

HUMAN RIGHTS COMMITTEE

Viana v. Uruguay

Communication No. 110/1981

29 March 1984

VIEWS

Submitted by: Antonio Viana Acosta

Alleged victims: The author

State party concerned: Uruguay

Date of communication: 12 August 1981

Date of decision on admissibility: 31 March 1983

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

Meeting on 29 March 1984;

Having concluded its consideration of communication No. R.25/110 submitted to the Committee by Antonio Viana Acosta 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 author of the communication and by the State party concerned;

Adopts the following:

Views under article 5 (4) of the Optional Protocol

1. The author of the communication (initial letter dated 12 August 1981 and further submissions dated 26 October 1981, 27 September 1982 and 11 June and 22 November 1983) is a Uruguayan national, residing at present in Sweden. He submits the communication on his own behalf.

2.1 The author (born on 30 October 1949) describes the background to the case as follows. Between 1969 and 1971 when he worked for Senator Zelmar Michelini of the Uruguayan opposition party Frente Amplio he was arrested several times on the suspicion of association with subversive movements but no charges were ever retained against him. After the defeat of Senator Michelini's party in the elections of November 1971, he left Uruguay with his family for Buenos Aires, Argentina. He continued to work for Zelmar Michelini, mostly as a Journalist.

2.2 The author alleges that on 24 February 1974 he was kidnapped by a Joint Uruguayan-Argentinian commando at his home in Buenos Aires, Argentina. After having been subjected to severe torture at several places of detention and interrogated with a view to making him admit that he had been involved in the activities of the Argentinian ERP (Ejercito Revolucionario del Pueblo) and the Uruguayan MLN (Movimiento de Liberacion Nacional, Tupamaros) he was brought on 4 April 1974 to the Metropolitan Airport of Buenos Aires, where he met his family. They were put on a regular flight to Montevideo, Uruguay. Members of the Uruguayan police were waiting for them at Carrasco Airport and they were taken to police headquarters.

2.3 The author claims to have been held at the following detention places in Uruguay: Batallon de Infanteria No. 12, where he allegedly was tortured for two months in 1974, and Batallon de Infanteria No. 11, where he was also subjected to torture of which he gives a detailed description. On 23 December 1974 he was taken to Libertad prison, where he remained until his "advanced release" on 13 February 1981. On 24 October 1974 he was brought before a judge to be indicted. Subsequently his wife was released. The background to the case, as described above, relates to events said to have taken place prior to the entry into force of the International Covenant on Civil and Political Rights for Uruguay on 23 March 1976.

2.4 On 26 April 1976 the author was taken before a military tribunal of first instance (Juzgado Militar de Primera Instancia, 5 Turno). There he replied to a questionnaire prepared by his defence lawyer, Dra. Maria Elena Martinez Salgueiro. The military judge, Colonel Eduardo Silva, listened to his replies but no witnesses were heard. The author then was taken back to Libertad prison and held there incommunicado. His defence lawyer was informed two weeks later that he indeed was at Libertad prison but that no visits were allowed. Before the tribunal of first instance the author was charged with subversive association and sentenced to seven years' imprisonment.

2.5 On 18 April 1977 the author was taken before the Supreme Military Tribunal and new charges were brought against him, such as attempting to subvert the Constitution at the level of conspiracy followed by preparatory acts, possession of arms and explosives and use of false identity papers. On that date the author was sentenced to 14 years' imprisonment.

2.6 The author states that both his first and second defence lawyers, Dr. Martinez Salgueiro and Dra. Susana Andreason, had to renounce his defence in 1976 and later to leave the country. Before the Supreme Military Tribunal the author had to accept a military ex officio counsel, Colonel Otto Gilomen, although a civilian defence lawyer, Jose Korsenak Fuks, was

ready to take up his defence.

2.7 The author alleges that in 1976 he was subjected to psychiatric experiments (giving the name of the doctor) and that for three years, against his will, he was injected with tranquilizers every two weeks. He alleges in this connection that in May 1976 when he put up resistance to the injections, Captain X (name is given) ordered a group of soldiers to subdue him forcibly in order to inject the drug and that he was subsequently held incommunicado in a punishment cell for 45 days. He further claims, without providing any detail, that on 14 and 15 April 1977 he was interrogated and subjected to torture at Libertad prison, that on 22 November 1978 he was again subjected to torture (giving the names of his torturers in both instances), that he started a hunger strike protesting against this ill-treatment and that in retaliation he was held incommunicado in a punishment cell for 45 days without any medical attention. He claims that in April 1980 he was again held incommunicado because he had spoken with members of the International Red Cross visiting Libertad prison. The author lists the names of several Uruguayan officials who allegedly practised torture.

