

HUMAN RIGHTS COMMITTEE

Barbato v. Uruguay

Communication No. 84/1981

21 October 1982

VIEWS

Submitted by: Hugo Gilmet Dermit, on behalf of his cousins, Guillermo Ignacio Dermit Barbato and Hugo Haroldo Dermit Barbato

Alleged victims: Guillermo Ignacio Dermit Barbato and Hugo Haroldo Dermit Barbato

State party concerned: Uruguay

Date of communication: 27 February 1981 (date of initial letter)

Date of decision on admissibility: 28 October 1981

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

Meeting on 21 October 1982,

Having concluded its consideration of communication No. 84/1981 submitted to the Committee by Hugo Gilmet Dermit 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

1.1 The author of the communication (initial letter dated 27 February 1981 and further letters dated 30 September 1981 and 28 July 1982) is a Uruguyan citizen at present living in Sweden. He submitted the communication on behalf of his cousins, Hugo Haroldo Dermit Barbato and Guillermo Ignacio Dermit Barbato, alleging that Hugo Dermit died in detention in Uruguay between 24 and

28 December 1980 and that Guillermo Dermitt is at present imprisoned in Uruguay.

1.2 The author states that his cousin, Guillermo Dermitt, a 30-year old Uruguayan medical doctor disappeared on 2 December 1980. His abandoned car was found in a street, with wide open doors. All attempts to find out his whereabouts were in vain for 17 days} in particular, no confirmation could be obtained from the authorities as to whether he was detained. On 19 December 1980, an official communique was published in Montevideo announcing Guillermo Dermitt's detention. He was described as belonging to a group of relatives of prisoners who had carried out "agitation and propaganda activities". The alleged victim's place of detention was not disclosed in the communique and he continued to be detained incommunicado. For some time his closest relatives did not know where he was being detained. The author claims that the real motive for Guillermo Dermitt's arrest was the fact that he was the brother of a political prisoner, Hugo Dermitt, and that no illegal activities could be imputed to him.

1.3 The author claims that Guillermo Dermitt is a victim of violations of a number of provisions of the International Covenant on Civil and Political Rights, including article 9 (1), because he was arbitrarily arrested} article 9 (2), because he was not promptly informed of the reasons for his arrest; article 9 (3), because he was not brought promptly before a judge, within the period of 10 days laid down in Uruguayan law; article 9 (4), because he was kept incommunicado and was thus unable to take his case before any judicial authority and because his family could not make use of the recourse of habeas corpus; article 10, because the treatment of detainees in Uruguay did not conform to this provision of the Covenant, more detailed information not being available because of Guillermo Dermitt's being incommunicado} article 14, because he was not brought before a court, and that if and when this happened, it would be before a military tribunal lacking in procedural guarantees and impartiality.

1.4 As to Hugo Dermitt, a 32-year old Uruguayan student of medicine at the time of his death, the author states that he was arrested in 1972, that he came under the jurisdiction of the military courts and that, after lengthy proceedings, he was sentenced to eight years' imprisonment. He had served his sentence in July 1980 but was not released. Instead, he was informed that he would be released only if he left the country, a condition which, according to the author, was not mentioned in the judgement, nor was it based on any rule of law. After he had obtained an entry visa from the Swedish Government, the authorities informed him that he was due to be released on 11 December 1980. In September 1980, Hugo Dermitt was transferred from the Establecimiento Militar de Reclusion No. 1 (Libertad prison, Department of San Jose) to the barracks of the Fourth Mechanized Cavalry Regiment situated in Montevideo (Camino Mendoza and Avenida de las Instrucciones). On 13 November 1980, he signed the option to leave the country for Sweden. At the end of that month, he was transferred to the Montevideo Police Headquarters. On 9 December 1980, the police authorities made it known that he would not be granted permission to leave the country. His whereabouts were unknown to his relatives until 28 December 1980. The author alleges that, during the period in question, Hugo Dermitt was once more transferred to the quarters of the Fourth Mechanized Cavalry Regiment, where he was seen by other prisoners and was reported to have been in good spirits, in spite of the interruption of the preparations for his release and departure from Uruguay. He was last seen alive on 24 December 1980. On 28 December 1980, his mother was called to the Military Hospital without any explanation. There she was shown the dead body of her son for identification purposes. The death certificate stated as cause of death "acute haemorrhage

resulting from a cut of the carotid artery" and his mother was told that he had committed suicide with a razor blade. The writer claims that this explanation is false and that Hugo Dermit died as a consequence of the mistreatment and torture to which he had allegedly been subjected.

