

HUMAN RIGHTS COMMITTEE

Fillastre and Bizouarn v. Bolivia

Communication No. 336/1988

6 November 1990

CCPR/C/40/D/336/1988*

ADMISSIBILITY

Submitted by: Nicole Fillastre (victim's wife)

Alleged victims: Andre Fillastre and Pierre Bizouarn

State party concerned: Bolivia

Date of communication: 27 September 1988

Document references: Prior decisions - CCPR/C/WG/35/D/336/1988 (Working Group rule 91 decision, dated 14 March 1989) CCPR/C/WG/36/D/336/1988 (Further Working Group rule 91 decision dated 5 July 1989)

Date of present decision: 6 November 1990

The Human Rights Committee, acting through its Working Group, pursuant to rule 87, paragraph 2, of the Committee's rules of procedure, adopts the following:

Decision on admissibility

1. The author of the communication (initial submission dated 27 September 1988 and subsequent correspondence) is Nicole Fillastre, a French citizen residing in Le Havre, France. She submits the communication on behalf of her husband, Andre Fillastre, a French private detective who is currently detained at the Prison of San Pedro in La Paz, Bolivia, together with another private detective, Pierre Bizouarn. By letter dated 25 May 1989, Mr. Bizouarn authorized Nicole Fillastre to act on his behalf. The author claims that her husband and Mr. Bizouarn have been the victims of violations of their human rights by Bolivia.

The Background :

2.1 The author states that on 26 August 1987 Andre Fillastre and Pierre Bizouarn travelled to La Paz accompanied by Ms. Silke Zimmerman, a German citizen then residing in France. Andre Fillastre was travelling in his capacity as a private detective on behalf of Ms. Zimmerman, who had requested his services in order to find and repatriate her four-year old son Raphael Cuiza Zimmerman in Bolivia. Her son had allegedly been taken away from his mother by his Bolivian father, Jorge Cuiza, and flown to Bolivia.

2.2 On 3 September 1987, Andre Fillastre, Mr. Bizouarn and Ms. Zimmerman were arrested by the Bolivian criminal police, after a complaint had been filed by the child's father, who claimed that they had manipulated their way into his home and that they had started a fight in the course of which he was injured. The two detectives are said to have abducted the child and left the home, together with the mother. Subsequent to their arrest, criminal proceedings were instituted against them. On 14 September 1987, the examining magistrate indicted the accused on three grounds: (a) unauthorized entry into a home; (b) causing grievous bodily harm and (c) kidnapping (secuestro), pursuant to articles 14, 298, 271 and 334 of the Bolivian Penal Code. Allegedly, he did so without interrogating the authors. Nevertheless, Ms. Zimmerman was released a few days afterwards, apparently without plausible explanations. Messrs. Fillastre and Bizouarn were instead imprisoned at the Prison of San Pedro, where they continue to be held.

2.3 With regard to the requirement of exhaustion of domestic remedies, the author states that the judicial proceedings against her husband and his friend have been pending before the magistrate court since September 1987. In this context, she indicates that, on 12 June 1990, the judge was expected to render his decision in the case but that, since the attorney representing her husband did not appear in court, he decided to further postpone the hearing.

The Complaint :

3.1 It is submitted that Messrs. Fillastre and Bizouarn were not able to adequately communicate either with their lawyer or with the examining magistrate before whom they were brought on 3 September 1988, one year after their arrest. In particular, it is alleged that the interpreter who had been designated to assist them could only speak English, a language that they did not master. Further, they allege that their statements before the examining magistrate were not only recorded incorrectly but deliberately altered.

3.2 According to the author, Messrs. Fillastre and Bizouarn were held in custody for ten days without being informed of the charges against them; this was apparently confirmed by the arresting officer, upon interrogation by the examining magistrate. As to the circumstances of the investigatory phase of the judicial proceedings, the author claims that several irregularities occurred in its course. Furthermore, the court hearing are said to have been postponed repeatedly because either their lawyer or the prosecutor failed to appear in court. More generally, the author claims bias on the part of the judge and of the judicial authorities. This is evidenced by the fact that the Bolivian authorities allowed Ms. Zimmerman to leave Bolivia without justification and never sought her testimony before the examining magistrate, although she had been indicted together with them.

