

HUMAN RIGHTS COMMITTEE

Jijón v. Ecuador

Communication No. 277/1988*

26 March 1992

VIEWS

Submitted by: Marieta Terán Jijón, subsequently joined by her son, Juan Fernando Terán Jijón

Alleged victim: Juan Fernando Terán Jijón

State party: Ecuador

Date of communication: 21 January 1988

Date of decision on admissibility: 4 July 1990

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

Meeting on 26 March 1992,

Having concluded its consideration of communication No. 277/1988, submitted to the Human Rights Committee by Mrs. Marieta Terán Jijón, subsequently joined by her son, Juan Fernando Terán Jijón, 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 authors of the communication and by the State party,

Adopts its:

Views under article 5, paragraph 4, of the Optional Protocol.**

Facts as submitted by the author

1.1 The author of the communication is Marieta Terán Jijón, an Ecuadorian citizen born in 1929, residing in Quito, Ecuador. She submits the communication on behalf of her son, Juan Fernando

Terán Jijón, an Ecuadorian citizen born in 1966, at the time of submission of the communication (21 January 1988) detained at the Penal García Moreno in Quito, Ecuador.

1.2 After two years of detention, Juan Fernando Terán Jijón was released; he left Ecuador in August 1988 and currently resides in Mexico, where he pursues university studies. After his release, Mr. Terán Jijón confirmed the exactitude of his mother's submissions and joined the communication as co-author, expressing the wish that the Committee proceed with the examination of the case.

1.3 Juan Fernando Terán Jijón was arrested on 7 March 1986 in Quito by members of an antisubversive police unit known as Escuadrón Volante; according to the author, he was about to visit a relative. He claims to have been kept incommunicado for 5 days, shackled and blindfolded, subjected to physical and mental torture, and forced to sign more than 10 blank sheets of paper. He was then transferred to the García Moreno prison. The report of a medical examination carried out in the infirmary of the prison on 13 March 1986 records haematomas and skin lesions all over his body.

1.4 The author was charged with participation in the crime of bank robbery, perpetrated on 7 March 1986 against the Banco de Pichincha and the Caja de Crédito Agrícola of Sangolquí. He denies any involvement in the offence.

1.5 On 27 January 1987 the Tribunal Segundo Penal de Pichincha convicted and sentenced him to one year of imprisonment. Although this term was fully served on 7 March 1987 and the Tribunal ordered his release on 9 March 1987, he was not released but instead reindicted, allegedly on the same facts and for the same offence.

1.6 With regard to the issue of exhaustion of domestic remedies, Mrs. Terán Jijón states that she instituted an action for amparo, appealed to the Tribunal de Garantías Constitucionales and to the National Congress. On 18 March 1988, her son was released, pending the adjudication of other criminal proceedings, involving charges of illegal possession of firearms. On 22 August 1989, the Fourth Chamber of the Superior Court declares the charges null and void; it found that the reindictment of the author in January 1987 violated article 160 of the Code of Criminal Procedure; according to which no one shall be tried or convicted more than once for the same offence.

Complaint

2. It is claimed that Juan Terán Jijón is a victim of violations by Ecuador of article 7 of the Covenant, because he was subjected to torture and ill-treatment following his arrest, partly in order to extract a confession from him and in order to force him to sign blank sheets of paper, about whose subsequent use he was kept in the dark; the author adds that he was denied access to counsel. It is further claimed that he was a victim of a violation of article 9, paragraph 1, because he was subjected to arbitrary arrest and detention, since he allegedly was not involved in the bank robbery; in this context, it is submitted that the police report incriminating him was manipulated by the Ministry responsible for the police (Ministerio de Gobierno y Policía). The author further alleges a violation of article 9, paragraph 3, because he was not brought promptly before a judge. The fact of having been reindicted for the same facts and the same offence is said to amount to a violation of the

principle ne bis in idem.

State party's information and observations

3.1 The State party contends that on 7 March 1986 Juan Terán Jijón, together with a group of armed men belonging to the terrorist movement "Alfaro vive", robbed the bank of Pichincha and the Caja de Crédito Agrícola of Sangolquí.

3.2 According to the police report, eight persons were involved in the hold-up of the two banks, escaping in a pick-up truck, of which the author was said to be the driver. A police car which followed them was able to arrest three of them after a shoot-out. The remaining five were apprehended later. The report does not specify when or where Mr. Terán Jijón was apprehended.