2.8 The author states that he was released on 13 February 1981 under the regime of "advanced release", that he had to report every day to a particular unit and that he did so from 13 February up to 14 April 1981 when he went to Brazil. He states that his family continues to be subjected to harassment in Uruguay.

2.9 With regard to the question of admissibility, the author states that he has not submitted his case to another procedure of international investigation or settlement. He further alleges that, because of the state of lawlessness prevailing in Uruguay with regard to cases submitted to military jurisdiction, there are no further domestic remedies which could be invoked.

2.10 The author claims that he is a victim of violations of articles 7, 8, 9, 10 (paras. 1, 2 and 3), 12, 14, 16, 17, 18, 19 (paras. 1 and 2), 21, 22, 25 and 26 of the International Covenant on Civil and Political Rights.

3. By its decision of 16 March 1982 the Working Group of the Human Rights Committee decided to transmit the communication under rule 91 of the Committee's provisional rules of procedure to the State party concerned, requesting information and observations relevant to the question of admissibility of the communication.

4. By a note dated 18 August 1982 the State party informed the Committee that the Government of Uruguay wished to state that, in view of article 1 of the Optional Protocol to the International Covenant on Civil and Political Rights, which provides that a State party to the Covenant recognizes the competence of the Committee to receive and consider communications "from individuals subject to its jurisdiction", it considered the communication in question to be inadmissible. Mr. Viana Acosta was not entitled to request the implementation of the machinery provided for in the Covenant because, once he was unconditionally released on 5 April 1981, he left the country to live abroad and he was therefore not subject to the jurisdiction of the Uruguayan State. The Government of Uruguay nevertheless wished to explain that the author of the communication was not a "political prisoner" but, rather a common criminal who was connected with the seditious "Tupamaros"

movement and was tried for the offence of "aiding and abetting a conspiracy to subvert".

5. Commenting on the State party's submission, the author argued, in his letter of 27 September 1982, that it was impossible for him to submit the communication from his own country, since no individual guarantees existed there.

6. When discussing the admissibility of the communication the Human Rights Committee observed that the events complained of allegedly occurred in Uruguay while the author was subject to the jurisdiction of Uruguay. The Committee recalled that, by virtue of article 2, paragraph 1 of the Covenant, each State party undertakes to respect and to ensure to "all individuals within its territory and subject to its jurisdiction" the rights recognized in the Covenant. Article 1 of the Optional Protocol was clearly intended to apply to individuals subject to the jurisdiction of the State party concerned at the time of the alleged violation of the Covenant. This was manifestly the object and purpose of article 1.

7. On the basis of the information before it, the Committee found that it was not precluded by article 5, paragraph 2 (a), of the Optional Protocol from considering the communication, as there was no indication that the same matter had been submitted to another procedure of international investigation or settlement. The Committee was also unable to conclude that in the circumstances of this case there were effective remedies available to the alleged victim which he had failed to exhaust. Accordingly, the Committee found that the communication was not inadmissible under article 5, paragraph 2 (b), of the Optional Protocol.

8. On 31 March 1983, the Human Rights Committee therefore decided:

1. That the communication was admissible in so far as it related to events which allegedly continued or took place after 23 March 1976, the date on which the Covenant and the Optional Protocol entered into force for Uruguay;

2. That the author be requested to submit to the Committee, within six weeks of the date of transmittal of this decision, further, more precise information (together with any relevant medical reports) concerning the psychiatric experiments to which he alleged that he was subjected (see para. 2.7 above);

3. That any information received from the author be transmitted as soon as possible to the State party to enable it to take such information into account in the preparation of its submission under article 4, paragraph 2, of the Optional Protocol;

4. That, in accordance with article 4, paragraph 2, of the Optional Protocol, the State party be requested to submit to the Committee, within six months of the date of 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;

5. That the State party be informed that the written explanations or statements submitted by it under article 4, paragraph 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 responses to the allegations which had been made by the author of the communication, and the State party's explanations of the actions taken by it. The State party was requested, in this connection, to enclose copies of any court orders or decisions of relevance to the matter under consideration.

9. By a note dated 5 April 1983, the Government of Uruguay repeated "what it stated in the reply given to the Committee in its note dated 18 August 1982 concerning the same case" (see para. 4 above).

