

HUMAN RIGHTS COMMITTEE

Bleier v. Uruguay

Communication No. R.7/30

29 March 1982

VIEWS

Submitted by: Irene Bleier Lewenhoff and Rosa Valino de Bleier

Alleged victim: Eduardo Bleier, authors' father and husband, respectively

State party concerned: Uruguay

Date of communication: 23 May 1978 (date of initial letter)

Date of decision on admissibility: 24 March 1980

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

Meeting on 29 March 1982,

Having concluded its consideration of communication No. R.7/30 submitted to the Committee by Irene Bleier Lewenhoff and Rosa Valino de Bleier 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 authors 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 the original communication (initial letter dated 23 May 1978 and further letter dated 15 February 1979) is Irene Bleier Lewenhoff, a Uruguayan national residing in Israel. She is the daughter of the alleged victim. Her information was supplemented by further letters (dated 25 February, 20 June, 26 July and 31 October 1980 and 4 January and 10 December 1981) from Rosa Valino de Bleier, a Uruguayan national residing in Hungary

who is the alleged victim's wife.

2.1 In her letter of 23 May 1978, the author, Irene Bleier Lewenhoff, states the following:

2.2 her father, Eduardo Bleier, was arrested without a court order in Montevideo, Uruguay, at the end of October 1975. The authorities did not acknowledge his arrest and he was held incommunicado at an unknown place of detention. Her father's detention was, however, indirectly confirmed because his name was on a list of prisoners read out once a week at an army unit in Montevideo where his family delivered clothing for him and received his dirty clothing. His name appeared on that list for several months until the middle of 1976. On 11 August 1976, "Communique No. 1334 of the Armed Forces Press Office" was printed in all the Montevideo newspapers requesting the general public to co-operate in the capture of 14 persons, among whom Eduardo Bleier was listed, "known to be associated with the banned Communist Party, who had not presented themselves when summoned before the military courts". The author also alleges that her father was subjected to particularly cruel treatment and torture because of his Jewish origin.

2.3 A number of detainees who were held, together with the author's father, and who were later allowed to communicate with their families or were released, gave independent but similar accounts of the cruel torture to which Eduardo Bleier was subjected. They generally agreed that he was singled out for especially cruel treatment because he was a Jew. Thus, on one occasion, the other prisoners were forced to bury him, covering his whole body with earth, and to walk over him. As a result of this treatment inflicted upon him, he was in a very bad state and towards December 1975 had to be interned in the Military Hospital.

2.4 At the time of the submission of the communication the author assumed that Eduardo Bleier was either detained incommunicado or had died as a result of torture. The author further states that since her father's arrest, owing to the uncertainty, there has been a complete disruption of family life. She also claims that the honour and reputation of her father were attacked in every possible way by the authorities, in particular by the publication of the above-quoted "communique".

2.5 The author maintains that in practice legal remedies do not exist in Uruguay. She claims that habeas corpus or other similar remedies cannot be invoked against arrests under the "prompt security measures". In the case of her father, all of the guarantees of amparo that could be invoked in penal proceedings were irrelevant, because he never appeared before any court; nor was he ever formally informed of the reasons for his arrest. The author claims that her father was arrested because of his political opinions.

2.6 She further states that the authorities never answered the numerous letters addressed to them by various personalities, institutions or organizations, asking for information about her father's situation. She adds that such silence might well indicate that her father died as a result of torture.

2.7 The author claims that the following provisions of the International Covenant on Civil and Political Rights have been violated by the Uruguayan authorities in respect of her father:

articles 2, 3, 6, 7, 9, (1) (2) (3) (4) and (5), 10, 12 (2), 14, 15, 17, 18, 19, 25 and 26.

3. By its decision of 26 July 1978, the Human Rights Committee transmitted the communication under rule 91 of the provisional rules of procedure to the State party concerned, requesting information and observations relevant to the question of admissibility of the communication.

4. By a note dated 29 December 1978 the State party informed the Human Rights Committee that a warrant had been out for the arrest of Eduardo Bleier since 26 August 1976, as he was suspected of being connected with the subversive activities of the banned Communist Party and had gone into hiding ("wanted person No. 1,189").

5. In reply to the State party's submission of 29 December 1978, Irene Bleier Lewenhoff, by a letter dated 15 February 1979, stated that she had irrefutable proof of the arrest of her father and the treatment inflicted upon him during detention. She claims that she has had the opportunity to talk in various parts of the world with persons formerly imprisoned in Uruguay and that many of them spoke of her father and the barbarous torture to which he had been subjected.

6. By a letter dated 25 February 1980, Rosa Valino Bleier, the wife of the alleged victim, requested the Human Rights Committee to accept her as co-author of communication No. R.7/30 concerning her husband, Eduardo Bleier. She further confirmed all the basic facts as outlined in Irene Bleier Lewenhoff's communication of 23 May 1978. In addition, she stated that she has received many unofficial statements, the latest in December 1978, indicating that her husband was still alive. She claims that some of the persons who were imprisoned with her husband and witnessed his tortures and who have explained to her the facts in detail, have now left Uruguay. She further stated that in 1976, she submitted an application for habeas corpus to the military court, as a result of which she received a report saying that her husband had been "wanted" since August of the same year.

