

HUMAN RIGHTS COMMITTEE

Schweizer v. Uruguay

Communication No. 66/1980

12 October 1982

VIEWS

Submitted by: Initially submitted by Olga Machado de Campora on behalf of her husband, David Alberto Campora Schweizer, who later joined as submitting party

Alleged victim: David Alberto Campora Schweizer

State party concerned: Uruguay

Date of communication: 15 March 1980 (date of initial letter)

Date of decision on admissibility: 28 July 1981

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

Meeting on 12 October 1982,

Having concluded its consideration of communication No. 66/1980, initially submitted by Olga Machado de Campora 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 initial author of the communication, the alleged victim and by the State party concerned,

Adopts the following:

Views under article 5 (4) of the Optional Protocol

1. The initial author of this communication, Olga Machado de Campora (initial letter dated 15 March 1980) is a Uruguayan national, residing in the Federal Republic of Germany. She submitted the communication on behalf of her husband, David Alberto Campora Schweizer, alleging that he was arbitrarily imprisoned in Uruguay and that he is a victim of a violation

by Uruguay of his rights under the International Covenant on Civil and Political Rights.

2.1 The author described the relevant facts as follows:

2.2 David Alberto Campora Schweizer, a Uruguayan national (45 years old at the time of the submission of the communication), was arrested in March 1971 on grounds of "association to break the law" (article 150 of the Penal Code). In September 1971 he escaped from prison together with other political detainees, but in April 1972 he was re-arrested and detained incommunicado for several weeks. On 15 June 1972, he was transferred to the Batallon de Infanteria No. 1 by the military authorities and allegedly subjected to severe torture.

2.3 The author further stated that a judge ordered her husband's release in May 1974 and that his request to leave the country was officially approved in November 1974. He was, however, kept imprisoned without charges at the disposal of the Executive authorities under the 'prompt security measures' until August 1977. She stressed that, during this time, there were no legal remedies available to her husband. She adds that from March 1975 to August 1977 he was subjected to mistreatment at the barracks of Trinidad.

2.4 In August 1977, the trial (procesamiento) was continued before a military court after law No. 14.493 of December 1975 had retroactively placed all political crimes (chapter VI of the Military Penal Code) under military jurisdiction, including proceedings against civilians. In addition to being charged with the offences which had been investigated between 1971 and 1974, at this new stage of the proceedings her husband was also prosecuted on the charge of 'use of a false document' (article 237 of the Penal Code) which had not been included in the proceedings before the ordinary judge. His new place of detention was Libertad prison.

3.1 In a further letter dated 11 June 1980, replying to the secretariat's request for clarification as to whether the same matter had been submitted to the Inter-American Commission on Human Rights, the author stated that, at her request, IACHR had discontinued consideration of her husband's case.

3.2 She also informed the Committee that the indictment against her husband was issued on 15 March 1980, and that his lawyer, Dr. Juan P. Labat, presented his defence at the beginning of April 1980.

3.3 She enclosed in this connection a copy of a memorandum dated 24 March 1980 containing the indictment of her husband of 12 March 1980. The charges brought against him were: "association in order to commit criminal offences" (asociacion para delinquir), "attack on the Constitution at the stage of conspiracy followed by preparatory acts" (atentado a la Constitucion en el grado de conspturacion seguida de actos preparatorios), "falsification of public documents" and "escape from prison" (autoevasion). The legal bases of these charges were the following articles of the Ordinary Penal Codes 150, 54, 56, 132 paragraphs 6, 137, 237 and 184. The sentence asked for was eight years of imprisonment, taking into account his previous detention, and that David Alberto Campora Schweizer be declared a "habitual criminal" with a consequence of three to four years' precautionary detention

(medidas de seguridad eliminativas) article 92 (4) of the Penal Code).

3.4 The author also enclosed with her letter of 11 June 1980, two testimonies, one from Dr. Alejandro Artucio dated 22 March 1978 and one from Julio Cesar Modernell dated 13 September 1977.

3.5 Dr. Artucio states that he had been the lawyer of persons who had been imprisoned together with the alleged victim and that for this reason he knew his case very well. The writer gives in particular a detailed legal background on David Campora's situation. He mentions that the judicial decision of 23 May 1974 providing for the provisional release of David Campora was based on the consideration that the deprivation of liberty already suffered by him was sufficient and that the punishment liable to be imposed on him would not exceed that period of three years.. He also quotes the reasons given for the executive decision to keep David Campora in detention under "Prompt Security Measures" : Taking into account the background of the case, the fact that Campora is very dangerous and his recidivism, the Executive orders his detention ..." Commenting on the continuation of the criminal proceedings against David Campora by military tribunals, he explains that, in December 1975, new legislation (Law No. 14.493) came into force in Uruguay, which retroactively established the jurisdiction of the military courts in all cases of so-called political offences (lesa nacion). This law was also applicable in the case of the alleged victim. Dr. Artucio further mentions that he himself was detained in Uruguay in connection with his activities as a defence lawyer and that he met David Campora in a Montevideo prison (building of the Batallon de Infanteria No. 1, Florida) in 1972, where he claims to have witnessed the mistreatment and torture to which the alleged victim was subjected (giving details).

