly eight months (from 19 January to 10 August 1976) he had not been brought before any form of judicial authority.

8. In a further note, dated 5 October 1979, the State party submitted its comments on the author's reply of 11 June 1979 to the Human Rights Committee's request for further information under rule 91 of its provisional rules of procedure. Concerning the state of health of Rosario Pietrarroia, the State party informed the Committee that "because of congenital glaucoma, his left eye had to be removed by surgery carried out at the Central Hospital of the Armed Forces three months ago. During his illness, Mr. Pietrarroia enjoyed all the guarantees of medical, surgical and hospital care afforded to all detainees, and his current state of health is good."

9. The six-month time-limit referred to in the Committee's decision of 14 August 1979 expired on 12 April 1980. By a note dated 10 July 1980, the State party submitted its written explanations under article 4 (2) of the Optional Protocol.

10. In that submission, the State party informed the Committee that a judicial decision had been delivered on the appeal lodged by the defence of the alleged victim and gave the following explanations:

On 9 October 1979, the Supreme Military Court rendered a judgement in second instance confirming the judgement of the first instance. Consequently, the author's assertions concerning domestic remedies are wholly groundless, since, at the time of submission of the communication to which this reply refers, the domestic remedies could not be considered to have been exhausted. Furthermore, for the guidance of the Committee, the Government of Uruguay reiterates that the remedies of appeal for reversal and appeal for review may be exercised in respect of final judgements rendered by military courts in second instance. In such cases, the court of justice which hears and delivers a decision on the appeal is formed by five civilian members and two high-ranking officers. With regard to the author's request to be informed about her father's state of health, the Government of Uruguay has already replied to the Committee, explaining the reason for his operation. As he was found to be suffering from congenital glaucoma of the left eye, the eye had to be removed. In the course of that operation, carried out in the Central Hospital of the Armed Forces, and also during his convalescence, Mr. Pietrarroia received constant medical care, just as all detainees needing any kind of intensive care have received and are receiving such care. He is currently being held at Military Detention Establishment M.I, and his state of health is good. All prisoners receive permanent medical care. In addition, they are visited regularly by eye, ear, nose and throat, and heart specialists. Any persons requiring more specialized care and/or

surgical operations are taken to the Central Hospital of the Armed Forces, where they remain as long as is necessary for their recovery.

11. In a further submission, dated 18 August 1980, under rule 93 (3) of the Committee's provisional rules of procedure, the author states that, with regard to the remedies of appeals for reversal and for review, these remedies can only be invoked when the person concerned has served half his sentence, i.e., in her father's case in two years' time. Concerning her father's state of health, she maintained the following:

The deafness from which my father has been suffering since the early months when he was held incommunicado has not been treated, since it was diagnosed as an "old person's complaint"; I must advise the Committee that he had never before had hearing problems. This, together with the problem of his sight, is a consequence of being beaten about the head. As a result of being strung up his spine and collar-bone have been damaged. In early April of the present year, one of his forefingers was operated on because, once bent, it did not return to its normal position, but the operation was a failure because it did not correct the defect and he has been suffering from pain in his hand ever since.

In the barracks where he was detained before being transferred to the Libertad prison, where he is held at present, he put out his knee performing military drill and his leg has not been right since. A short while ago "he fell into a well he had not noticed" and gravely injured his leg, which causes him considerable pain. Finally, his feet get very cold, which is a sign of a serious deterioration in his physical condition. Nevertheless, his morale is high, which accounts for the fact that his physical appearance may seem good.

My father is now 68 years old and unless he receives constant and adequate medical attention, I think that his physical condition will be further undermined in view of the harassment and 'accidents' to which he has been and continues to be exposed.

12. 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". As regards the question of exhaustion of domestic remedies the Committee observes that, notwithstanding the fact that an appeal against the judgement of the first instance was pending at the time of the submission of the communication in January 1979 and at the time the communication was declared admissible on 14 August 1979, the State party did not, in its submissions of 13 July 1979 under rule 91 of the Committee's provisional rules of procedure, raise any objection to the admissibility of the communication on that ground and, in any event, that remedy has since been exhausted. As regards the possibility of invoking the remedies of cassation ("casación") or review ("revisión"), the State party has informed the Committee in several other cases that these remedies are of an exceptional nature. The Committee is not satisfied that they are applicable in the present case and, in any event, to require resort to them would unreasonably prolong the exhaustion of domestic remedies.

