

HUMAN RIGHTS COMMITTEE

Altesor v. Uruguay

Communication No. R.2/10

29 March 1982

VIEWS

Submitted by: Alice Altesor and Victor Hugo Altesor

Alleged victim: Alberto Altesor

State party concerned: Uruguay

Date of communication: 10 March 1977 (date of initial letter)

Date of decision on admissibility: 29 October 1980

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

Meeting on 29 March 1982,

Having concluded its consideration of communication No. R.2/10, submitted to the Committee by Alice Altesor and Victor Hugo Altesor, 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 authors of the communication and by the State party concerned,

Adopts the following:

Views under article 5(4) of the Optional Protocol

1. The authors of the communication (initial letter dated 10 March 1977 and further letters dated 1 August and 26 November 1977, 19 May 1978, 16 April 1979, 10 June 1980 and 28 January and 6 October 1981) are Uruguayan nationals, residing in Mexico. They submitted the communication on behalf of their father, Alberto Altesor Gonzalez, a 68-year-old Uruguayan citizen, a former trade union leader and member of the Uruguayan Chamber of

Deputies, alleging that he is arbitrarily detained in Uruguay.

1.2 The authors of the communication state that their father was arrested in Montevideo on 21 October 1975 without any formal charges brought against him. Although the fact of his arrest and the place of his imprisonment were not made public, the writers claim that from information provided by eye-witnesses arrested at the same time and subsequently released, it can be affirmed that their father was first detained in a private house and afterwards at the Battallon de Infanteria No. 3. There he was allegedly subjected to beatings and electric shocks, forced to remain standing for a total of more than 400 hours, and strung up for long periods, although shortly before his arrest he had undergone a heart operation which saved his life but at the same time made it necessary for him to observe very strict rules regarding work, diet and medication. On 14 December 1975 he was transferred to the Batallon de Artilleria No. 5, where he remained handcuffed, hooded and in absolute solitary confinement. He was later moved to the Libertad prison. He was detained under the "prompt security measures" and was not brought before a judge until over 16 months after his arrest, when he was ordered to be tried, allegedly on no other charge than that of his public and well-known trade union and political militancy. He has been deprived of his political rights under Acta Institucional No. 4 of 1 September 1976.

1.3 The authors further contend that in practice internal recourses in Uruguay are totally ineffective and that the recourse of habeas corpus is denied by the authorities to persons detained under the prompt security measures.

1.4 In a further submission, dated 1 August 1977, the authors allege that in view of their father's very poor state of health, interim measures should be taken, in accordance with rule 86 of the rules of procedure of the Committee, in order to avoid irreparable damage to their father's health and life. The authors claim that the following provisions of the International Covenant on Civil and Political Rights have been violated: articles 7 (1), 9 (3) and (4), 10 (2) (a) and (3), and 25 (a), (b) and (c).

2. By its decision of 26 August 1977, the Human Rights Committee transmitted the communication under rule 91 of the provisional rules to the State party concerned requesting information and observations relevant to the question of admissibility of the communication, as well as information concerning the state of health of the alleged victim.

3. By a note dated 27 October 1977, the State party objected to the admissibility of the communication on two grounds: (a) that the same matter was already being examined by the Inter-American Commission on Human Rights (IACHR) as case No. 2112 and (b) that the alleged victim had not exhausted all available domestic remedies.

4. By a further decision of 26 January 1978 the Committee:

(a) Informed the authors of the communication of the State party's objection on the ground that a case concerning their father was already under examination by IACHR, as case No. 2112, and solicited their comments thereon;

(b) Informed the State party that, in the absence of more specific information concerning the domestic remedies said to be available to the author of this communication and the effectiveness of those remedies as enforced by the competent authorities in Uruguay, the Committee was unable to accept that he had failed to exhaust such remedies and the communication would therefore not be considered inadmissible in so far as exhaustion of domestic remedies was concerned, unless the State party gave details of the remedies which it submitted had 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;

(c) Expressed concern over the fact that the State party had, so far, furnished no information on Alberto Altesor's state of health, urged the State party as a matter of urgency to arrange for him to be examined by a competent medical board and requested the State party to furnish it with a copy of the board's report.