1.5 The author claims that Hugo Dermit was a victim of violations of articles 6, 7, 9, 10, 12, 14 and 17 of the International Covenant on Civil and Political Rights.

1.6 With regard to the question of admissibility, the author stated that he had not submitted either case to another procedure of international investigation or settlement. He alleged there were no further domestic remedies which could be invoked. In the case of Hugo Dermit, the remedies through proceedings before the Military Tribunals had been exhausted. The eight years' sentence imposed on him resulted from a decision of the Supreme Military Tribunal. His continued detention after completion of his sentence was based on "prompt security measures". The author claims that the only remedy available in that situation was the option to leave the country. He alleges that no procedural possibilities existed to oblige the authorities to respect this constitutional option. The author further claims that although the alleged violations of human rights in the case of Hugo Dermit commenced before 23 March 1976, they continued to occur after that date.

2. By its decision of 18 March 1981, the Working Group of 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. It also requested the State party to provide the Committee with (a) copies of any court orders or decisions relevant to the case, and (b) copies of the death certificate and medical report and of the report of whatever inquiry had been held in connection with the death of Hugo Dermit.

3. In a note dated 24 August 1981, the State party disputed the admissibility of the communication on the grounds that: (a) concerning Hugo Dermit, the same matter had been submitted to the Inter-American Commission on Human Rights as case No. 7710, and (b) with regard to Guillermo Permit, the remedies available under domestic law had not yet been exhausted, and the State party had repeatedly informed the Committee of all the remedies available to everyone in Uruguayan territory. The Government did not furnish the Committee with copies of any court orders or decisions relevant to the case of Guillermo Dermit nor did it mention any proceedings pending against the alleged victim, any specific remedies available to him, or refer to any other facts concerning his case.

4. In his letter of 30 September 1981, the author informed the Committee that the case of Hugo Dermit had been submitted to the Inter-American Commission on Human Rights by a third party. He attached a copy of a letter dated 25 September 1981, sent by the person responsible for submitting case No. 7710 to the Inter-American Commission requesting its withdrawal. With regard to the case of Guillermo Dermit, the author asserted once again the lack of any domestic remedies that could have been exhausted. He informed the Committee that Guillermo has been subjected to military judicial proceedings. He again claimed that Guillermo is a victim of violations of article 14 of the Covenant and alleged that the military judges are neither independent nor impartial.

5.1 With regard to article 5, paragraph 2 (a), the Human Rights Committee noted that case No. 7710,

concerning Hugo Dermit, had been withdrawn from the Inter-American Commission on Human Rights (IACHR). This had been confirmed by the secretariat of IACHR. The Committee also notes that, with regard to Guillermo Dermit, the State party has not disputed the author's contention that the case has not been submitted to any other procedure of international investigation or settlement.

5.2 With regard to article 5, paragraph 2 (b), the Human Rights Committee took note of the State Party's assertion that Guillermo Dermit had not yet exhausted the domestic remedies available to him. However, the State party did not give details of the remedies which may be invoked in the particular circumstances of this case} nor did it specify which of the alleged violations could have been effectively remedied within the established military judicial process. On the basis of the information before it, the Committee was unable to conclude that there were remedies available to Guillermo Dermit which he should have pursued.

