

## HUMAN RIGHTS COMMITTEE

### Motta et al. v. Uruguay

Communication No. 11/1977

29 July 1980

### VIEWS

*Submitted by: Alberto Grille Motta on 25 April 1977*

*Alleged victims: The author and other persons*

*State party: Uruguay*

*Date of adoption of views: 29 July 1980 (tenth session)*

#### **Views under article 5 (4) of the Optional Protocol\***

1. The author of this communication (initial letter dated 25 April 1977 and further letter dated 12 December 1978) is a Uruguayan national, residing in Mexico. He submitted the communication on his own behalf as well as on behalf of other persons who allegedly were not in a position to submit a communication on their own.

2. The author claims that on 7 February 1976 he was arrested by a group of Montevideo policemen at the house of a woman friend, Ofelia Fernfindez. They were both brought to Department 5 of the National Directorate of Information and Intelligence (commanded by a superintendent named by the author), where after several hours of ill-treatment he was interrogated for the purpose of obtaining an admission that he held an important position in the Communist Party and in order to induce him to identify fellow detainees as active members of the Communist Youth.

The author further alleges that over a period of approximately 50 days, he and his fellow detainees were subjected to severe torture; he cites in his case, inter alia, the application of electric shocks, the use of the "submarino" (putting the detainee's hooded head into foul water), insertion of bottles or barrels of automatic rifles into his anus and forcing him to remain standing, hooded and handcuffed and with a piece of wood thrust into his mouth, for several days and nights. Mr. Grille Motta specifically names several alleged torturers and interrogators.

The author states that he was brought before a military judge without having any opportunity

to see a lawyer beforehand and after having been totally isolated from the outside world; after making a statement before the Military Court he was transferred to the "Cilindro Municipal", a sports stadium that had been turned into a prison some years ago, where he remained for approximately another two months.

Mr. Alberto Grille Motta claims that on 20 May 1976 he was tried by a military judge on charges carrying sentences of from 8 to 24 years' imprisonment.

On 3 June 1976 the author and three of his fellow prisoners escaped to the Venezuelan embassy where they were granted "diplomatic" asylum.

Mr. Alberto Grille Motta claims that he has not submitted this case to any other international instance and that he has exhausted all possible domestic remedies, citing in this connection the dismissal by the Supreme Court of Justice of Uruguay of his appeal against certain decisions of the Military Court.

3. On 26 August 1977, the Human Rights Committee decided to transmit the communication to the State party, under rule 91 of the provisional rules of procedure, requesting information and observations relevant to the question of admissibility. The Committee also decided to request the author to furnish further information on the grounds and circumstances justifying his acting on behalf of the other alleged victims mentioned in the communication. No reply was received from the author in this regard.

4. By letter dated 27 October 1977, the State party objected to the admissibility of the communication on two grounds:

(a) The same matter had already been examined by the Inter-American Commission on Human Rights (IACHR);

(b) The alleged victims had not exhausted all available domestic remedies.

5. On 1 February 1978 the Human Rights Committee,

(a) Having ascertained that the case concerning the author of the communication which was before IACHR could not concern the same matter as it was submitted to IACHR on 10 March 1976 (prior to the entry into force of the International Covenant on Civil and Political Rights and the Optional Protocol for Uruguay),

(b) Being unable to conclude on the basis of the information before it that, with regard to the exhaustion of domestic remedies, there were any remedies which the alleged victim should or could have pursued,

(c) Being unable because of the lack of relevant additional information from the author, to consider the communication in so far as it related to other alleged victims,

Therefore decided:

(a) That the communication was admissible in so far as it related to the author, but inadmissible in so far as it related to other alleged victims;

(b) That the text of the decision be transmitted to the State party, together with the text of the relevant documents, and to the author;

(c) That, in accordance with article 4 of the Protocol, the State party be requested to submit to the Committee, within six months of the date of the transmittal to it of the decision, written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by it.