5.1 By a note dated 14 April 1978, the State party reiterated that the same matter was before IACHR and it submitted information which consisted of a general description of the rights available to the accused persons in the military criminal tribunals and of the domestic remedies at their disposal as means of protecting and safeguarding their rights under the Uruguayan judicial system. The State party also stated the following concerning Alberto Altesor:

"He was a member of the Executive Committee of the Communist Party and was responsible for the so-called fourth section of the prohibited communist party, i.e. the infiltration of the armed forces. He was arrested owing to his connection with the clandestine and subversive activity of the said unlawful organization on 21 October 1975 and placed in custody under the prompt security measures. Subsequently he was brought before the military examining judge of the first circuit; on 24 September 1976 the judge ordered him to be placed on trial, charged with the offence referred to in article 60 (V) of the Military Criminal Code concerning subversive associations."

5.2 Concerning the state of health of Alberto Altesor, the State party submitted that Alberto Altesor Gonzalez underwent surgery on 26 December 1974 for a slight aortic stenosis, that he was entirely exempt from any kind of task involving physical effort, that he was given a diet suitable for the disease and was under medical supervision, that the conditions under which Altesor was detained were governed by the rules of the prison establishment which are generally applicable to all ordinary offenders and which make adequate provision for recreation, visits, correspondence, etc.; that a panel of doctors had been asked to examine Alberto Altesor and that the opinion of this panel of doctors was going to be communicated to the Committee in due course. The medical report was received on 5 October 1979 and transmitted to the authors of the communication for information.

6. Further proceedings before the Human Rights Committee were considerably delayed owing, first, to the authors' repeated efforts to conceal the fact that they were indeed also the authors of case No. 2112 before IACHR and, thereafter, by their statements, which could not be confirmed, that they had withdrawn case No. 2112 from consideration by IACHR. Finally, on 10 June 1980, the authors furnished the Human Rights Committee with a copy

of their withdrawal request by the secretariat of IACHR. The Committee has however ascertained that the case concerning Alberto Altesor continues to be pursued by IACHR, on the basis of a new complaint from an unrelated third party, submitted to IACHR in March 1979.

7.1 For the determination of admissibility of the communication which the Committee had before it, the following facts were established:

(a) Alice and Victor Hugo Altesor submitted their father's case to IACHR in October 1976;

(b) They submitted their father's case to the Human Rights Committee on 10 March 1977;

(c) In March 1979, an unrelated third party complained to IACHR about the situation of Alberto Altesor;

(d) By letter of 6 May 1980, Alice and Victor Hugo Altesor withdrew their submission from consideration by IACHR.

7.2 The Committee concluded that it was not prevented from considering the communication submitted to it by the authors on 10 March 1977 by reason of the subsequent complaint made by an unrelated third party under the procedures of IACHR. Accordingly the Committee found that the communication was not inadmissible under article 5 (2) (a) of the Optional Protocol.

7.3 With regard to the exhaustion of local remedies, the Committee was unable to conclude, on the basis of the information before it that there were remedies available to the alleged victim which he should have pursued. Accordingly, the Committee found that the communication was not inadmissible under article (5) (2) (b). of the Optional Protocol.

8. The Human Rights Committee therefore decided on 29 October 1980:

(1) That the Communication was admissible, and that the authors were justified in acting on behalf of their father;

(2) That the authors should be requested to clarify without delay, and not later than six weeks from the date of the transmittal of the present decision to them, which of the events previously described by them were alleged to have occurred on or after 23 March 1976 (the date on which the International Covenant on Civil and Political Rights entered into force for Uruguay) and to provide the Committee with detailed information (including relevant dates) as to their present knowledge about their father's treatment and situation after 23 March 1976;

(4) 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 any submission received from the authors of the communication pursuant to operative paragraph 2 above, written explanations and statements clarifying the matter and the remedy,

if any, that may have been taken by it;

(5) That the State party be informed that the written explanations or statements submitted by it under article 4 (2) of the Optional Protocol must relate primarily to the substance of the matter under consideration. The Committee stressed that, in order to perform its responsibilities, it required specific and detailed responses to each and every allegation made by the authors of the communication, and the State party's explanations of the actions taken by it. The State party was requested, in this connexion, to enclose copies of any court orders or decisions of relevance to the matter under consideration;

(7) That, further to the requests set out in operative paragraphs 4 and 5 above, the State party be requested to furnish the Committee, as soon as possible, with information concerning the present state of health of Alberto Altesor, considering that the latest information from the State party on this point was dated 5 October 1979.

9.1 On 28 January 1981 the authors submitted further information and clarifications pursuant to paragraph 2 of the Committee's decision of 29 October 1980.

9.2 With regard to acts which allegedly occurred or continued or had effects which themselves constituted a violation of the Covenant after 23 March 1976, the authors maintain that all the alleged violations of the International Covenant on Civil and Political Rights occurred or continued to make their effects felt after that date. In particular the authors indicate that their father was kept in solitary confinement without being brought before a judge for 16 months, 11 of which were after the date on which the Covenant entered into force for Uruguay.