5.3 On 28 October 1981, the Human Rights Committee therefore decided:

(a) That the communication was admissible;

(b) That, in accordance with article 4 (2) of the Optional Protocol, the State party should 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 to enclose copies of any court orders or decisions of relevance to the matter under consideration, and, in the case of Hugo Dermit, to enclose copies of the death certificate and medical report and of the reports on whatever enquiries were held into the circumstances surrounding his death.

6.1 In its submission under article 4 (2) of the Optional Protocol, dated 1 June 1982, the State party forwarded a transcript of the autopsy report concerning Hugo Dermit which reads as follows:

"Death certified on 28 December 1980. Causes suicide. Result of the autopsy: on 28 December 1980, an autopsy was carried out on the body of Hugo Dermit Barbato, white, male, 32 years old, general health good, thin. Blood on the face, neck, front of the thorax and upper limbs, mainly on the left side. On the left-hand side of the neck, a clean cut 40 mm long with sanguineous infiltration at the edges. The wound runs obliquely from the thyroid cartilage outwards and downwards to the middle of the external cleidomastoid muscle. Immediately above it, another clean cut 10 mm long with sanguineous infiltration at the edges. On the right forearm, 4 cm from the wrist joint, a 30 mm oblique cut running from the outer edge to the middle of the forearm (and being, at this point, 6 cm from the wrist). On the left forearm, a similar, but shorter (20 mm) wound. The remainder of the external examination showed no special peculiarities.

"Internal examination: neck - dissection of the areas corresponding to the wound in the left side of the neck showed that the internal jugular vein was completely Severed, with a wound 1 nun in diameter in the left common carotid artery. Recent sanguine)us infiltration in adjacent areas. The upper wound showed that the middle thyroid artery had been severed. Thorax and abdomen - pleura and lungs: lungs normal, with collapsed alveoli. Abdomen: normal. General paleness of the viscera. Upper limbs: the wounds in both forearms show that the middle veins had been partly severed. Summary: from the preceding study, it is evident

that the cause of death was anaemia as a result of acute haemorrhage caused by the severing of the left carotid vessels. By the pathological anatomy service, Haydee Klempert First Lieutenant, Medical Corps."

6.2 With respect to Guillermo Dermit, the State party asserts that he was brought to trial because "it was proved that he had been involved in the offences of conspiracy to subvert and action to upset the Constitution in the degree of conspiracy, followed by criminal preparations on 23 March 1981. The aforementioned person was one of the subversive members of the so-called 'seispuntista' movement, which tried to reactivate the subversive 'Tupamaros' movement from within the prison, with the help of elements outside it." The Government reiterated its rejection of the admissibility of this case .on the grounds of non-exhaustion of internal remedies available under criminal military law. These remedies are: "appeal against the decision to refuse to allow a trial, application to set aside the ordinary appeal for review, remedy of appeal, complaint for refusal of leave to appeal, appeal for annulment and the special remedies of appeal to vacate a judgement and appeal for review."

7.1 In a further letter dated 28 July 1982, the author refers to the State party's submission under article 4 (2) and claims that it does not answer the specific complaints of violations raised in his communication.

7.2 With respect to Hugo Dermit, the author states in particular:

"In its submission, the Government of Uruguay gives no explanations concerning the complaints I made in my communication of 27 February 1981 to the effect that my cousin was arbitrarily deprived of his right to life; was treated not with humanity and respect for his dignity, but, rather, subjected to torture and cruel, inhuman and degrading treatment} was, without any doubt, unlawfully deprived of his liberty after he had served his sentence and was denied the constitutional right to choose to leave the national territory; was subjected to criminal proceedings fiddled with procedural errors constituting violations of article 14 of the Covenant, to arbitrary interference with his family and to unlawful attacks on his honour and reputation.

"With regard to the merits of the case, the Government of Uruguay merely states that it is 'transmitting the report on the autopsy carried out on the body of the victim on 28 December 1980 ...' The results of the autopsy in no way indicate beyond any doubt that the cause of my cousin's death was 'suicide', as the Government of Uruguay claims. The autopsy was carried out by military medical personnel before the victim's relatives were informed of his death and they had no opportunity to have the autopsy carried out by doctors of their own choice. The victim's body, which was handed over to his relatives in the afternoon of 28 December 1980, showed signs of having undergone a tracheotomy, as well as signs that it has been kept refrigerated, since it was initially bloated and then deflated, with a substantial loss of water during the period preceding burial.

