

## HUMAN RIGHTS COMMITTEE

### Weinberger v. Uruguay

Communication No. 28/1978

29 October 1980

#### VIEWS

*Submitted by: Luciano Weinberger Weisz on 8 May 1978*

*Alleged victim: Ismael Weinberger*

*State party: Uruguay*

*Date of adoption of views: 29 October 1980 (eleventh session)*

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

1. The author of this communication (initial letter dated 8 May 1978 and subsequent letters dated 16 June 1978, 11 February 1979 and 18 August 1980) is a Uruguayan citizen residing in Mexico. He submitted the communication on behalf of his brother, Ismael Weinberger, a journalist at present detained in Uruguay.

2. The author alleges the following: His brother was arrested in the presence of his relatives at his home in Montevideo, Uruguay, on 25 February 1976, without any warrant of arrest. He was held incommunicado for nearly 10 months, while Uruguayan authorities denied his detention for more than 100 days. Only in June 1976 did his name appear on a list of detained persons, but still his family was not informed about his place of detention, the prison of "La Paloma" in Montevideo. During this period of 10 months, he suffered severe torture, and was most of the time kept blindfolded with his hands tied together. In addition, like all other prisoners, he was forced to remain every day during 14 hours sitting on a mattress. He was not allowed to move around, nor to work or read. Food was scarce (a piece of bread and thin soup twice a day without any meat). When his family was allowed to visit him after 10 months, serious bodily harm (one arm paralysed, leg injuries, infected eyes) could be seen. He had lost 25 kgs and showed signs of application of hallucinogenic substances. At the end of 1976 or early 1977, he was transferred to the prison of "Libertad" in the Province of San Jos~, where he received better treatment.

The author further states that Ismael Weinberger was brought before a military judge on 16 December 1976 and charged with having committed offences under article 60 (V) of the

Military Penal Code ("subversive association") with aggravating circumstances of conspiracy against the Constitution (asociación para delinquir con el agravante de atentado a la Constitución). Only then could he avail himself of the assistance of legal counsel. Characterizing these accusations as a mere pretext, the author alleges that the real reasons for his brother's arrest and conviction were his political opinions, contrary to the official ideology of the present Government of Uruguay. He asserts that Ismael Weinberger was prosecuted solely for having contributed information on trade union activities to a newspaper opposed to the Government, i.e., for the exercise of rights expressly guaranteed by the Constitution of Uruguay to all citizens. Furthermore, he alleges that to be tried on a charge of "asociación para delinquir" amounted to prosecution for membership in a political party which had been perfectly lawful at the time when Ismael Weinberger was affiliated with it, and which had been banned only afterwards. In addition, he maintains that his brother did not have a fair and public hearing, since the trial of first instance was conducted in writing, military judges are subordinated to the military hierarchy and lack the required qualities of impartiality and independence, and his brother only had the assistance of counsel after approximately 10 months of detention. Finally, the author alleges that the judgement against his brother was not made public.

The author also alleges that pursuant to Acta Institucional No. 4 of 1 September 1976, (arts. 1 (a), (b) and 2 (a))' his brother is now deprived of the right to engage in political activities for 15 years.

3. The author further claims that in practice domestic remedies do not exist in Uruguay. With regard to the recourse of habeas corpus, the authorities maintain that it is not applicable to the cases of persons detained under "prompt security measures", while an appeal against a sentence to a higher tribunal is in practice ineffective.

The author alleges that articles 2, 3, 7, 9, 10, 12, 14, 15, 25 and 26 of the International Covenant on Civil and Political Rights have been violated. He states in his letter of 16 June 1978 that the Inter-American Commission on Human Rights took note of his brother's case and, after having requested a report on it from the Government of Uruguay, decided to take no further action in the matter and to file it (case No. 2134).