3.6 Julio Cesar Modernell states in his testimony that he was imprisoned together with the alleged victim for two years in the buildings of the Artilleria de Trinidad until his release in October 1976. He describes the general conditions of their imprisonment (extremely poor hygiene) and mentions, inter alia, that the treatment to which the prisoners were subjected worsened with the arrival of new military officials in February 1976. It was the systematic policy to provoke the prisoners, followed by new interrogations and mistreatment (plantones). The writer states in this context that David Campora was one night attacked and badly beaten by an official named Alferes Queirolo, who was briefly arrested upon the complaint by relatives of the prisoners, but then was allowed to continue with his mistreatment of prisoners. According to a carefully developed plan, a period of extremely harsh treatment would be followed by one of relative ease during which the prisoner was told that his release was imminent, thus creating false hope for him and his family. This treatment was aimed to "break" the prisoner psychologically.

4. By its decision of 21 July 1980, the Working Group of the Human Rights Committee, having decided that the author of the communication was justified in acting on behalf of the alleged victim, 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.

5. In a further letter dated 8 October 1980, the author stated that the military tribunal of first instance had sentenced her husband to nine years of imprisonment and one or two years of precautionary detention (medidas de seguridad eliminativas). She informed the Committee that her husband's lawyer had already appealed against the judgement rendered against her husband, to the Supreme Military Tribunal.

6. By a note dated 14 November 1980, the State party objected to the admissibility of the communication on the ground that domestic remedies had not been exhausted. In support of that objection, the State party confirmed that on 10 September 1980 the court of first instance had pronounced a sentence of nine years' rigorous imprisonment plus two years' precautionary detention (medidas eliminativas) in the case. The State party further added that under the provisions of article 489 of the Code of Military Penal Procedure, appeal is automatic for every final judgement imposing a prison sentence of more than three years and, when the judgement in the second instance has been pronounced, there is still the possibility of applying for the remedies of annulment and review which are also provided for in the Code of Military Penal Procedure.

7. The author in a further letter of 7 December 1980 stated that she had learned from her husband's lawyer that his trial before the Supreme Military Tribunal had taken place on 13 November 1980, that the court had ordered his immediate release, considering that he had served his sentence, without ordering any precautionary detention (medida de seguridad).

8. In an additional letter dated 12 January 1981, the author informed the Committee that her husband had arrived in Cologne, Federal Republic of Germany, on 14 December 1980. She stated that, on 12 December, at 5 p.m., her husband was taken out of Libertad prison and brought to the police headquarters in Montevideo, where the Ambassador of the Federal Republic of Germany in Uruguay, Mr. Marre, issued him a fremdenpass (travel document) of the Federal Republic of Germany with which he travelled on 13 December 1980 to the Federal Republic of Germany. The author added that, upon arrival in that country, her husband was brought to a Sanatorium for two weeks because of his precarious state of health.

9. In an interim decision of 31 March 1981, the Human Rights Committee asked David Alberto Campora Schweizer whether he wished the Committee to pursue the matter. In the affirmative, the alleged victim was requested to acquaint himself with the contents of the submissions previously made on his behalf and the submissions made by the State party, with a view to: (a) correcting any inaccuracies which he might find in the submissions made on his behalf; (b) commenting as he deemed relevant on the submissions of the State party; (c) adding any further information which he might wish to place before the Human Rights Committee for consideration in his case.

10. In a reply dated 28 May 1981, David Campora informed the Committee that he wished to corroborate explicitly and entirely all the facts reported by his wife," the author of the communication, and to confirm the existence of the violations of rights recognized in the International Covenant on Civil and Political Rights, referred to by her. He further stated that the Committee should continue to consider his case until it reaches a decision on the

substance of the matter.

11. In a further letter dated i July 1981, David Campora gives a description of the treatment to which prisoners were subjected in Military Detention Establishment No. 1 (Libertad prison) where he was held from August 1977 until his release in December 1980. He described the daily life of the prisoners, including their constant harassment and persecution by the guards; the regime of arbitrary prohibitions and unnecessary torments; the combination of solitude and isolation on. the one hand and the fact of being constantly watched, listened to and followed by microphones and through peepholes on the other hand; the lack of contact with their families, aggravated by worries about the difficulties experienced and pressures exerted on their families; the cruel conditions in the punishment wing in which a prisoner might be confined for up to 90 days at a time; the breakdown of physical and mental health through malnutrition, lack of sunshine and exercise, as well as nervous problems created by tension and ill-treatment. In sum, he asserts that the Libertad prison is 'an institution designed, established and operated with the exclusive objective of totally destroying the individual personality of everyone of the prisoners confined in its.

12. On 20 July 1981, the Committee decided:

(a) That the communication was admissible in so far as it related to events said to have occurred on or after 23 March 1976 (the date of the entry into force of the Covenant and the Optional Protocol for Uruguay);

(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;

(c) 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 responses to the allegations which had been made by the author of the communication and the State party's explanations to 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.