"The Government of Uruguay states that the victim's death was certified on 28 December 1980. It provides no explanation of the circumstances in which the death was certified (place, hour, who found the body, whether or not the sharp object or objects with which the

victim supposedly committed suicide were found in the same place). The Government of Uruguay has not provided the Committee with any information concerning any investigation into the circumstances of the death. In view of this and the fact that the victim was seen alive as late as 24 December, in circumstances which in no way indicated that he had even the slightest intention of committing suicide, particularly since he should have been happy and optimistic about his situation and the prospect of his forthcoming release, the official explanation is implausible and unacceptable. The complete absence of any investigation into the responsibility of the officials who held him in their custody, of any reference to possible penalties resulting therefrom and of any inquiry into the circumstances and the way in which the death occurred show that, instead of seeking clarification and justice, the authorities are trying to cover up the violent acts committed in their name. I must repeat that, even if the victim did actually commit suicide, the most serious responsibility would have been incurred: the only possible reason why he might have decided to commit suicide is that he was forced to do so by threats or violence, with the result that he found any thought of the future unbearable, when, in fact, he had every reason to be optimistic about it. And the fact that he might actually have committed suicide while under arrest would have called for an investigation and the punishment of those who were responsible, except that it is the authorities themselves who are responsible."

7.3 With respect to Guillermo Dermitt, the author states in particular:

"The Government of Uruguay has given no explanation concerning the complaints made in the first communication of 27 February 1981 to the effect that the violations which occurred included the following: the victim's arrest was arbitrary; he was not allowed to take legal action or proceedings; he was not promptly informed of the charges against him; he was not brought promptly before a judge within the maximum time-limit of 10 days; he was held incommunicado with no possibility of appealing to any judicial authority on his own initiative; he was not treated with due respect for the inherent dignity of the human person; and he was denied the constitutional rights to choose to leave the national territory. With regard to the merits of the case, the Government of Uruguay merely reports that the victim 'was brought to trial because it was proved that he had been involved in the offences of conspiracy to subvert, and action to upset, the Constitution in the degree of conspiracy, followed by criminal preparations on 23 March 1981'. It is also claimed that the victim was 'one of the subversive members of the so-called 'Seispuntista' movement, which tried to reactivate the subversive 'Tupamaros' movement from within the prison, with the help of elements outside it'.

"The Government attaches no copies of the court orders and decisions relating to the case under consideration. Since the Government has failed to provide any evidence to the contrary, I wish to repeat my assertion that the real motive for the arrest of Guillermo Ignacio Dermitt Barbato is that he is the brother of a political prisoner, Hugo Haraldo Dermitt Barbato, and that there are no grounds for the proceedings against him.

"The fact that the military courts have been involved makes it necessary to state again that this procedure is still in violation of article 14 of the Covenant because these courts do not provide the guarantees stipulated in that article, since they lack independence and

impartiality, and also because of the shortcomings in the procedure which they apply."

7.4 With respect to the admissibility of the communication relative to Guillermo Dermit, the author disputes the State party's assertion that the defendant did not exhaust the internal remedies purportedly available under criminal military law and examines said remedies as follows:

"Appeal against a decision to refuse to allow a trial'. Like all other remedies in question, this one is totally inapplicable to the victim's case. Article 178 of the Code of Organization of the Military Courts (COTM) provides that an appeal may be lodged against a decision to refuse to allow a trial. It will, however, be quite clear to the Committee that this has nothing to do with my cousin's case, in which there was no refusal to allow a trial. As shown in the report itself, he was actually brought to trial. There is, moreover, no point in referring to this possible remedy. It is the public prosecutor's department that can, as stated in article 178, lodge such an appeal, whose object is to bring a person to trial when a military court has refused to do so and has released the person.

