

HUMAN RIGHTS COMMITTEE

Casariago v. Uruguay

Communication No. 56/1979

29 July 1981

VIEWS

Submitted by: Lilian Celiberti de Casariago on 17 July 1979

Alleged victim: The author

State party: Uruguay

Date of adoption of views: 29 July 1981 (thirteenth session)

Views under articles 5 (4) of the Optional Protocol¹

1. The author of the communication (initial letter dated 17 July 1979 and further letters dated 5 and 20 March 1980), is Francesco Cavallaro, practicing lawyer in Milan, Italy, acting on behalf of Lilian Celiberti de Casariago, who is imprisoned in Uruguay. The lawyer has submitted a duly authenticated copy of a General Power of Attorney to act on her behalf.

2.1 In his submission of 17 July 1979 the author of the communication alleges the following:

2.2 Since 1974 Lilian Celiberti de Casariago, a Uruguayan citizen by birth and of Italian nationality based on jus sanguinis, had been living in Milan, Italy, with her husband and two children. Mrs. Celiberti had been authorized to leave Uruguay in 1974. While in Uruguay she had been an active member of the Resistencia Obrero-Estudiantil and in this connection she had been arrested for "security reasons", and subsequently released, several times. In 1978 Mrs. Celiberti, her two children (3 and 5 years of age) and Universindo Rodriguez Diaz, a Uruguayan exile living in Sweden, traveled to Porto Alegre (Brazil) purportedly to contact Uruguayan exiles living there. The author claims that, based on information gathered, inter alia, by representatives of private international organizations, the Lawyers' Association in Brazil, journalists, Brazilian parliamentarians and Italian authorities, Mrs. Celiberti was arrested on 12 November 1978 together with her two children and Universindo Rodriguez Diaz in their apartment, in Porto Alegre, by Uruguayan agents with the connivance of two Brazilian police officials (against whom relevant charges have been brought by Brazilian authorities in this connection). From 12 November probably to 19 November 1978, Mrs. Celiberti was detained in her apartment in Porto Alegre. The children

were separated from their mother and were kept for several days in the office of the Brazilian political police. The mother and the children were then driven together to the Uruguayan border where they were separated again. The children were brought to Montevideo (Uruguay) where they remained for 11 days in a place together with many other children before being handed over on 25 November 1978 by a judge to their maternal grandparents. Mrs. Celiberti was forcibly abducted into Uruguayan territory and kept in detention. On 25 November 1978 the Fuerzas Conjuntas of Uruguay publicly confirmed the arrest of Mrs. Celiberti, her two children and Mr. Universindo Rodriguez Diaz, alleging that they had tried to cross the Brazilian-Uruguayan border secretly with subversive material. Until 16 March 1979, Mrs. Celiberti was held incommunicado. At that time she was detained in Military Camp No. 13, but neither her relatives nor other persons, including representatives of the Italian Consulate, were allowed to visit her. On 23 March 1979, it was decided to charge her with "subversive association", "violation of the Constitution by conspiracy and preparatory acts thereto" and with other violations of the Military Penal Code in conjunction with the ordinary Penal Code. She was ordered to be tried by a Military Court. It was further decided to keep her in "preventive custody" and to assign an ex officio defense lawyer to her.

2.3 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 Lilian Celiberti de Casariego: articles 9, 10 and 14.

3. On 10 October 1979, 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.

4.1 By a note dated 14 December 1979 the State party objected to the admissibility of the communication on the ground that the same matter had been submitted to the Inter-American Commission on Human Rights and referred to case No. 4529, dated 15 August 1979.

4.2 In a further submission dated 5 March 1980, the author states that, as the legal representative of Lilian Celiberti de Casariego, he cannot rule out the possibility of her case having been submitted to the Inter-American Commission on Human Rights. He claims, however, that the Human Rights Committee's competence is not excluded for the following reasons: (a) the communication relating to Mrs. Celiberti was submitted to the Human Rights Committee on 17 July 1979, i.e., before the matter reached the Inter-American Commission on Human Rights; (b) if the case was submitted to the Inter-American Commission on Human Rights by a third party, this cannot prejudice the right of the legal representative of Mrs. Celiberti to choose the international body to protect her interests.

5. On 2 April 1980, the Human Rights Committee, (a) Having ascertained from the secretariat of the Inter-American Commission on Human Rights that a case concerning Lilian Celiberti was submitted by an unrelated third party and opened on 2 August 1979 under No. 4529,

(b) Concluding that it is not prevented from considering the communication submitted to it by Mrs. Celiberti's legal representative on 17 July 1979 by reason of the subsequent opening

of a case by an unrelated third party under the procedure of the Inter-American Commission on Human Rights,

(c) 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 29 October 1980. Up to date no such submission has been received from the State party.

7. The Human Rights Committee notes that it has been informed by the Government of Uruguay in another case (No. 9/1977, *Edgardo D. Santullo Valcada v. Uruguay*) that the remedy of habeas corpus is not applicable to persons detained under the "prompt security measures".

8. 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 as set out by the author in the absence of any comments thereupon by the State party.

