

HUMAN RIGHTS COMMITTEE

Sendic v. Uruguay

Communication No. R.14/63

28 October 1981

VIEWS

Submitted by: Violeta Setelich on behalf of her husband Raul Sendic Antonaccio

State party concerned: Uruguay

Date of communications 28 November 1979

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

Meeting on 28 October 1981,

Having concluded its consideration of communication No. R.14/63 submitted to the Committee by Violeta Setelich 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. The author of this communication (initial letter dated 28 November 1979 and further letters dated 28 and 31 May, 23 June, 7 July and 3 October 1980, 9 February, 27 May and 22 July 1981) is Violeta Setelich, a Uruguayan national residing in France. She submitted the communication on behalf of her husband, Raul Sendic Antonaccio, a 54 year old Uruguayan citizen, detained in Uruguay.

2.1 The author stated in her submission on 28 November 1979 that her husband had been the main founder of the Movimiento de Liberacion Nacional (MLN-Tupamaros). She commented that the MLN(T) had been a political movement - not a terrorist one - aimed at

establishing a better social system through the radical transformation of socio-economic structures and recourse to armed struggle. She further stated that, on 7 August 1970, after seven years of clandestine activity, her husband was arrested by the Uruguayan police; that on 6 September 1971 he escaped from Punta Carretas prison together with 105 other political detainees; that he was re-arrested on 1 September 1972 and taken, seriously wounded, to a military hospital; and that, after having been kidnapped by a military group, he finally appeared in Military Detention Establishment No. 1 (Libertad prison).

2.2 The author further stated that, between June and September 1973, eight women and nine men, including her husband, were transferred by the army to unknown places of detention, and that they were informed that they had become "hostages" and would be executed if their organization, MLN(T), took any action. She added that, in 1976, the eight women "hostages" were taken back to a military prison, but that the nine men continued to be held as "hostages". The author enclosed a statement, dated February 1979, from Elena Curbelo de Mirza, one of the eight women "hostages" who were released in March 1978. (In her statement, Mrs. Mirza confirmed that Raul Sendic and eight other men detainees continued to be considered as "hostages". She listed the names of her fellow hostages, both the men and the women. She stated that a hostage lived in a tiny cell with only a mattress. The place was damp and cold and had no window. The door was always closed and the detainee was kept there alone 24 hours a day. On rare occasions he was taken out to the yard, blindfolded and with his arms tied. She further stated that hostages were often transferred to fresh prisons, that relatives had then to find where they were and that visits were authorized only at very irregular intervals.)

2.3 The author described five places of detention where her husband was kept between 1973 and 1976, and stated that in all of them he was subjected to mistreatment (solitary confinement, lack of food and harassment), while in one of them, as a result of a severe beating by the guards, he developed a hernia. She mentions that, in September 1976, he was transferred to the barracks of Ingenieros in the city of Paso de los Toros.

2.4 The author declared that, beginning in February 1978, her husband was once again subjected to inhuman treatment and torture: for three months, he was made to do the "planton" (stand upright' with his eyes blindfolded) throughout the day; he was only able to rest and sleep for a few hours at a time; he was beaten and given insufficient food and he was not allowed to receive visits. In May 1978, he received his first visit after this three months' sanction and his state of health was alarming.

2.5 At the end of August 1978, the authorities officially stated that, because of the danger he represented, her husband was not detained in Libertad Prison, but at Paso de los Toros. The author maintained that the fact that her husband was held as a hostage and the cruel and discriminatory treatment to which he was subjected constituted flagrant violations of both national and international law, particularly the Geneva Conventions of 1949.

2.6 The author stressed that her husband's situation had not changed with the coming into force of the International Covenant on Civil and Political Rights and the Optional Protocol on 23 March 1976. She requested the Human Rights Committee to take appropriate action

with a view to securing her husband's right to submit a communication himself.

2.7 The author further alleged that her husband had needed an operation for his hernia since 1976; that, despite a medical order to perform such an operation, the military authorities had refused to take him to a hospital, and that his state of health continued to deteriorate. (Because of his hernia, he could take only liquids and was unable to walk without help; he also suffered from heart disease.) She feared for his life and even thought that it had been decided to kill him slowly, notwithstanding the official abolition of the death penalty in Uruguay in 1976. She therefore requested the Human Rights Committee to apply rule 86 of its provisional rules of procedure in order to avoid irreparable damage to his health.