"In any event, it is not this remedy, but, rather, the remedy of appeal against the indictment, to which the Government might justifiably have referred. The Government report does not mention the latter remedy, which is entirely theoretical and has proven to be totally ineffective because it has never, since it was provided for by law, been used in any case; and because the proceedings never take less than one year and often quite a bit more and, during that time, it is, in practice, impossible to obtain a decision on any application for pro-trial release.

"Application to set aside and ordinary appeal for review'. These are remedies against specific court decisions, as clearly stated in COTM, article 475. The Government does not say which decisions were not appealed in the victim's case and, in fact, there were no such decisions: the only decision in his case was the one ordering him to be brought to trial, in accordance with the special regime provided for in article 178.

"The 'remedy of appeal' is inappropriate in this case because it applies only to final decisions (COTM, article 481). There has been no decision even in first instance, in the victim's case, as shown in the report.

"Complaint for refusal of leave to appeal' This remedy is, as its name indicates, one that is available in the particular situation when a decision has been appealed and the court which made it considers that it cannot be appealed. Its object is to obtain a decision from a higher court concerning the admissibility of the appeal (COTM, article 492). Since there has been no decision in my cousin's case, he could hardly have appealed against it. Consequently, there could have been no 'complaint' for refusal of leave to appeal when no appeal could be lodged.

"The 'appeal for annulment' is not applicable in my cousin's case because it also assumes that a decision has been made (article 503); it must be lodged together with the appeal - something that is, as has been seen, quite impossible. "Special remedies of appeal to vacate a judgement and appeal for review' These are remedies against decisions by a court of

'second instance (article 507) and, in the victim's case, there still has been no decision by the court of first instance. According to article 460, these remedies still do not prevent the decision that is being contested from becoming a final decision: 'Decisions are final and enforceable: 1. When the law allows no other instance or ordinary appeal in the case'.

"It may be said that, although these remedies are totally inapplicable at this time and at this stage in the proceedings, they might be applicable later on and that they may therefore be regarded as 'remedies that have not been exhausted'.

'This view does not apply to the first of the above-mentioned remedies since there has never been a decision 'to refuse to allow a trial'. The other remedies on the list, which are not applicable now, may, however, be used in future.

'It is, therefore, essential to look at the entire procedure and to see whether, for the Committee's purposes, it will be necessary to wait until the proceedings have been completed. Since the remedies in question are available only in respect of the final decision or the decision of second instance, it would be essential to await the outcome of the proceedings if they had to be exhausted before the Committee could act. In fact, there was a four-month delay before the victim's case was brought before a 'judicial authority'. He has been detained for 20 months and it will be a long time before a decision is made by the court of first instance. There are prisoners in Uruguay who have been waiting for as long as eight years for their decisions of second instance.

'Accordingly, to claim that the proceedings must be completed in order to apply for - and 'exhaust - the remedies that are theoretically available would mean postponing action by the Committee for an unacceptable amount of time, particularly since failure to make a decision within a reasonable time is one of the violations that has been reported and one of the most obvious causes of what has happened. In other words, the possibility of instituting unacceptably lengthy proceedings, which is in itself a violation of the Covenant, would make the Government think that it was not subject to the Committee's jurisdiction. This can hardly be the intention of the Covenant.'

8.1 The Human Rights Committee has the obligation under article 5 (1) of the Optional Protocol to consider this communication in the light of all written information made available to it by the author and the State party. It therefore bases its views on the following facts, which have not been contradicted by the State party.

8.2 Hugo Haraldo Dermot Barbato was arrested in 1972 and subsequently sentenced to eight years' imprisonment. He completed serving his sentence in July 1980 and thereafter was kept in detention pursuant to the 'prompt security measures'. He was informed that he would be released only if he left the country, a condition which was not mentioned in the judgement against him. After he had obtained an entry visa from the Swedish Government, the Uruguayan authorities informed him that he was to be released on 11 December 1980. Yet, on 9 December 1980, he was told that he would not be granted permission to leave the country. His whereabouts were unknown to his relatives until 28 December 1980, when his mother was called to the Military Hospital to identify his body. His mother was told that he had committed suicide.