7. On 24 March 1980, the Committee decided:

(a) That the authors were justified in acting on behalf of the alleged victim by reason of close family connexion;

(b) That the communication was admissible in so far as it related to events which have allegedly continued or taken place after 23 March 1976 (the date of the entry into force of the Covenant and the Optional Protocol for Uruguay);

(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;

(d) That the State party be informed that the written explanations or statements-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 perform its responsibilities, it required specific responses to the allegation which had been made by the authors of the communication, and the State party's explanations of the actions taken by it;

(f) That the authors be requested to submit any additional detailed information available to them of Eduardo Bleier's arrest and treatment during detention, including statements from other prisoners who claim to have seen him in captivity in Uruguay.

8.1 In reply to the Committee's request for additional detailed information on Mr. Bleier's arrest and treatment, Rosa Valino de Bleier, in two letters dated 20 June and 26 July 1980, provided detailed information which she had obtained from other ex-prisoners who claimed to have seen her husband in captivity in Uruguay. She also included the text of testimonies on her husband's detention and ill-treatment. In one of the testimonies an eyewitness, Alcides Lanza Perdomo, a Uruguayan citizen, at present resident in Sweden as a political refugee, declared, inter alia, the following:

"I have known Mr. Eduardo Bleier personally since 1955; our acquaintance continued until 1975. Therefore my ability to identify him in person is beyond doubt. I was detained in Montevideo on 2 February 1976 and held until 1 July 1979 ... At the beginning of my imprisonment, on a date between 6 and 10 February 1976 which I cannot specify more exactly with any certainty, the events which I am about to relate took place. I was imprisoned in the barracks of Infantry Regiment No. 13, in C n Casavalle, Montevideo, held completely incommunicado and tortured along with other prisoners. On two or three occasions I struggled violently with the torturers and, driven by pain and desperation, snatched off the hood which I had to wear 111 the time.

"On those occasions I saw Eduardo Bleier, who was being subjected to savage torture by a group of men. I identified him quite clearly and positively, without the slightest doubt, and so confirmed my certainty that Mr. Bleier was there and was being tortured, because I had for a long time fully recognized his voice, both in its normal tone and in his heart-rending shrieks under torture;

"What I was able to see and hear showed that Mr. Bleier was being subjected to particularly brutal torture and continually insulted at the same time." a/

8.2 The additional information submitted by Rosa Valino de Bleier on 20 June and 26 July 1980 was transmitted to the State party on 23 June and 2 September 1980, respectively.

9. In its submission of 9 October 1980, the State party repeated what it had stated in its brief submission of 29 December 1978, namely, that a warrant was still out for the arrest of Eduardo Bleier, whose whereabouts, were still unknown. No information, explanations or observations were offered with regard to the various submissions from the authors concerning Mr. Bleier's detention.

10.1 With reference to operative paragraph 6 of the Committee's decision of 24 March 1980, Mrs. Rosa Bleier submitted on 31 October 1980 three further testimonies from persons who

claim to have seen Eduardo Bleier in detention. One of them, Manuel Pineiro Pena, a Spanish citizen, declared in Barcelona, Spain, on 24 September 1980:

"I was arrested in my house by an intelligence squad of the Uruguayan army in the early morning of 27 October 1975 and taken hooded to a private house used by this squad for all kinds of torture ... In this place, three days after my arrest, I heard for the first time the voice and cries of Eduardo Bleier as he was being tortured. I heard them again in the early days of November of the same year when I was transferred to the barracks of the 13th Infantry Battalion in Calle Instrucciones, where I could also see him through a small gap in the blindfold which covered my eyes during the first eight months of my detention and also because, for some 15 days, we were lying on the floor side by side ... Then, one night in early December, I heard them calling him as always by his number, which was 52, and they took him to the interrogation room; for hours his cries were heard, and then there came a moment when his cries ceased and we heard the medical orderly being summoned urgently."

10.2 Another witness, Vilma Antuney de Muro, a Uruguayan citizen residing in Sweden, testified that she had been arrested on 3 November 1975 and taken to the barracks of the 13th Infantry Battalion, where she first saw Bleier on 7 November.

"During the night of the same day we heard cries and saw Bleier falling down the stairs which led to the little room upstairs. When he reached the bottom, he sat up and said something to them for which he was beaten. On another day, between the cries of one of the worst torture sessions, I suddenly heard about six or seven people approaching, struggling with someone who clutched me for a moment and said, 'They want to kill me'. At that moment they trampled on one of my breasts and the pain forced me to sit up ... my blindfold slipped and I saw that some torturers were again taking Bleier upstairs."