2.8 The author stated that her husband had been denied all judicial guarantees. She further stated that, since December 1975, it had been compulsory for all cases relating to political offences to be heard by military courts. and that her husband's trial, which was still pending, would, therefore, be before such a body.

2.9 She added that in July 1977, the Government issued "Acts Institucional No. 8", which in effect subordinated the judicial power to the Executive, and that independent and impartial justice could not be expected from the military courts. She further alleged that domestic remedies such as habeas corpus, were not applicable, that civilians were deprived of the safeguards essential to a fair trial and of the right to appeal, that defence lawyers were systematically harassed by the military authorities and that her husband had not been allowed to choose his own counsel. She maintained that all domestic remedies had been exhausted.

2.10 She also stated that, at the time of writing (28 November 1979), she was unaware of her husband's whereabouts. She requested the Human Rights Committee to obtain information from the State party about his place of detention and conditions of imprisonment.

3. The author claimed that the following provisions of the International Covenant on Civil and Political Rights had been violated by the Uruguayan authorities: articles 2, 6, 7, 10 and 14.

4. On 26 March 1980, 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 of the communication. The Committee also requested the State party to furnish information on the state of health of Raul Sendic Antonaccio, the medical treatment given to him and his precise place of detention.

5. By a note dated 16 June 1980, the State party contested the admissibility of the communication on the ground that the same matter had been submitted to the Inter-American Commission on Human Rights (IACHR) as case No. 2937. In this connexion the Committee ascertained from the Secretariat of IACHR that the case referred to was submitted by a third party and opened before IACHR on 26 April 1978. The State party did not furnish any information concerning Rail Sendic's state of health, the medical treatment given to him or

his whereabouts.

6. In her submission dated 23 June 1980, the author, commenting on the State party's submission, stated that she had never submitted her husband's case to the IACHR. She further stated that it had become known, thanks to strong international pressure on the military authorities, that her husband was detained in the Regimiento "Pablo Galarza" in the department of Durazno. She alleged that the State party had refrained from giving any information on her husband's state of health because he was kept on an inadequate diet in an underground cell with no fresh air or sunlight and his contacts with the outside world were restricted to a monthly visit that lasted 30 minutes and took place in the presence of armed guards.

7. In a further submission dated 7 July 1980, Violeta Setelich identified the author of the communication to IACHR concerning its case No. 2937 and enclosed a copy of his letter, dated 8 June 1980, addressed to the Executive Secretary of IACHR, requesting that consideration of case No. 2937 concerning Rail Sendic should be discontinued before that body, so as to remove any procedural uncertainties concerning the competence of the Human Rights Committee to consider the present communication under the Optional Protocol.

8. In the circumstances, the Committee found that it was not precluded by article 5(2)(a) of the Optional Protocol from considering the communication. The Committee was unable to conclude from the information at its disposal that there had been remedies available to the victim of the alleged violations which had not been invoked. Accordingly, the Committee found that the communication was not inadmissible under article 5(2)(b) of the Optional Protocol.

9. On 25 July 1980, 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 the Committee's decision, written explanations or statements clarifying the matter and the measures, if any, that it had taken to remedy the situation;

(c) That the State party should be requested to furnish the Committee with information on the present state of health of Raul Sendic Antonaccio, the medical treatment given to him and his exact whereabouts;

(d) That the State party should be informed that the written explanations or statement 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 discharge 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 of its actions. The State party was requested, in that connection, to enclose copies of any court orders or decisions of relevance to the matter under consideration.

10. In a letter dated 3 October 1980, the author argued that her husband had the right to be informed of the Committee's decision of 25 July 1980, declaring the communication admissible, and that he should be given copies of the relevant documents and afforded an opportunity to supplement them as he saw fit.

11. On 24 October 1980, the Human Rights Committee:

Noting that the author of the communication, in her submission of 28 November 1979, had expressed grave concern as to her husband's state of health and the fact that his whereabouts were kept secret by the Government of Uruguay,

Taking into account the fact that its previous requests for information about the present situation of Raul Sendic Antonaccio had gone unheeded,

Noting further the letter dated 3 October 1980 from the author of the communication,

Decided.