8.3 Guillermo Ignacio Dermit Barbato, Hugo's younger brother, disappeared on 2 December 1980. His detention was officially acknowledged on 19 December 1980, but he continued to be held incommunicado. He was not brought before a judicial authority until 23 March 1981 when he was brought before a military tribunal. After some 20 months, there does not appear to have been any decision taken and the State party gives no evidence of any such decision.

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

9.2 In operative paragraph 2 of its decision of 28 October 1981, the Committee requested the State party to enclose copies of the death certificate and medical report and of the reports on whatever inquiries were held into the circumstances surrounding the death of Hugo Dermit. Only a transcript of the autopsy report has been submitted. The State party has not submitted any report on the circumstances in which Hugo Dermit died or any information as to what inquiries have been made or the outcome of such inquiries. Consequently, the Committee cannot help but give appropriate weight to the information submitted by the author, indicating that a few days before Hugo's death he had been seen by other prisoners and was reported to have been in good spirits, in spite of the interruption of the preparations for his release and departure from Uruguay. While the Committee cannot arrive at a definite conclusion as to whether Hugo Dermit committed suicide, was driven to suicide or was killed by others while in custody; yet, the inescapable conclusion is that in all the circumstances the Uruguayan authorities either by act or by omission were responsible for not taking adequate measures to protect his life, as required by article 6 (1) of the Covenant.

9.3 In the same operative paragraph, the Committee requested the State party to furnish copies of any relevant court orders or decisions. The Committee is seriously concerned by the fact that, in this case and in a number of other cases, the State party has failed to furnish the texts of court decisions.

9.4 As to the question of exhaustion of domestic remedies in the case of Guillermo Dermit, the Committee also takes into account the following considerations: the remedies listed by the State party as unexhausted, cannot be considered available to the alleged victim in the circumstances of his case. They are either inapplicable de jure or de facto and do not constitute an effective remedy, within the meaning of article 2 (3) of the Covenant, for the matters complained of. There are therefore no grounds to alter the conclusion reached in the Committee's decision of 28 October 1981, that the communication is not inadmissible under article 5 (2) (b) of the Optional Protocol.

9.5 No attempt has been made by the State party to show that the delay in trying Guillermo Dermit could be justified by the difficulties of the case.

9.6 With regard to the burden of proof, the Committee has already established in its views in other cases (e.g., R. 7/30) that said burden cannot rest alone on the author of the communication, especially considering that the author and the State party do not always have equal access to the evidence and that frequently the State party alone has access to relevant information. It is implicit in article 4 (2) of the Optional Protocol that the State party has the duty to investigate in good faith all allegations of violation of the Covenant made against it and its authorities.

10. 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 communication discloses violations of the Covenant, in particular:

(a) With respect to Hugo Haroldo Dermit Barbato,

of article 6, because the Uruguayan authorities failed to take appropriate measures to protect his life while he was in custody;

(b) With respect to Guillermo Ignacio Dermit Barbato,

of article 9 (3), because he was not promptly brought before a judge;

of article 9 (4), because he was held incommunicado and effectively barred from challenging his arrest and detention;

of article 14 (3) (c), because he has not been tried without undue delay.

11. The Committee, accordingly, is of the view that the State party is under an obligation to take effective steps (a) to establish the facts of Hugo Dermit's death, to bring to justice any persons found to be responsible for his death and to pay appropriate compensation to his family; (b) with respect to Guillermo Dermit, to ensure strict observance of all the procedural guarantees prescribed by article 14 of the Covenant as well as of the rights of detained persons set forth in articles 7, 9 and 10 of the Covenant; (c) to transmit a copy of these views to Guillermo Dermit; and (d) to take steps to ensure that similar violations do not occur in the future.