9.3 The authors further allege that violations of the Covenant occurred not only after its entry into force, but also after this communication was filed with the Committee, including specific violations of article 14, *inter alia*, that Alberto Altesor was not tried until 1977 (i.e. after undue delay), that he was tried by a military and not by a civilian court, that the judge was not competent, independent or impartial, that the accused was not promptly informed of the charges against him, that he was not allowed to defend himself in person, that there was no public hearing, and that the witnesses on his behalf were not allowed to be examined under the same conditions as the witnesses against him. The authors also allege procedural irregularities in the trial, including the sentencing of Alberto Altesor to eight years' imprisonment, although the prosecution had allegedly asked only for a sentence of six years. Although more than five years have elapsed since his arrest (at the time of writing in January 1981), his case is supposedly still in a court of second instance.

9.4 With regard to Alberto Altesor's state of health, the authors allege that he has been a patient at the Military Hospital since 29 December 1980; before that, at the Libertad prison, he had been found to be suffering from chest pains, fainting and loss of weight.

10.1 In its submission under article 4 (2) of the Optional Protocol, dated 21 August 1981, the State party rejects the authors' assertion in their submission of 28 January 1981 that article 14 of the Covenant was violated because Alberto Altesor was tried by a military and

not by a civilian tribunal, referring to the Uruguayan law No. 14068 (State Security Act), which establishes the jurisdiction of military courts over offences against the State, including the offences of "subversive association" and "action to upset the Constitution" of which Mr. Altesor was accused. The State party further asserts that due procedural guarantees were observed during the trial, and that Alberto Altesor had court-appointed counsel.

10.2 With regard to the authors' assertion that the case is still pending in a court of second instance, the State party explains that this is incorrect and that the court of second instance confirmed the judgement of the court of first instance on 18 March 1980.

10.3 The State party also rejects the assertion that Alberto Altesor is being subjected to persecution because of his political ideas.

10.4 With regard to Alberto Altesor's state of health, the State party indicates that he underwent medical examination on 20 March 1981, without, however, specifying the result of the examination. The State party adds that it has communicated to the authors via the Uruguayan Embassy in Mexico that the Government of Uruguay is prepared to carry out any further medical examinations and treatment as may be required by Alberto Altesor's state of health.

11.1 In a further letter dated 6 October 1981 the authors refer to the State party's submission under article 4 (2), and claim that it does not answer their specific complaints Of violations of guarantees embodied in the Covenant. The fact that their father was brought before the military courts because of the terms of a particular Uruguayan law cannot alter the essence of the matter: "that the procedure applied in this way is lacking in internationally established guarantees".

11.2 With respect to their allegation that the sentence against their father was politically motivated, they indicate that the State party still has not specifically stated which acts the detainee committed in order to warrant his present situation..

11.3 The authors also declare that they never received any information about their father's state of health through the Embassy of Uruguay in Mexico.

12.1 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 (1) of the Optional Protocol. The Committee bases its views on the following facts:

12.2 Alberto Altesor was arrested in Montevideo on 21 October 1975 and placed in custody under the prompt security measures. Recourse to habeas corpus was not available to him. On 24 September 1976 a military judge ordered him to be placed on trial, charged with the offence referred to in article 60 (V) of the Military Criminal Code concerning "subversive association". The court of first instance sentenced him to eight years' imprisonment (the Committee is not informed of the date of this decision).. The court of second instance confirmed the judgement of the court of first instance on 18 March 1980.

13.1 In formulating its views the Human Rights Committee also takes into account the following considerations, which reflect a failure by both parties to furnish the information and clarifications necessary for the Committee to formulate final views on a number of important issues:

13.2 In operative paragraph 2 of its decision on admissibility of 29 October 1980, the Committee requested the authors to clarify which of the events previously described by them were alleged to have occurred on or after 23 March 1976 (the date on which the Covenant entered into force for Uruguay) and to provide detailed information as to their present knowledge about their father's treatment after this date. The Committee notes that the authors' reply on 28 January 1981 and their submission of 6 October 1981 do not furnish the Committee with any further precise information to enable it to establish with certainty what in fact occurred after 23 March 1976. The authors claim that, based on information provided by eye-witnesses arrested at the same time as Alberto Altesor and subsequently released, their father was subjected to torture following his arrest. No eye-witness testimonies have been furnished, nor a clear indication of the time-frame involved. The authors have however explained that the "mistreatment which he suffered earlier, to the point of having to be hospitalized, is not inflicted on him at present".

