

HUMAN RIGHTS COMMITTEE

Valcada v. Uruguay

Communication No. 9/1977

26 October 1979

VIEWS

Submitted by: Edgardo Dante Santullo Valcada on 20 February 1977

Alleged victim: The author

State party: Uruguay

Date of adoption of views: 26 October 1979 (eighth session)

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

1. The author of this communication dated 20 February 1977 is a Uruguayan national residing in Mexico. He submitted the communication on his own behalf.

2. The author states that on 8 September 1976 he was arrested in the streets of Montevideo by four police officers dressed in civilian clothing and taken to the headquarters of the Investigation and Intelligence Department. There he learned that he was accused of receiving the clandestine newspaper Carta. The author described what ensued as follows: "On denying this, I was hooded and forced to remain standing in an unnatural position (feet one metre apart, body and head very erect, arms stretched out and raised to shoulder level, in my underwear and barefoot on a pile of grit); this caused me intense muscular pain. If I was overcome by fatigue and lowered my arms or head or put my legs a little further together, I was beaten brutally. This treatment was accompanied by punches, kicks, insults and threats of torturing my wife and two children (aged six and eight)." He further alleges that he was not given any food and that this situation lasted for three days. The day after his arrest, on 9 September 1976, at 3 a.m., his house was thoroughly searched, allegedly without his permission and without any warrant. On 16 September 1976 he was transferred to the Central Prison where he remained imprisoned for a further 50 days in complete solitary confinement in a cell measuring 1.2 by 2 metres. He was only allowed to leave his cell 15 minutes in the mornings and 15 minutes in the afternoons. On 23 October 1976, he was brought before a military judge before whom he maintained what he had said previously. On 5 November 1976 he was again brought before the military court, where he was informed that, in the absence of any reasonable grounds for charging him with an offence, he could

go flee. The writer adds that at no time, during the 50 days of his detention, was he able to communicate with a defence counsel and that the recourse of habeas corpus was not applicable in his case because he was detained under the "prompt security measures". Finally he claims that he has not received any compensation for his imprisonment and for the resulting economic hardship suffered by his family.

3. On 25 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.

4. By letter dated 27 October 1977, the State party objected to the admissibility of the communication on the ground that the alleged victim had not exhausted all available domestic remedies, and made the general observation that every person in the national territory has free access to the courts and public and administrative authorities and freedom to avail himself of all the administrative and legal remedies available to him under Uruguay's internal law.

5. On 1 February 1978, the Human Rights Committee,

(a) Having ascertained that the case concerning the alleged victim has not been submitted to any other international body,

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

Therefore decided:

(a) That the communication was admissible;

(b) That the text of this 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 (2) of the Optional Protocol, the State party 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 remedy, if any, that may have been taken by it.

6. The time-limit for the State party's submission under article 4 (2) of the Optional Protocol expired on 3 September 1978. More than four months after expiry of the six-month time-limit, the State party submitted its explanations, dated 8 January 1979, which consisted of a "Review of the rights of the accused in cases before a military criminal tribunal, and domestic remedies available to him for protecting and safeguarding his rights in the national courts of justice". It contained a reference to the remedy of habeas corpus under article 17 of the Constitution, but it did not mention the fact that under the Uruguayan legal system the remedy of habeas corpus is not applicable to persons arrested and detained under the régime

of prompt security measures.

7. On 10 April 1979, the Committee decided that the submission of the State party dated 8 January 1979 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.

8. 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 response was received from the State party, dated 9 October 1979. The State party informed that Mr. Santullo Valcada was arrested on 9 September 1976 in connection with the identification of persons acting as clandestine contacts for the proscribed Communist Party. During the inspection of his house, a great amount of subversive material was allegedly found and Mr. Santullo was detained under the "prompt security measures". On 6 November 1976 he was released and a few days later, on 25 November, he obtained political asylum at the Embassy of Mexico. It is maintained that, throughout the proceedings, all the provisions of the internal legal order were strictly complied with. The State party also referred in its submission to the régime of "prompt security measures" describing some of its characteristics. Under such régime, any person can be arrested on grounds of a grave and imminent danger to security and public order; the remedy of habeas corpus is not applicable. Furthermore the State party referred to the domestic legal provisions prohibiting any physical maltreatment in Uruguay. Without going into further details, the State party submitted that the author's allegations concerning violations of the Covenant were unfounded, irresponsible and unaccompanied by the least shred of evidence and that they accordingly did not deserve further comment.

9. The Committee has noted that the submissions by the Government of Uruguay of 9 October 1979 were received after the expiry of the time-limit imposed by article 4 (2) of the Optional Protocol, and even after the time-limit following the Committee's renewed request of 18 April 1979. The Committee considered the present communication in the light of all information made available to it by the parties as provided for in article 5 (1) of the Optional Protocol.

10. The Human Rights Committee therefore decides to base its views on the following facts which have either been essentially confirmed by the State party or are unrepudiated or uncontested except for denials of a general character offering no particular information or explanations: Edgardo Dante Santullo Valcada was arrested on 8 or 9 September 1976. He was brought before a military judge on 25 October 1976 and again on 5 or 6 November 1976 when he was released. During his detention he did not have access to legal counsel. He had no possibility to apply for habeas corpus. Nor was there any decision against him which could be the subject of an appeal.

11. As regards the allegations of ill-treatment, the Committee noted that in his communication the author named the senior officers responsible for the ill-treatment which

he alleged that he received. The State party has adduced no evidence that his allegations of illtreatment have been duly investigated in accordance with the laws to which it drew attention in its submission of 9 October 1979. A refutation of these allegations in general terms is not enough. The State party should investigate the allegations in accordance with its laws.

12. 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, having arisen after 23 March 1976, disclose violations of the International Covenant on Civil and Political Rights, in particular:

"of article 9 (4) because, habeas corpus being inapplicable in his case, Santullo Valcada was denied an effective remedy to challenge his arrest and detention."

As regards article 7 of the Covenant the Committee cannot find that there has not been any violation of this provision. In this respect the Committee notes that the State party has failed to show that it had ensured to the person concerned the protection required by article 2 of the Covenant.

13. 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 remedies to the victim, including compensation in accordance with article 9 (5) of the Covenant.

*/ 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
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Individual opinion appended to the Committee's views at the request of Mr. Walter Surma Tarnopolsky:

Although I agree with the view of the Committee that it could not find that there has not been any violation of article 7 of the Covenant, [also conclude, for the reasons set out in paragraph 11 of the Committee's views, that there has been a violation of article 7 of the Covenant.

The following members of the Committee associated themselves with the individual opinion

submitted by Mr. Tarnopolsky: Mr. Nejib Bouziri, Mr. Abdoulaye Dieye, Mr. Bernhard Graefrath, Mr, Dejan JanEa, Mr. Waleed Sadi.