13.1 The Human Rights Committee has considered the present communication in the light of all information made available to it by the parties as provided in article 5 (I) of the

Optional Protocol. It hereby decides to base its views on the following facts, which have either been essentially confirmed by the State party, or are uncontested, except for denials of a general character offering no particular information or explanation:

13.2 Rosario Pietraroia Zapala was arrested in Uruguay, without a warrant for arrest, early in 1976 (according to the author on 19 January 1976; according to the State party on 7 March 1976), and held incommunicado under the "prompt security measures" for four to six months. During the first period of his detention he was at least on two occasions committed to the military hospital. His trial began on 10 August 1976, when he was charged by a military court with the offences of "subversive association" ('asociación subversiva") and "conspiracy to violate the Constitution, followed by acts preparatory thereto" ("atentado contra la Constitución en el grado de conspiración seguida de actos preparatorios"). In this connection, the Committee notes that the Government of Uruguay has offered no explanations as regards the concrete factual basis of the offences for which Rosario Pietraroia was charged in order to refute the claim that he was arrested, charged and convicted on account of his prior political and trade-union activities which had been lawful at the time engaged in. In May 1977, the military prosecutor called for a penalty of 12 years' rigorous imprisonment and on 28 August 1978 Rosario Pietraroia was sentenced to 12 years' imprisonment, in a closed trial, conducted in writing and without his presence. His right to a defence counsel of his own choice was curtailed, and the judgement of the court was not made public. On 9 October 1979, the Supreme Military Court rendered a judgement of second instance, confirming the judgement of the first instance. The Committee notes that the State party did not comply with the Committee's request to enclose copies of any court orders or decisions of relevance to the matter under consideration. Pursuant to Acta Institucional No. 4 of 1 September 1976, Rosario Pietraroia is deprived of the right to engage in political activities for 15 years.

14. The Human Rights Committee has considered whether acts and treatment which are prima facie 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 submissions of fact or law to justify such 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.

15. As regards article 19, the Covenant provides 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. The Government of Uruguay has submitted no evidence regarding the nature of the activities in which Rosario Pietraroia was alleged to have been engaged and which led to his arrest, detention and committal for trial. Bare information from the State party that he was charged with subversive association and conspiracy to violate the Constitution, followed by preparatory acts thereto, is not in itself sufficient, without details of the alleged charges and copies of the court proceedings. The

Committee is therefore unable to conclude on the information before it that the arrest, detention and trial of Rosario Pietraroia was justified on any of the grounds mentioned in article 19 (3) of the Covenant.

16. The Human Rights Committee is aware that the sanction of deprivation of certain political rights is provided for in the legislation of some countries. Accordingly, article 25 of the Covenant prohibits "unreasonable" restrictions. In no case, however, may a person be subjected to such sanctions solely because of his or her political opinion (arts. 2 (1) and 26). Furthermore, the principle of proportionality would require that a measure as harsh as the deprivation of all political rights for a period of 15 years be specifically justified. No such attempt has been made in the present case.

17. 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 occurred after 23 March 1976 (the date on which the Covenant entered into force in respect of Uruguay), disclose violations of the Covenant, in particular of:

Article 9 (2), because Rosario Pietraroia Zapala was not duly informed of the charges against him;

Article 9 (3), because he was not brought promptly before a judge or other officer authorized by law to exercise judicial power and because he was not tried within a reasonable time;

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

Article 10 (1), because he was held incommunicado for months;

Article 14 (1), because he had no fair and public hearing and because the judgement rendered against him was not made public;

Article 14 (3), because he did not have access to legal assistance during his detention incommunicado and was not tried in his presence;

Article 15 (1), because the penal law was applied retroactively against him;

Article 19 (2), because he was arrested, detained and tried for his political and trade-union activities;

Article 25, because he is barred from taking part in the conduct of public affairs and from being elected for 15 years, in accordance with Acta Institucional No. 4 of 1 September 1976.

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

1/ see also cases Nos. 5/1977 (p. 37), 10/1977 (p. 6), 28/1978 (p. 57) and 34/1978 (p. 65).

2/ This may be a typing error in the State party's submission. From the context, the correct date would appear to be 10 August 1976.