1. That the State party should be reminded of the decisions of 26 March and 25 July 1980 in which the Human Rights Committee requested information about the state of health of Raul Sendic Antonaccio, the medical treatment given to him and his exact whereabouts;

2. That the State party should be urged to provide the information sought without any further delay;

3. That, as requested by Violeta Setelich, the State party should be requested to transmit all written material pertaining to the proceedings (submissions of the parties, decisions of the Human Rights Committee) to Raul Sendic Antonaccio, and that he should be given the opportunity himself to communicate directly with the Committee.

12.1 In further letters dated 9 February, 27 May and 22 July 1981, the author restated her deep concern about her husband's state of health. She reiterated that after soldiers had struck him in the lower abdomen with gun butts at Colonial barracks in mid-1974, her husband had developed an inguinal hernia and that there was a risk that the hernia might become strangulated. She stated that Sendic's relatives had repeatedly requested that he should be operated on because of his extremely poor state of health, but to no avail.

12.2 She added that her husband's conditions of detention were slightly better at the Regimiento Pablo Galarza No. 2, since he was allowed to go out to the open air for one hour a day. She stressed, however, that he should be transferred to the Libertad Prison, where all other political prisoners were held.

12.3 Concerning her husband's legal situation, she added the following information:

(i) In July 1980, her husband was sentenced to the maximum penalty under the Uruguayan Penal Code: 30 years' imprisonment and 15 years of special security measures. He had not

been informed of the charges against him before the trial, or allowed to present witnesses and the hearing had been held in camera and in his absence. He had been denied the right of defence as he had never been able to contact the lawyer assigned to him, Mr. Almicar Perrea.

(ii) In September 1980 and in April and May 1981, the authorities announced that her husband's sentence was to be reviewed by the Supreme Military Tribunal, but this has not yet occurred.

(iii) Though Sendic's relatives had appointed Maitre Cheron to be his lawyer, Maitre Cheron was denied in September 1980 and in January 1981 the right to examine Sendic's dossier and to visit him.

13. The time-limit for the State party's submission under article 4(2) of the Optional Protocol expired on 27 February 1981. To date, no such submission has been received from the State party.

14. On 21 August 1981, the State party submitted the following comments on the Committee's decision of 24 October 1980 (see para. 11 above):

"The Committee's decision of 24 October 1980 adopted at its eleventh session on the case in question exceeds its authority. The competence granted to the Committee on Human Rights by the Optional Protocol to the International Covenant on Civil and Political Rights is contained in article 5 (4) which states: 'The Committee shall forward its views to the State party concerned and to the individual.' The scope of this rule is quite clearly defined. The Committee has authority only to send its observations to the State party concerned.

"On the contrary, in the present decision, the Committee had arrogated to itself competence which exceeds its powers.

"The Committee on Human Rights is applying a rule which does not exist in the text of the Covenant and the Protocol, whereas the function of the Committee is to fulfil and apply the provisions of those international instruments. It is inadmissible for a body such as the Committee to create rules flagrantly deviating from the texts emanating from the will of the ratifying States. Those were the circumstances in which the decision in question was taken. Paragraph 3 requests, with absolutely no legal basis, that a detainee under the jurisdiction of a State party - Uruguay - be given the opportunity to communicate directly with the Committee. The Government of Uruguay rejects that decision, since to accept it would be to create the dangerous precedent of receiving a decision which violates international instruments such as the Covenant and its Protocol. Moreover, the Uruguayan Government considers that the provisions in those international instruments extend to States as subjects of international law. Thus these international norms, like any agreement of such nature, are applicable to States and not directly to individuals. Consequently, the Committee can hardly claim that this decision extends to any particular individual. For the reasons given, the Government of Uruguay rejects the present decision of the Committee, which violates elementary norms and principles and thus indicates that the Committee is

undermining its commitments in respect of the cause of promoting and defending human rights".

15. The Human Rights committee, having examined the present communication in the light of all the information made available to it by the parties as provided in article 5 (1) of the Optional Protocol, hereby decides, in the absence of comments by the State party, to base its views on the following facts as set out by the author:

16.1 Events prior to the entry into force of the Covenant: Raul Sendic Antonaccio, a main founder of the Movimiento de Liberacion Nacional (MLN) - Tupamaros, was arrested in Uruguay on 7 August 1970. On 6 September 1971, he escaped from prison, and on 1 September 1972 he was re-arrested after having been seriously wounded. Since 1973 he has been considered as a "hostage", meaning that he is liable to be killed at the first sign of action by his organization, MLN (T). Between 1973 and 1976, he was held in five penal institutions and subjected in all of them to mistreatment (solitary confinement, lack of food and harassment). In one of them, in 1974, as a result of a severe beating by the guards, he developed a hernia.

