

## HUMAN RIGHTS COMMITTEE

### Touren v. Uruguay

Communication No. 32/1978

31 March 1981

### VIEWS

*Submitted by: Lucia Sala de Touren on 16 May 1978*

*Alleged victim: Luis Touren*

*State party: Uruguay*

*Date of adoption of views: 31 March 1981 (twelfth session)*

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

1. The author of this communication, dated 16 May 1978, is an Uruguayan national, residing in Mexico. She submitted the communication on behalf of her husband, Luis Touren, a 54-year-old Uruguayan citizen and a former municipal official of the city of Montevideo, allegedly detained in Uruguay.

2.1 The author alleges that her husband was arrested on 21 January 1976 and subjected to cruel and inhuman treatment (of which she gives no details) during his detention incommunicado from the date of arrest until August 1976. She states that he was subsequently sentenced to 14 years' imprisonment by a military court and that at the time of writing (16 May 1978) his case was still pending before the second military instance (the Supremo Tribunal Militar). She further states that her husband, having been subjected during the first part of his detention to the regime of "prompt security measures", was denied the right to leave the country, although article 186 (17) of the Uruguayan Constitution provides that persons under that regime have the option to leave the country.

2.2 The author maintains that no formal charges were made against her husband and that he was not brought before a judge until seven months after his arrest, in August 1976, when he was formally charged with the offence of "subversive association" and afforded the right to have the assistance of a counsel; that the real reasons for his arrest were his political opinions and public activities; that he was never afforded a public hearing before a tribunal, as there are no public hearings during the whole procedure of first instance; that, as in the case of any person prosecuted under military justice in Uruguay, he was not allowed to be

present at the trial or to defend himself in person; and that the judgement against him was not made public.

2.3 She further alleges that military tribunals do not have the competence to deal with the cases of civilian detainees under article 253 of the Constitution and that they are not impartial since, as part of the armed forces, they are subordinated to the military hierarchy. As for the recourse of habeas corpus, the authorities allegedly claim that it is not applicable to the cases of persons detained under "prompt security measures".

2.4 The author also alleges that, pursuant to "Institutional Act No. 4" (Acta Institucional No. 4) of 1 September 1976, her husband has been deprived of the right to engage in political activities, including the right to vote, for 15 years.

2.5 The author claims that articles 2, 3, 7, 9 (1), (2), (3), (4), (5), 10 (1), (2a), (3), 12, 14 (1), (2), (3a, 3d, 3e and 3g), (5), 15, 25 (a and b) and 26 of the Covenant have been violated.

3. On 28 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 of the communication. The time-limit for the State party's information or observations expired on 9 November 1978. No reply was received from the State party.

4. On 24 April 1979 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 this decision, written explanations or statements clarifying the matter (including copies of any court orders or decisions relevant to the matter) and the remedy, if any, that may have been taken by it.

5. The time-limit for the State party's submission under article 4 (2) of the Optional Protocol expired on 25 November 1979. By notes dated 23 November 1979 and 13 February 1980, the State party requested the Committee to accord a reasonable extension of time. By a note dated 10 July 1980, the State party submitted the following explanations under article 4 (2) of the Optional Protocol:

... contrary to what is maintained in the communication under consideration, Mr. Luis Touron was not detained without formal charges against him; as was fully proved by his own statements, he entered into association with others with a view to taking direct action to change the form of government by means which are inadmissible under internal public law and committed acts aimed at reorganizing the directlye machinery of the banned Communist party with the object of adapting it for underground operations. The author refers in her communication to "the lack of a public hearing before a tribunal". It must be explained that public hearings do not exist under the Uruguayan legal order. The trial is conducted in

writing and the accused has the opportunity to express himself through his counsel and by means of the formal statements before the judge. Another legal error in the communication under consideration is the assertion that military tribunals are not competent to judge civilian detainees. Since the entry into force of the State Security Act (No. 14,068 of 6 July 1972, approved by Parliament) it has been established that offences against the State come within the jurisdiction of military courts. This Act gives effect to a constitutional norm, article 330, which provides: 'Anyone who takes action to upset the present Constitution, following its adoption and publication, or provides means for such action to be taken, shall be regarded, sentenced and punished as an offender against the State'. Consequently, the sole jurisdiction for these offences is the military, since, from the entry into force of the 1884 Military Penal Code, the duty to safeguard the nation comes specifically within the sphere of military competence.