3.3 The State party denies that Mr. Terán Jijón was at any time subjected to ill-treatment in detention. It further contends that the judicial proceedings against the author were at all times conducted in conformity with the procedures established under Ecuadorian Law.

3.4 With respect to the second indictment against Mr. Terán Jijón, the State party explains that it was not based on the charge of bank robbery, but rather on the charge of illegal possession of firearms.

Issues and proceedings before the Committee

4.1 During its thirty-ninth session, the Committee considered the admissibility of the communication and noted that the State party, while addressing issues of merit, had not shown whether any investigation with regard to the allegations of torture had taken place or was in progress, nor contended that effective domestic remedies remained open to the author. In the circumstances, the Committee concluded that the requirements of article 5, paragraph 2 (b), of the Optional Protocol had been met.

4.2 The Committee further noted that the facts as submitted appeared to raise issues under provisions of the Covenant which had not specifically been invoked by the authors. It reiterated that whereas authors must invoke the substantive rights contained in the Covenant, they are not required, for purposes of the Optional Protocol, necessarily to do so by reference to specific articles of the Covenant. So as to assist the State party in preparing its submission under article 4, paragraph 2, of the Optional Protocol, the Committee suggested that the State party should address the allegations (a) under article 10 of the Covenant, that Juan Terán Jijón was subjected to ill-treatment during detention, (b) under article 14, paragraph 3 (b), that he was denied access to a lawyer after his arrest, (c) under article 14, paragraph 3 (g), that he was forced to sign blanco confessions, and (d) that his indictment in January 1987 corresponded to be same offence for which he had already been tried and convicted, which appeared to raise issues under article 14, paragraph 7.

4.3 On 4 July 1990, therefore, the Committee declared the communication admissible in so far as it appeared to raise issues under articles 7, 9, 10 and 14 of the Covenant.

4.4 The State party did not reply to the Committee's request for information and observations, in spite of a reminder addressed to it on 29 July 1991.

5.1 The Committee has considered the communication in the light of all the information made available by all parties, as required under article 5, paragraph 1, of the Optional Protocol. Concerning the substance of the authors' allegations, the Committee notes with concern that the State party has confined itself to statements of a general nature, by categorically denying that the author was at any time subjected to ill-treatment, and by asserting that the proceedings complied with the requirements of Ecuadorian law. Article 4, paragraph 2, of the Optional Protocol enjoins a State party to investigate in good faith all the allegations of violations of the Covenant made against it and its judicial authorities, and to furnish of the Committee with sufficient detail about the measures, if any, taken to remedy the situation. The dismissal of the allegations in general terms, as in the present case, does not meet the requirements of article 4, paragraph 2. In the circumstances, due weight must be given to the author's allegations, to the extent that they have been substantiated.

5.2 Mr. Terán has claimed that he was subjected to torture and ill-treatment during detention, which included remaining shackled and blind-folded for five days; the State party dismisses this claim. The Committee notes that Mr. Terán has submitted corroborative evidence in support of his allegation; the medical report, prepared on 13 March 1986, i.e. shortly after his arrest, records haematomas and numerous skin lesions ("escoriaciones") all over his body. Moreover, the author has submitted that he was forced to sign more than 10 blank sheets of paper. In the Committee's opinion, this evidence is sufficiently compelling to justify the conclusion that he was subjected to treatment prohibited under article 7 of the Covenant, and that he was not treated with respect for the inherent dignity of his person, in violation of article 10, paragraph 1.

5.3 In respect of the authors' claim of a violation of article 9, paragraph 1, the Committee lacks sufficient evidence to the effect that Mr. Terán's arrest was arbitrary and not based on grounds established by law. On the other hand, the Committee notes that Mr. Terán was kept in detention on the basis of a second indictment, subsequently quashed, from 9 March 1987 until 18 March 1988. In the circumstances, the Committee finds that this continuation of his detention for one year following the release order of 9 March 1987 constituted illegal detention within the meaning of article 9, paragraph 1, of the Covenant. Moreover, Mr. Terán has claimed and the State party has not denied that he was kept incommunicado for five days without being brought before a judge and without having access to counsel. The Committee considers that this entails a violation of article 9, paragraph 3.