9. On 12 November 1978 Lilian Celiberti de Casariego was arrested in Porto Alegre (Brazil) together with her two children and with Universindo Rodriguez Diaz. The arrest was carried out by Uruguayan agents with the connivance of two Brazilian police officials. From 12 to 19 November 1978, Mrs. Celiberti was detained in her apartment in Porto Alegre and then driven to the Uruguayan border. She was forcibly abducted into Uruguayan territory and kept in detention. On 25 November 1978 the Fuerzas Conjuntas of Uruguay publicly confirmed the arrest of Mrs. Celiberti, her two children and Mr. Universindo Rodriguez Diaz, alleging that they had tried to cross the Brazilian Uruguayan border secretly with subversive material. Until 16 March 1979, Mrs. Celiberti was held incommunicado. On 23 March 1979, she was charged with "subversive association", "violation of the Constitution by conspiracy and preparatory acts thereto", and with other violations of the Military Penal Code in conjunction with the ordinary Penal Code. She was ordered to be tried by a Military Court. She was ordered to be kept in "preventive custody" and assigned an ex officio defense lawyer.

10.1 The Human Rights Committee observes that although the arrest and initial detention

of Lilian Celiberti de Casariego allegedly took place on foreign territory, the Committee is not barred either by virtue of article 1 of the Optional Protocol ("... individuals subject to its jurisdiction ... ") or by virtue of article 2 (1) of the Covenant ("... individuals within its territory and subject to its jurisdiction ...") from considering these allegations, together with the claim of subsequent abduction into Uruguayan territory, inasmuch as these acts were perpetrated by Uruguayan agents acting on foreign soil.

10.2 The reference in article 1 of the Optional Protocol to "individuals subject to its jurisdiction" does not affect the above conclusion because the reference in that article is not to the place where the violation occurred, but rather to the relationship between the individual and the State in relation to a violation of any of the rights set forth in the Covenant, wherever they occurred.

10.3 Article 2 (1) of the Covenant places an obligation upon a State party to respect and to ensure rights "to all individuals within its territory and subject to its jurisdiction", but it does not imply that the State party concerned cannot be held accountable for violations of rights under the Covenant which its agents commit upon the territory of another State, whether with the acquiescence of the Government of that State or in opposition to it. According to article 5 (1) of the Covenant:

Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.

In line with this, it would be unconscionable to so interpret the responsibility under article 2 of the Covenant as to permit a State party to perpetrate violations of the Covenant on the territory of another State, which violations it could not perpetrate on its own territory.

11. 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 the facts as found by the Committee, disclose violations of the International Covenant on Civil and Political Rights, in particular of:

Article 9 (1), because the act of abduction into Uruguayan territory constituted an arbitrary arrest and detention;

Article 10 (1), because Lilian Celiberti de Casariego was kept incommunicado for four months;

Article 14 (3) (b), because she had no counsel of her own choosing;

Article 14 (3) (c), because she was not tried without undue delay.

12. The Committee, accordingly, is of the view that the State party is under an obligation, pursuant to article 2 (3) of the Covenant, to provide Lilian Celiberti de Casariego with

effective remedies, including her immediate release, permission to leave the country and compensation for the violations which she has suffered, and to take steps to ensure that similar violations do not occur in the future.

1/ The text of an individual opinion submitted by a Committee member is appended to these views.

Appendix

Individual opinion submitted by a member of the Human Rights Committee under rule 94 (3) of the Committee's provisional rules of procedure
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Individual opinion appended to the Committee's views at the request of Mr. Christian Tomuschat:

I concur in the views expressed by the majority. None the less, the arguments set out in paragraph 10 for affirming the applicability of the Covenant also with regard to those events which have taken place outside Uruguay need to be clarified and expanded. Indeed, the first sentence in paragraph 10.3, according to which article 2 (1) of the Covenant does not imply that a State party "cannot be held accountable for violations of rights under the Covenant which its agents commit upon the territory of another State", is too broadly framed and might therefore give rise to misleading conclusions. In principle, the scope of application of the Covenant is not susceptible to being extended by reference to article 5, a provision designed to cover instances where formally rules under the Covenant seem to legitimize actions which substantially run counter to its purposes and general spirit. Thus, Governments may never use the limitation clauses supplementing the protected rights and freedoms to such an extent that the very substance of those rights and freedoms would be annihilated; individuals are legally barred from availing themselves of the same rights and freedoms with a view to overthrowing the regime of the rule of law which constitutes the basic philosophy of the Covenant. In the present case, however, the Covenant does not even provide the pretext for a "right" to perpetrate the criminal acts which, according to the Committee's conviction, have been perpetrated by the Uruguayan authorities.

To construe the words "within its territory" pursuant to their strict literal meaning as excluding any responsibility for conduct occurring beyond the national boundaries would, however, lead to utterly absurd results. The formula was intended to take care of objective difficulties which might impede the implementation of the Covenant in specific situations. Thus, a State party is normally unable to ensure the effective enjoyment of the rights under the Covenant to its citizens abroad, having at its disposal only the tools of diplomatic protection with their limited potential. Instances of occupation of foreign territory offer

another example of situations which the drafters of the Covenant had in mind when they confined the obligation of States parties to their own territory. All these factual patterns have in common, however, that they provide plausible grounds for denying the protection of the Covenant. It may be concluded, therefore, that it was the intention of the drafters, whose sovereign decision cannot be challenged, to restrict the territorial scope of the Covenant in view of such situations where enforcing the Covenant would be likely to encounter exceptional obstacles. Never was it envisaged, however, to grant States parties unfettered discretionary power to carry out wilful and deliberate attacks against the freedom and personal integrity of their citizens living abroad. Consequently, despite the wording of article 2 (1), the events which took place outside Uruguay come within the purview of the Covenant.