On 29 September 1977 Mr. Tourón was sentenced by a court of first instance to 14 years' imprisonment for "subversive association" (article 60 (v) of the Military Penal Code) and "conspiracy to overthrow the Constitution followed by the preparatory acts" (articles 60 (1), paragraph 6, and 60 (XII)) in a combination of principal and secondary offences (Military Penal Code, article 7 and Ordinary Penal Code, article 56). On 10 October 1977 Colonel Otto Gilomen, counsel for the accused, appealed to the Supreme Court of Military Justice against the judgement rendered by the court of first instance. On 17 May 1979 final judgement was passed by a court of second instance, upholding the previous judgement, and it became enforceable on 29 June 1979. As may be observed, not only did the accused have the benefit of due legal assistance in the proceedings but he availed himself of the remedy of appeal to which Uruguayan legislation entitled him. It may be added that under Uruguayan law the remedy of appeal functions automatically in the case of final judgements imposing prison sentences of over three years, such sentences not being considered enforceable until they have been comprehensively reviewed on appeal by the Supreme Court of Military Justice; in other words, in such cases it is mandatory for counsel to appeal against such sentences. To continue with the erroneous or false assertions, it is stated in the communication that Mr. Tourón's case has not been submitted to any other international body, when in reality it was brought before and considered by the Inter-American Commission on Human Rights as case No. 2011. With regard to the reference to physical coercion, the Government of Uruguay categorically rejects this accusation.

6. The Human Rights Committee notes that the State party has informed the Committee in another case (No. 9/1977) that the remedy of habeas corpus is not applicable to persons detained under the "prompt security measures".

7. As to the State party's observation in its note dated 10 July 1980 that the case of Luis Tourón was brought before and considered by the Inter-American Commission on Human Rights as case No. 2011, the Committee recalls that it has already ascertained in connection with its consideration of other communications (e.g. No. 1/1976) that IACHR case No. 2011 (dated 27 January 1976, listing the names and dates of arrest of a large number of persons, offering no further details), predates the entering into force of the Covenant, and the Optional Protocol for Uruguay, and therefore does not concern the same matter which the Committee is competent to consider. Further, the Committee recalls that no objection was

raised by the State party as to the admissibility of the present communication under rule 91 of the Committee's provisional rules of procedure.

8. The Human Rights Committee, considering 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, hereby decides to base its views on the following facts which have either been essentially confirmed by the State party, or are unrefuted: Luis Touron was arrested on 21 January 1976 and was detained incommunicado from the date of arrest until August 1976 when he was brought before a judge and formally charged with the offence of "subversive association" and "conspiracy to overthrow the Constitution followed by preparatory acts". It was not until then that he was afforded the right to have the assistance of counsel. He was not allowed to be present at his trial or to defend himself in person. There was no public hearing, and judgement was not delivered in public. On 29 September 1977 he was sentenced by a military court of first instance to 14 years' imprisonment. On 17 May 1979 a final judgement was passed by a court of second instance, upholding the previous judgement. He has been deprived of all his political rights, including the right to vote, for 15 years.

9. As to the allegations of ill-treatment, they are in such general terms that the Committee makes no finding in regard to them.

10. 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.

11. The Human Rights Committee is aware that under the legislation of many countries criminal offenders may be deprived of certain political rights. However, article 25 of the Covenant permits only reasonable restrictions. The Committee notes that Mr. Touron has been sentenced to 14 years' imprisonment for "subversive association" and "conspiracy to overthrow the Constitution followed by preparatory acts". The State party has not responded to the Committee's request that it should be furnished with copies of any court orders or decisions relevant to the matter. The Committee is gravely concerned by this omission. Although similar requests have been made in a number of other cases, the Committee has never yet been furnished with the texts of any court decisions. This tends to suggest that judgements, even of extreme gravity, as in the present case, are not handed down in writing. In such circumstances, the Committee feels unable, on the basis of the information before it, to accept either that the proceedings against Luis Touron amounted to a fair trial or that the severity of the sentence imposed or the deprivation of political rights for 15 years were justified.

12. In addition, 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, in particular of:

Article 9 (3), because Luis Touron was not brought promptly before a judge or other officer authorized to exercise judicial power;

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

Article 14 (1), because he had no 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 seven months of his detention and was not tried in his presence.

13. 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 he has suffered and to take steps to ensure that similar violations do not occur in the future.