5.4 With regard to Mr. Terán's contention that the State party violated article 14, paragraph 7, of the Covenant, because he was reindicted for the same events that had been the basis of his first trial and conviction, the Committee notes that article 14, paragraph 7, proscribes re-trial or punishment for an offence for which the person has already been convicted or acquitted. In the instant case, while the second indictment concerned a specific element of the same matter examined in the initial trial, Mr. Terán was not tried or convicted a second time, since the Superior Court quashed the indictment, thus vindicating the principle of ne bis in idem. Accordingly, the Committee finds that there has been no violation of article 14, paragraph 7, of the Covenant.

6. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it disclose violations of articles 7, 9, paragraphs 1 and 3 and 10, paragraph 1, of the Covenant.

7. The Committee is of the view that Juan Fernando Terán Jijón is entitled to a remedy, including appropriate compensation. The State party is under an obligation to investigate the use to which the more than ten sheets of paper signed by Mr. Terán Jijón under duress were put, to see to it that these documents are returned to him or destroyed, and to ensure that similar violations do not occur in the future.

8. The Committee would appreciate receiving information, within 90 days, from the State party in respect of measures adopted pursuant to the Committee's views.

[Done in English, French, Russian and Spanish, the English text being the original version.]

* Pursuant to rule 84, paragraph 1, of the Committee's rules of procedure, Mr. Julio Prado Vallejo did not take part in the examination of the communication and the adoption of the Committee's views.

** An individual opinion submitted by Mr. Bertil Wennergren is appended.

Appendix

Individual opinion of Mr. Bertil Wennergren pursuant to rule 94, paragraph 3, of the Committee's rules or procedure, concerning the Committee's views on communication No. 277/1988 (Marieta and Juan Fernando Terán Jijón v. Ecuador)

I concur with the Committee's views, with the exception of the findings, in paragraph 5.4, on Mr. Terán's claim that he was forced to sign 10 blank sheets of paper during the interrogation that took place when he was kept incommunicado in detention and subjected to maltreatment. The Committee has expressed the view, in paragraph 5.2, that the evidence submitted is sufficiently compelling to justify the conclusion that Mr. Terán Jijón was subjected to treatment prohibited under article 7 of the Covenant, and that he was not treated with respect for the inherent dignity of his person (in violation of art. 10, para.1). However, the Committee found that the element of signing 10 blank sheets of paper did not raise an issue under article 14, paragraph 3 (g). In that respect, I disagree.

I first note that the State party has not addressed Mr. Terán's allegation that he was forced to sign these blank sheets. In the circumstances, there is sufficient reason to believe that the allegation is based on verifiable events. I therefore believe that the Committee's findings should have been made on the basis of these facts as found. Pursuant to article 14, paragraph 3 (g), everyone shall, in the determination of any criminal charge against him, be entitled not to be compelled to testify against himself or to confess guilt. This means that during criminal proceedings,

neither the prosecutor nor the judge nor anyone else may threaten the accused or otherwise try to exert pressure on him, so as to force him to testify against himself or to confess guilt.

It also would violate the principle of objectivity and impartiality if such incidents were to occur; it would further entail a violation of article 14, paragraph 3 (g), if testimony or a confession obtained through compulsion in pretrial interrogation were to be introduced as evidence. Article 15 of the Convention against Torture confirms this view by prescribing that each State party shall ensure that any statement which is found to have been made as a result of torture shall not be introduced as evidence in any judicial proceedings, except against an individual accused of torture, as evidence that the statement was made.

Nevertheless, it is difficult to avoid that an incrimination or confession, in spite of their not being given any weight of evidence, cast a shadow on the accused. All attempts to compel a person to incriminate him or herself or to confess guilt should thus be prevented. It is not unusual that, as a method of compulsion, an interrogator forces the accused to sign blank papers, insinuating that incriminations or confessions of crimes more serious than the ones he is accused of, would be added. In so doing, the interrogator of course violates article 7 and 10, paragraph 1, but, in my opinion, he also violates article 14, paragraph 3 (g). That conclusion follows my conviction that no form of compulsion to make an individual incriminate him or herself or to confess guilt, can be accepted; this is so regardless of whether it is an express incrimination or merely a hypothetical one. There is always the risk that what has been signed or recorded may exercise undue influence on the issue of proof in the determination of criminal charges at a subsequent stage.

Bertil WENNERGREN