13. On 18 February 1982, the time-limit for observations requested from the State party under article 4 (2) of the Optional Protocol expired. However, no submission has yet been received from the State party, in addition to that received by the Committee prior to the decision on the admissibility of the communication. The Committee notes with concern the State party's failure to respond and its failure to furnish the Committee with relevant court orders and decisions.

14. 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.

15. The Committee decides to base its views on the following facts which are not in dispute or which are unrepudiated or uncontested by the State party except for denials of a general character offering no particular information or explanation.

Events prior to the entry into force of the Covenant:

16.1 David Alberto Campora Schweizer was arrested in Uruguay in March 1971 on grounds of "association to break the law". In September 1971 he escaped from prison, but was re-arrested in April 1972.

16.2 In May 1974, a judge ordered David Campora's provisional release; his request to leave the country was approved in November 1974. At the same time, however, an order of detention under the rules of "Prompt Security Measures" was issued against him so that he was kept imprisoned without any charges. There were no remedies available to him to challenge his prolonged detention. While he was kept at Trinidad barracks (since November 1974) he suffered mistreatment.

Events subsequent to the coming into force of the Covenant:

17.1 The detention under the regime of "prompt security measures" lasted until August 1977, when at that time the trial (procesamiento) was continued before a military tribunal in accordance with Law No. 14.493 of December 1975, David Alberto Campora Schweizer was transferred from Trinidad barracks to Libertad prison.

17.2 David Campora was charged anew before the competent military tribunal for the same acts which had already been investigated by an ordinary judge between 1971 and 1974, including, however, this time the charge of "use of false document" (article 237 of the Penal Code) which had not been the object of the prior proceedings. In March 1980, the formal indictment against David Campora contained the following charges: "association in order to commit criminal offences" (asociacion para delinquir), "attack on the Constitution at the stage of conspiracy followed by preparatory acts" (atentado ala Constitucion en el grado de conspiracion seguida de actos preparatorios), "falsification of public documents" and "escape from prison" (autoevasion).

17.3 On 10 September 1980, a military court of first instance pronounced a sentence of nine years' rigorous imprisonment plus two years' precautionary detention (medidas eliminativas). On 13 November 1980, the Supreme Military Tribunal ordered David Alberto Campora Schweizer's release, considering that he had served his sentence without ordering any precautionary detention (medida de seguridad).

17.4 On 12 December 1980, he was taken out of Libertad prison and brought to the police headquarters in Montevideo. On 13 December 1980 he travelled to the Federal Republic of Germany where he joined his family.

17.5 On the basis of the information submitted by the initial author and later confirmed by David Alberto Campora Schweizer himself, it cannot be established whether the

mistreatment complained of continued or occurred on or after 23 March 1976, the date on which the Covenant entered into force for Uruguay. As far as the period after the coming into force of the Covenant is concerned, both authors refer only in general terms to mistreatment without mentioning any specific incident. In his testimony of 13 September 1977, Julio Cesar Modernell, who was imprisoned together with David Campora for two years until October 1976, describes an attack by a prison official which took place in February 1976 or later. It cannot be seen whether this incident took place before, on or after 23 March 1976. In the circumstances, the Committee cannot base a finding on the allegations of mistreatment. The Committee is, however, in a position to conclude that the conditions of imprisonment to which David Campora was subjected at Libertad prison were inhuman (see, in particular, para. 11 above).

18.1 On the basis of the facts of the present case, the Human Rights Committee does not feel that it is in a position to pronounce itself on the general compatibility of the regime of "prompt security measures" under Uruguayan law with the Covenant. According to article 9 (1) of the Covenant, no one shall be subjected to arbitrary arrest or detention. Although administrative detention may not be objectionable in circumstances where the person concerned constitutes a clear and serious threat to society which cannot be contained in any other manner, the Committee emphasizes that the guarantees enshrined in the following paragraphs of article 9 fully apply in such instances. In this respect, it appears that the modalities under which "prompt security measures" are ordered, maintained and enforced do not comply with the requirements of article 9.

18.2 Concerning the allegation that article 14 (7) of the Covenant has been violated by the State party, the Committee observes that, based on the authors' submission, the criminal proceedings initiated against David Campora in 1971 were not formally concluded at first instance until the military tribunal pronounced its judgement on 10 September 1980. Article 14 (7), however, is only violated if a person is tried again for an offence for which he has already been finally convicted or acquitted. This does not appear to have been so in the present case. Nevertheless, the fact that the Uruguayan authorities took almost a decade until the judgement of first instance was handed down indicates a serious malfunctioning of the judicial system contrary to article 14 (3) (c) of the Covenant.

19. 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 the following violations of the International Covenant on Civil and Political Rights:

of article 9 (3) and (4) because during the time spent in detention under the regime of "prompt security measures", David Alberto Campora Schweizer was not brought before a judge and could not take proceedings to challenge his arrest and detention)

of article 10 (1) because he was detained under inhuman prison conditions;

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

20. The Committee, accordingly, is of the opinion that the State party is under an obligation to provide the victim with effective remedies, including compensation, for the violations he has suffered.