With regard to the exhaustion of domestic remedies, the Committee said that its decision "may be reviewed in the light of any further explanations which the State party may submit giving details of any domestic remedies which it claims to have been available to the author in the circumstances of his case, together with evidence that there would be a reasonable prospect that such remedies would be effective".

6. After expiry of the six-month time-limit the State party submitted its explanations, dated 6 November 1978, which consisted of a "Description of the rights available to the accused in the military criminal tribunals and of the domestic remedies at his disposal as a means of protecting and safeguarding his rights under the Uruguayan judicial system".

7. In a letter dated 12 December 1978 and submitted under rule 93 (3) of the provisional rules of procedure the author reaffirmed his previous assertions that he has exhausted all domestic remedies available to him in practice. He pointed out that the remedy of habeas corpus was not applicable in his case and that his appeal against the only ruling by the military court which could be appealed against in his case was dismissed by the Supreme Court of Justice after his escape. He submitted that the Committee should declare that a serious violation has occurred of articles 3, 6, 7, 8, 9, 10, 14, 15, 17, 18 and 19 of the International Covenant on Civil and Political Rights.

8. On 18 April 1979, the Committee decided that the submission of the State party, dated 6 November 1978, was not sufficient to comply with the requirements of article 4 (2) of the Optional Protocol, since it contained no explanations on the merits of the case under consideration and requested the State party to supplement its submission by providing, not later than six weeks from the date of the transmittal of this decision to the State party, observations concerning the substance of the matter under consideration, including copies of any court orders or decisions of relevance to the matter under consideration.

9. The Committee's decision of 18 April 1979 was transmitted to the State party on 18 May 1979. The six weeks referred to therein therefore expired on 2 July 1979. More than three months after that date a further submission dated 5 October 1979 was received from the State party.

10. In its further submission of 5 October 1979 the State party, while repeating the views expressed in its submission of 6 November 1978, namely that the question of admissibility

should be reviewed by the Committee in the light of the explanations given by the State party on domestic procedures available to the accused and reaffirming its conviction that its reply of 6 November 1978 should have been sufficient to settle the matter once and for all, added the following explanations:

Mr. Alberto Grille Motta, who had already been detained in 1967 for causing a disturbance on the premises of the Central Office of the Department of Montevideo, was again arrested on 7 February 1976 under "prompt security measures" for his alleged subversive activities from within the clandestine organization of the proscribed Communist Party.

He was placed at the disposal of the military courts which, by decision of 17 May 1976, ordered him to be tried on charges of subversive association and attempt to undermine the morale of the armed forces, under articles 60 (V) and 58 (3) respectively of the Military Penal Code.

At that time, contrary to what is stated in Mr. Grille Motta's communication, he appointed Dr. Susana Andreassen as his defence counsel.

On 3 June 1976, Mr. Grille Motta and three other detainees escaped from their place of detention, thus thwarting the course of justice.

The allegations that the author of the communication was subjected to ill-treatment and torture were nothing but a figment of the imagination of the author; they were nothing more than a further example of the campaign of defamation being waged against Uruguay with the object of discrediting its image abroad.

11. The 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.

12. With regard to the exhaustion of domestic remedies, the Committee has been informed by the Government of Uruguay in another case (No. 9/1977) that the remedy of habeas corpus is not applicable to persons arrested under "prompt security measures". Mr. Grille Motta states that he did in fact appeal to the Supreme Court of Uruguay against a ruling of the military court and that his appeal was dismissed. There is no evidence from which the Committee can conclude that there was any other domestic remedy available to him which he should have exhausted.

13. The Committee therefore decides to base its views on the following facts which have either been essentially confirmed by the State party or are uncontested except for denials of a general character offering no particular information or explanation: Alberto Grille Motta was arrested on 7 February 1976. About one month later, he was brought before a military judge without having any opportunity to consult a lawyer beforehand and after having been held completely incommunicado with the outside world. On 17 May 1976 he was ordered to be tried on charges of subversive association and an attempt to undermine the morale of the armed forces under articles 60 (V) and 58 (3) respectively of the Military Penal Code. The remedy of habeas corpus was not available to him. He was arrested, charged and

committed for trial on the grounds of his political views, associations and activities.