10. In a letter dated 11 June 1983 the author regrets not being able to provide the Committee with the requested precise information concerning the psychiatric experiments he allegedly had been subjected to during his detention. He explains that all information of this kind remained in the hands of the doctors, some of whom he identifies by name, who belonged to the military health establishment in Uruguay. He repeats his earlier allegations that every fortnight for more than three years he was injected against his will with a psychotropic drug. He claims that the doctors stopped administering the drug after he had informed the Chief of the Red Cross mission which visited Libertad prison in April 1980. The author alleges that no competent medical supervision was exercised when the drug was administered to him and he lists in this connection several members of the Armed Forces Health Corps, who allegedly collaborated in the psychological and physical destruction of detainees. He further completes his earlier list of names of Uruguayan officials having allegedly practised torture (see para. 2.7 above), mentioning a total of 62 names. He also encloses two medical reports, one from a Brazilian doctor dated 16 June 1981 and one from a Swedish hospital covering the period 29 September to 18 December 1981. In the first medical report it is stated inter alia that "... examination reveals ... a number of scars on the fists, ankles, penis and gluteal region, caused by electric shocks".

11. In its submissions under article 4 (2) of the Optional Protocol dated 27 September and 4 October 1983, the State party reiterates its views previously expressed to the Committee (see para. 4 above).

12. Commenting on the State party's submissions, the author in a letter dated 22 November 1983 points out that the Government of Uruguay, despite the Committee's requests, has failed to respond in substance and to provide the Committee with copies of court orders or decisions of relevance to his case. He further disputes the State party's contention that he was "unconditionally" released.

13.1 The Committee decides to base its views on the following facts which have been either essentially confirmed by the State party or are uncontested except for denials of a general character offering no particular information or explanation. However, it follows from the Committee's decision on the admissibility of the communication that the claims relating to events said to have taken place before 23 March 1976 (see paras. 2.1, 2.2 and 2.3 above) are inadmissible for the purpose of any finding by the Committee.

13.2 Antonio Viana Acosta was seized by a joint Uruguayan-Argentinian commando on 24 February 1974 at his home in Buenos Aires, Argentina, and was flown on 4 April 1974 to

Uruguay, where he was detained in custody. He was subsequently held at various places of detention in Uruguay until 23 December 1974 when he was taken to Libertad prison where he remained until his release from prison on 13 February 1981. On 26 April 1976 he was taken before a military tribunal of first instance where he replied to a questionnaire prepared by his defence lawyer in the presence of a judge. He was thereafter taken back to Libertad prison and held incommunicado for several weeks. He was charged with subversive association and sentenced by the military tribunal of first instance to seven years' imprisonment. On 18 April 1977, Antonio Viana Acosta was brought before the Supreme Military Tribunal where new charges were brought against him. He was forced to accept a military ex-officio counsel, Colonel Otto Gilomen, although a civilian defence lawyer, Jose Korsenak Fuks, was ready to take up his defence. He was sentenced to 14 years' imprisonment. On three occasions, one starting in May 1976, one in November 1978 and one in April 1980, he was held incommunicado in a punishment cell. He was released from detention on 13 February 1981. On 14 April 1981 he left Uruguay.

14. Concerning the author's allegations of torture, the Committee notes that the periods of torture, except for 14 and 15 April 1977 and 22 November 1978, (see para. 2.7 above) occurred before the entry into force of the Covenant and the Optional Protocol thereto for Uruguay, and that regarding torture alleged to have occurred after 23 March 1976 no details have been provided by the author. These allegations are therefore, in the opinion of the Committee, unsubstantiated. Nevertheless, the information before the Committee evidences that Antonio Viana Acosta was subjected to inhuman treatment.

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 the facts as found by the Committee, in so far as they continued or occurred after 23 March 1976 (the date on which the Covenant and the Optional Protocol entered into force for Uruguay), disclose violations of the International Covenant on Civil and Political Rights, with respect to:

- articles 7 and 10 (1) because Antonio Viana Acosta was subjected to inhuman treatment;

- article 14 (3) (b) and (d) because before the Supreme Military Tribunal he did not have counsel of his own choosing;

- article 14 (3) (c) because he was not tried without undue delay.

16. The Committee, accordingly, is of the view that the State party is under an obligation to provide Antonio Viana Acosta with effective remedies and, in particular, with compensation for physical and mental injury and suffering caused to him by the inhuman treatment to which he was subjected.