13.3 With respect to the date when Alberto Altesor was first brought before a judge, the authors claim that he was kept incommunicado and not brought before a judge for over 16 months after his arrest. The State party's explanations in its note of 14 April 1978 are ambiguous in this respect: "Fue detenido ... el 21/10/75 e internado al amparo de las medidas prontas de seguridad. Con posterioridad fue sometido al juez militar de instruccion de ler. turno quien con fecha 24 de Septiembre de 1976 dispuso su procesamiento ...". The Committee cannot determine whether "con posterioridad" (subsequently) means that Alberto Altesor was brought before a judge within a reasonable time; nor is it clear whether "fue somerico al juez militar" means that he was brought personally before the judge or whether his case was merely submitted to the judge in writing or in the presence of a legal representative. The State party should have clearly stated the precise date when Alberto Altesor was brought personally before a judge, since article 9 (3) of the Covenant requires that "Anyone arrested or detained on a criminal charge shall be brought promptly before a judge." Without that statement, the State party has failed to rebut the authors' allegation that their father was not brought before a judge until after 16 months of detention. The fact that Alberto Altesor was committed for trial by a military judge of 24 September 1976 (i.e. over 11 months after his arrest), does not adequately clarify the matter.

13.4 The authors claim that their father was arrested because of his political activities. In reply, the State party stated that Alberto Altesor headed a section of the proscribed Communist Party believed to be engaged in the infiltration of the armed forces, and that he was arrested owing to his connexion with the clandestine and subversive activity of the said unlawful organization. The State party has not furnished any court decision or other information as to the specific nature of the activities in which Alberto Altesor was alleged to have been engaged and which led to his detention.

13.5 In operative paragraph 5 of its decision of 29 October 1980 the Committee requested

the State party to furnish specific and detailed responses to each and every allegation made by the authors. The Committee observes that the State party's submission under article 4 (2) of the Optional Protocol, dated 21 August 1981, does not constitute sufficient refutation with regard to various of the allegations made by the authors. The State party's general statements that "the trial was held with all due guarantees" and that Alberto Altesor had "counsel as required by law" are insufficient to rebut the allegations that the accused was not promptly informed of the charges against him, that he was not allowed to defend himself in person, that there was no public hearing, and that defence witnesses were not examined under the same conditions as witnesses against him. The State party has not responded to the Committee's request that it should be furnished with copies of any court orders or decisions relevant to the matter. The Committee is seriously concerned by this omission. Although similar requests have been made in a number of other cases, the Committee has never yet been furnished with the texts of any court decisions. In such circumstances, the Committee feels unable, on the basis of the information before it, to accept the State party's contention that Alberto Altesor had a fair trial.

14. As to the authors' allegation that the enactment of Acta Institucional No. 4 of 1 September 1976, which curtailed the political rights of various categories of citizens, made their father a victim of violations of article 25 of the Covenant, the Committee refers to the considerations reflected in its views on a number of other cases (e.g. in R.7/28, R.7/32, R.8/34 and R.10/44), concerning the compatibility of Acta Institucional No. 4 with the provisions of article 25 of the Covenant, which proscribes "unreasonable restrictions" on the enjoyment of political rights. It has been the Committee's considered view that this enactment which deprives all citizens, who as members of certain political groups had been candidates in the elections of 1966 and 1971, of any political rights for a period as long as 15 years is an unreasonable restriction of the political rights protected by article 25 of the Covenant.

15. 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 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,(3), because Alberto Altesor was not brought promptly before a judge or other officer authorized by law to exercise judicial power;

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

of article 10 (1), because he was held incommunicado for several months;

of article 14 (1) and (3), because he did not have a fair and public hearing;

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

16. The Committee, accordingly, is of the view that the State party is under an obligation to provide the victim with effective remedies, including compensation, for the violations which he has suffered and to take steps to ensure that similar violations do not occur in the future. The State party should also ensure that Alberto Altesor receives all necessary medical care.

Notes

a/ The relevant part of the Act reads as follows:

"... The Executive Power, in exercise of the powers conferred on it by the institutionalization of the revolutionary process,

DECREES:

"Art. 1. The following shall be prohibited, for a term of 15 years, from engaging in any of the activities of a political nature authorized by the Constitution of the Republic, including the vote:

"(a) All candidates for elective office on the lists for the 1966 and 1971 elections of the Marxist and pro-Marxist Political Parties or Groups declared illegal by the resolutions of the Executive Power No. 1788/67 of 12 December 1967 and No. 1026/73 of 26 November 1973; ..."