14. As regards the serious allegations of illtreatment and torture claimed by Mr. Grille Motta to have continued for about 50 days after his arrest on 7 February 1976, the Committee notes that it follows from this account that such treatment continued after 23 March 1976 (the date of the entry into force of the Covenant and the Optional Protocol for Uruguay). Furthermore, in his communication of 25 April 1977, which was transmitted by the Committee to the Uruguayan Government, Mr. Grille Motta named some of the officers of the Uruguayan Police who he stated were responsible. The State party has adduced no evidence that these allegations have been duly investigated in accordance with the laws to which it drew attention in its submission of 9 October 1979 in case No. 9/1977. A refutation of these allegations in general terms is not sufficient. The State party should have investigated the allegations in accordance with its laws and its obligations under the Covenant and the Optional Protocol and brought to justice those found to be responsible.

15. The Human Rights Committee has considered whether acts and treatment, which are prima facie not in conformity with the Covenant, could for any reasons be justified under the Covenant in the circumstances. The Government has referred to provisions of Uruguayan law, including the "prompt security measures". However, the Covenant (art. 4) does not allow national measures derogating from any of its provisions except in strictly defined circumstances, and the Government has not made any submissions of fact or law to justify such derogation. Moreover, some of the facts referred to above raise issues under provisions from which the Covenant does not allow any derogation under any circumstances.

16. 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 these facts, in so far as they have occurred after 23 March 1976 (the date on which the Covenant entered into force in respect of Uruguay), disclose violations of the Covenant, in particular of:

Articles 7 and 10 (1), on the basis of evidence of torture and inhuman treatment, which has not been duly investigated by the Uruguayan Government and which is therefore unrefuted;

Article 9 (3), because Mr. Grille Motta was not brought promptly before a judge or other officer authorized by law to exercise judicial power;

Article 9 (4), because recourse to habeas corpus was not available to him.

17. As regards article 19, the Covenant provides that everyone shall have the right to hold opinions without interference and that the freedom of expression set forth in paragraph 2 of that article shall be subject only to such restrictions as are necessary (a) for respect of the rights and reputations of others or (b) for the protection of national security or of public order (*ordre public*), or of public health or morals. The Government of Uruguay has submitted no evidence regarding the nature of the political activities in which Grille Motta was alleged to have been engaged and which led to his arrest, detention and committal for trial. Bare information from the State party that he was charged with subversive association and an attempt to undermine the morale of the armed forces is not in itself sufficient, without

details of the alleged charges and copies of the court proceedings. The Committee is therefore unable to conclude on the information before it that the arrest, detention and trial of Grille Motta was justified on any of the grounds mentioned in article 19 (3) of the Covenant.

18. The Committee, accordingly, is of the view that the State party is under an obligation to provide the victim with effective remedies, including compensation, for the violations which he has suffered and to take steps to ensure that similar violations do not occur in the future.

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\*/ The text of an individual opinion submitted by a Committee member is appended to these views.

### Appendix

Individual opinion submitted by a member of the Human Rights Committee under rule 94 (3) of the Committee's provisional rules of procedure  
Communication No. 11/1977

Individual opinion appended to the Committee's views at the request of Mr. Christian Tomuschat:

I can see no justification for a discussion of article 19 of the Covenant in relation to the last sentence of paragraph 13. To be sure, the petitioner has complained of a violation of article 19. But he has not furnished the Human Rights Committee with the necessary facts in support of his contention. The only concrete allegation is that, while detained, he was interrogated as to whether he held a position of responsibility in the outlawed Communist Youth. No further information has been provided by him concerning his political views, association and activities. Since the petitioner himself did not substantiate his charge of a violation of article 19, the State party concerned was not bound to give specific and detailed replies. General explanations and statements are not sufficient. This basic procedural rule applies to both sides. A petitioner has to state his case plainly. Only on this basis can the defendant Government be expected to answer the charges brought against it. Eventually, the Human Rights Committee may have to ask the petitioner to supplement his submission, which in the present case it has not done.