4. On 26 July 1978, 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.

5. By a note dated 29 December 1978, the State party objected to the admissibility of the communication on three grounds:

(a) That the case had been considered by the InterAmerican Commission on Human Rights (No. 2134) which had decided to shelve it when the complaint had been withdrawn by its author;

(b) That the date of the alleged violation of human rights (Ismael Weinberger was arrested on 18 January 1976) preceded the date of the entry into force for ' Uruguay of the Covenant

and the Optional Protocol (23 March 1976);

(c) That domestic remedies had not been exhausted (the State party enclosed an annex listing the domestic remedies in the Uruguayan legal system).

6. In a decision adopted on 24 April 1979, the Human Rights Committee concluded:

(a) That it was not barred from considering the case after having ascertained that case No. 2134, concerning the alleged victim, was no longer under consideration by the Inter-American Commission on Human Rights;

(b) That it was not barred from considering the case although the arrest of the alleged victim preceded the date of the entry into force for Uruguay of the Covenant and the Optional Protocol, since the alleged violations continued after that date;

(c) That, with regard to the exhaustion of domestic remedies, on the basis of the information before it, there were no further remedies which the alleged victim could have pursued;

The Committee therefore decided:

(a) That the communication was admissible;

(b) That, in accordance with article 4 (2) 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 this decision, written observations or explanations concerning the substance of the matter under consideration and in particular on the specific violations of the Covenant alleged to have occurred. The State party was requested, in this connection, to enclose copies of any court orders or decisions of relevance to the matter under consideration;

(c) That this decision be communicated to the State party and to the author of the communication.

7. The six-month time-limit referred to in the Committee's decision expired on 25 November 1979. By a note dated 10 July 1980, the State party submitted its written explanations under article 4 (2) of the Optional Protocol.

8. In this submission the State party repeats the views expressed in its earlier note of 29 December 1978 as to the non-exhaustion of domestic remedies. The State party points out that the fact that Mr. Weinberger has not exhausted the available domestic remedies is proved by the appeal against the judgement of the court of first instance which the defence lodged with the Supreme Military Court on 19 August 1979 and which was brought before that Court on 29 September 1979.

As far as the merits of the case are concerned, the State party submits that Ismael Weinberger was not arrested because of his political beliefs or ideas or his trade-union membership, but for having participated directly in subversive activities.

The State party further contests the allegation that Ismael Weinberger has not been afforded legal assistance. The State party submits that he had at all times access to the help of a defence lawyer of his choosing, Dr. Moises Sarganas.

9. In his submission dated 18 August 1980, under rule 93 (3) of the provisional rules of procedure, the author comments upon the State party's reply of 10 July 1980.

With regard to the exhaustion of domestic remedies, the author reiterates that they are in practice inoperative. In substantiation of this allegation he repeats the dates relating to his brother's arrest (25 February 1976), the day the Government acknowledged that arrest (June 1976), the day charges were brought against him (16 December 1976), the day the indictment was pronounced (September 1978), and the day he was sentenced by a Military Court of First Instance (14 August 1979). The author points out that these dates and the fact that no final judgement has been pronounced in his brother's case more than four and a half years after his arrest prove that domestic remedies are not operating normally in Uruguay.

As regards the merits of the case, the author submits that the State party should have explained and specified in what subversive activities Ismael Weinberger has been involved. In substantiation of that allegation the State party should have complied with the request of the Human Rights Committee to "enclose copies of any court orders or decisions of relevance to the matter under consideration".

10. 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.

11. 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". The author as well as the State party have stated that an appeal was lodged on behalf of Ismael Weinberger with the Supreme Military Court on 19 August 1979. Up to date no final judgement has been rendered in the case of Ismael Weinberger, more than four and a half years after his arrest on 25 February 1976. The Committee concludes that in accordance with article 5 (2) (b) of the Optional Protocol, it is not barred from considering the case, as the application of the remedy is unreasonably prolonged.