3.3 As the conditions of detention at the prison of San Pedro, they are said to be inhuman and degrading. In this context, the author submits that, due to the psychological distress as well as the

conditions of detention, her husband has become addicted to alcohol and drugs and lost his will to live.

3.4 Finally, the author claims that her countless efforts since September 1987 to obtain her husband's release have not met with any response. She maintains that, notwithstanding the various promises made to her by the French authorities, no official attempt was made to obtain her husband's release or to improve the conditions of his detention.

The State party's observations:

4.1 The State party acknowledges that criminal proceedings are pending before the magistrate court (Juzgado Sexto de Partido en lo Penal), and adds that they are approaching their final phase. It notes that the judge had ordered *ex officio* a further investigation of the facts at issue. Moreover, delays in the proceedings are said to be partly attributable to the Judge's desire to gather further evidence, which would enable him to render his judgment. According to the State party, however, the two French citizens are likely to be found guilty of the offences for which they were indicted, in particular the kidnapping (*delito de secuestro*) of Raphael Cuiza Zimmerman. It observes that under the Bolivian Penal Code, kidnapping is punishable by imprisonment of five to six years.

4.2 Finally, the State party indicates that the author's husband and his compatriot are assisted by two attorneys, one of whom is acting in his private capacity, whereas the other was assigned to the case *ex officio*. Both are said to be working in collaboration with the French Embassy in La Paz. It further maintains that, while the proceedings in the case are pending, the accused are lawfully detained at the Prison of San Pedro in La Paz.

The issues before the Committee:

5.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

5.2 The Committee has ascertained, as it is required to do under article 5, paragraph 2(a), of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

5.3 The Committee has noted the State party's observations and clarifications concerning the current status of the case of Messrs. Fillastre and Bizouarn before the Bolivian courts. It observes that they are still awaiting the outcome of the proceedings instituted against them in September 1987, that is, more than three years after their arrest. In the circumstances of the case, the Committee considers that a delay of over three years for the adjudication of the case at first instance, discounting subsequent appeals if, as the State party indicates is likely, they are found guilty as charged, is "unreasonably prolonged" within the meaning of article 5, paragraph (2) (b), of the Optional Protocol. Moreover, from the information before it, the Committee deduces that such delays as have been encountered are neither attributable to the alleged victims, nor explained by the complexity of the case. Accordingly, it concludes that the requirements of article 5, paragraph (2) (b), have been met.

5.4 The Committee considers that the communication should be examined on the merits as it raises issues under the Covenant, as advanced in the author's claims (a) that Messrs. Fillastre and Bizouarn were not promptly informed of the charges against them; (b) that they were not promptly brought before a judge and interrogated; (c) that they were not afforded adequate facilities for the preparation of their defence and were unable to properly communicate with counsel assigned to them; (d) that they were inadequately represented during the preliminary investigation; and (e) that they are being subjected to inhuman and degrading treatment.

6. The Committee therefore decides:

(a) That the communication is admissible in so far as it may raise issues under articles 9, paragraphs 2 and 3, 10 paragraph 1, and 14, paragraph 3(b), (c) and (d) of the Covenant;

(b) That in accordance with article 4, paragraph 2, of the Optional Protocol, the State party shall 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 measures, if any, that may have been taken by it;

(c) That any explanations or statements received from the State party shall be communicated by the Secretary-General under rule 93, paragraph 3, of the Committee's rules of procedure, to the author with the request that any comments that she may wish to submit thereon should reach the Human Rights Committee in care of the Centre for Human Rights, United Nations Office at Geneva, within six weeks of the date of the transmittal;

(d) That this decision shall be communicated to the State party and to the author.

(Done in English, French, Russian and Spanish, the English text being the original version)

*/ All persons handling this document are requested to respect and observe its confidential nature.