16.2 Events subsequent to the entry into force of the Covenant: In September 1976, he was transferred to the barracks of Ingenieros in the city of Paso de los Toros. There, from February to May 1978, or for the space of three months, he was subjected to torture ("plantones", beatings, lack of food). On 28 November 1979 (date of the author's initial communication), his whereabouts were unknown. He is now detained in the Regimiento-Pablo Galarza No. 2, Department of Durazno, in an underground cell. His present state of health is very poor (because of his hernia, he can take only liquids and is unable to walk without help) and he is not being given the medical attention it requires. In July 1980, he was sentenced to 30 years' imprisonment plus 15 years of special security measures. He was not informed of the charges brought against him. He was never able to contact the lawyer assigned to him, Mr. Almicar Perrea. His trial was held in camera and in his absence and he was not allowed to present witnesses in support of his case. In September 1980 and in April and May 1981, it was publicly announced that his sentence was to be reviewed by the Supreme Military Tribunal.

17. The Human Rights Committee observes that, when it took its decision on admissibility on 25 July 1980, it had no information about Raul Sendic's trial before a court of first instance. The Committee further observes that, although his sentence is to be reviewed by the Supreme Military Tribunal (there has as yet been no indication that these final review proceedings have taken place), the Committee is not barred from considering the present communication, since the application of remedies has been unreasonably prolonged.

18. The Human Rights Committee cannot accept the State party's contention that it exceeded its mandate when in its decision of 24 October 1980, it requested the State party to afford to Raul Sendic Antonaccio the opportunity to communicate directly with the Committee. The Committee rejects the State party's argument that a victim's right to contact the Committee directly is invalid in the case of persons imprisoned in Uruguay. If governments had the right to erect obstacles to contacts between victims and the Committee, the procedure established

by the Optional Protocol would, in many instances, be rendered meaningless. It is a prerequisite for the effective application of the Optional Protocol that detainees should be able to communicate directly with the Committee. The contention that the International Covenant and the Protocol apply only to States, as subjects of international law, and that, in consequence, these instruments are not directly applicable to individuals is devoid of legal foundation in cases where a State has recognized the competence of the Committee to receive and consider communications from individuals under the Optional Protocol. That being so, denying individuals who are victims of an alleged violation their rights to bring the matter before the Committee is tantamount to denying the mandatory nature of the Optional Protocol.

19. The Human Rights Committee notes with deep concern that the State party has failed to fulfill its obligations under article 4 (2) of the Optional Protocol and has completely ignored the Committee's repeated requests for information concerning Raul Sendic's state of health, the medical treatment given to him and his exact whereabouts. The Committee is unable to fulfill the task conferred upon it by the Optional Protocol if States parties do not provide it with all the information relevant to the formation of the views referred to in article 5(4). Knowledge of the state of health of the person concerned is essential to the evaluation of an allegation of torture or ill-treatment.

20. 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 violations of the International Covenant on Civil and Political Rights, particularly:

of article 7 and article 10 (1) because Raul Sendic is held in solitary confinement in an underground cell, was subjected to torture for three months in 1978 and is being denied the medical treatment his condition requires;

of article 9 (3) because his right to trial within reasonable time has not been respected;

of article 14 (3) (a) because he was not promptly informed of the charges against him;

of article 14 (3) (b) because he was unable either to choose his own counsel or communicate with his appointed counsel and was, therefore, unable to prepare his defence;

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

of article 14 (3) (d) because he was unable to attend the trial at first instances

of article 14 (3) (e) because he was denied the opportunity to obtain the attendance and examination of witnesses on his behalf.

21. The Committee, accordingly, is of the view that the State party is under an obligation to take immediate steps to ensure strict observance of the provisions of the Covenant and to

provide effective measures to the victim, and in particular to extend Raul Sendic treatment laid down for detained persons in articles 7 and 10 of the Covenant and to give him a fresh trial with all the procedural guarantees prescribed by article 14 of the Covenant. The State party must also ensure that Raul Sendic receives promptly all necessary medical care.