12. 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: Ismael Weinberger Weisz was arrested at his home in Montevideo, Uruguay, on 25 February 1976 without any warrant of arrest. He was held incommunicado at the prison of "La Paloma" in Montevideo for more than 100 days and could be visited by family members only 10 months after his arrest. During this period, he was most of the time kept blindfolded with his hands tied together. As a result of the treatment received during detention, he suffered serious physical injuries (one arm paralysed, leg injuries and infected eyes) and substantial loss of weight.

Ismael Weinberger was first brought before a judge and charged on 16 December 1976,

almost 10 months after his arrest. On 14 August 1979, three and a half years after his arrest, he was sentenced to eight years of imprisonment by the Military judge of the Court of First Instance for "subversive association" (art. 60 (V) of the Military Penal Code) with aggravating circumstances of conspiracy against the Constitution. The concrete factual basis of this offence has not been explained by the Government of Uruguay, although the author of the communication claims that the true reasons were that his brother had contributed information on trade-union activities to a newspaper opposed to the Government and his membership in a political party which had lawfully existed while the membership lasted. The Committee further notes in this connection that the State party did not comply with the Committee's request to enclose copies of any court orders or decisions of relevance to the matter under consideration. Ismael Weinberger was not granted the assistance of counsel during the first 10 months of his detention. Neither the alleged victim nor his counsel had the right to be present at the trial, the proceedings being conducted in writing. The judgement handed down against him was not made public.

Pursuant to Acta Institucional No. 4 of 1 September 1976, Ismael Weinberger is deprived of the right to engage in political activities for 15 years.

13. As regards the treatment to which Ismael Weinberger has been subjected, the Committee notes that the State party did not at all comment thereon in its submission of 10 July 1980.

14. 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". The Covenant (art. 4) allows national measures derogating from some of its provisions only 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.

15. The Human Rights Committee is aware that under the legislation of many countries criminal offenders may be deprived of certain political rights. Accordingly, article 25 of the Covenant only prohibits "unreasonable" restrictions. In no case, however, may a person be subjected to such sanctions solely because of his or her political opinion (arts. 2 (1) and 26). Furthermore, in the circumstances of the present case there is no justification for such a deprivation of all political rights for a period of 15 years.

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), because of the severe treatment which Ismael Weinberger received during the first 10 months of his detention;

Article 9 (3), because he was not brought promptly before a judge or other officer authorized

by law to exercise judicial power and because he was not tried within a reasonable time;

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

Article 14 (1), because he had no fair and public hearing and because the judgement rendered against him was not made public;

Article 14 (3), because he did not have access to legal assistance during the first 10 months of his detention and was not tried in his presence;

Article 15 (1), because the penal law was applied retroactively against him;

Article 19 (2), because he was detained for having disseminated information relating to trade-union activities;

Article 25, because he is barred from taking part in the conduct of public affairs and from being elected for 15 years in accordance with Acta Institucional No. 4\* of 1 September 1976.

17. The Committee, accordingly, is of the view that the State party is under an obligation to provide the victim with effective remedies, including his immediate release and 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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\*/ Institutional Act No. 4 of 1 September 1976:

"[...] The Executive Power, in exercise of the powers conferred on it by the institutionalization of the revolutionary process,

"DECREES:

"Art. 1. The following shall be prohibited, for a term of 15 years, from engaging in any of the activities of a political nature authorized by the Constitution of the Republic, including the vote:

"(a) All candidates for elective office on the lists for the 1966 and 1971 elections of the Marxist and pro-Marxist Political Parties or Groups declared illegal by the resolutions of the Executive Power No. 1788/67 of 12 December 1967 and No. 1026/73 of 26 November 1973;

"(b) All persons who have been tried for crimes against the nation.

"Art. 2. The following shall be prohibited, for a term of 15 years, from engaging in any of the activities of a political nature authorized by the Constitution of the Republic, except the vote:

"(a) All candidates for elective office on the lists for the 1966 and 1971 elections of the Political Organizations which were electorally associated with the organizations mentioned in the preceding article, subparagraph (a), under the same coincidental or joint slogan or subslogan; [..]