10.3 These testimonies were transmitted to the State party on 17 February 1981. By note of 5 May 1981 the State party, referring to Mrs. Bleier's communications of 31 October 1980, reiterated its position that it did not know the whereabouts of Eduardo Bleier.

11.1 By an interim decision of 2 April 1981 the Human Rights Committee stated that before adopting final views in the matter,

"the Committee considers that it is the clear duty of the Government of Uruguay to make a full and thorough inquiry (a) into the allegations concerning Mr. Bleier's arrest and his treatment while in detention prior to 26 August 1976, and (b) as to his apparent disappearance and the circumstances in which a warrant for his arrest was issued on 26 August 1976. The Committee urges that this should be done without further delay and that the Committee should be informed of the action taken by the Government of Uruguay and of the outcome of the inquiry".

11.2 The Committee based its interim decision on the following considerations;

"11. As to the merits of the case, the Committee had before it (i) detailed information, including statements of family members and eyewitness testimonies of persons who had

been detained in Uruguayan prisons together with Eduardo Bleier and who were later released, concerning his detention and severe mistreatment in prison and later 'disappearance' and (ii) a brief categorical denial of Eduardo Bleier's detention by the Government of Uruguay, which, in the light of (i), is totally insufficient.

"12. The Committee cannot but give appropriate weight to the overwhelming information submitted by the authors of the complaint. This information tends to corroborate the author's allegation that Eduardo Bleier was arrested at the end of October 1975 in Montevideo, Uruguay. His detention would appear to be confirmed at that time by the authorities because his name was on a list of prisoners read out once a week at an army unit in Montevideo; it also appears to be confirmed by several fellow prisoners and other persons who had seen and talked to him in several identified detention centres in Uruguay. Also, several eyewitnesses have reported that Eduardo Bleier was subjected to severe torture during detention.

"13. The failure of the State party to address in substance the serious allegations brought against it and corroborated by unrefuted information, cannot but lead to the conclusion that Eduardo Bleier is either still detained, incommunicado, by the Uruguayan authorities or has died while in custody at the hands of the Uruguayan authorities."

12. By a note of 14 August 1981 the State party submitted the following observations on the Committee's interim decision of 2 April 1981:

"the Government of Uruguay wishes to state that, in paragraph 13 of that document, the Committee displays not only an ignorance of legal rules relating to presumption of guilt, but a lack of ethics in carrying out the tasks entrusted to it, since it so rashly arrived at the serious conclusion that the Uruguayan authorities had put Eduardo Bleier to death. The Committee, whose purpose is to protect, promote and ensure respect for civil and political rights, should bear in mind that this task should always be carried out under the rule of law in accordance with its mandate and the universally accepted procedures concerning such matters as guilt and presumption of guilt."

13.1 The Human Rights Committee cannot accept the State party's criticism that it has displayed an ignorance of legal rules and a lack of ethics in carrying out the tasks entrusted to it or the insinuation that it has failed to carry out its task under the rule of law. On the contrary, in accordance with its mandate under article 5 (1) of the Optional Protocol, the Committee has considered the communication in the light of the information made available to it by the authors of the communication and by the State party concerned. In this connexion the Committee has adhered strictly to the principle audiatur et altera pars and has given the State party every opportunity to furnish information to refute the evidence presented by the authors.

13.2 The Committee notes that the State party has ignored the Committee's repeated requests for a thorough inquiry into the authors' allegations.

13.3 With regard to the burden of proof, this cannot rest alone on the author of the communication, especially considering that the author and the State party do not always have

equal access to the evidence and that frequently the State party alone has access to relevant information. It is implicit in article 4 (2) of the Optional Protocol that the State party has the duty to investigate in good faith all allegations of violation of the Covenant made against it and its authorities, especially when such allegations are corroborated by evidence submitted by the author of the communication, and to furnish to the Committee the information available to it. In cases where the author has submitted to the Committee allegations supported by substantial witness testimony, as in this case, and where further clarification of the case depends on information exclusively in the hands of the State party, the Committee may consider such allegations as substantiated in the absence of satisfactory evidence and explanations to the contrary submitted by the State party.

13.4 The Committee finds that the disappearance of Eduardo Bleier in October 1975 does not alone establish that he was arrested by Uruguayan authorities. But, the allegation that he was so arrested and detained is confirmed (i) by the information, unexplained and substantially unrefuted by the State party, that Eduardo Bleier's name was on a list of prisoners read out once a week at an army unit in Montevideo where his family delivered clothing for him and received his dirty clothing until the summer of 1976, and (ii) by the testimony of other prisoners that they saw him in Uruguayan detention centres. Also there are the reports of several eyewitnesses that Eduardo Bleier was subjected to severe torture while in detention.

14. It is therefore the Committee's view that the information before it reveals breaches of articles 7, 9 and 10 (1) of the International Covenant on Civil and Political Rights and that there are serious reasons to believe that the ultimate violation of article 6 has been perpetrated by the Uruguayan authorities.

15. As regards the latter point the Human Rights Committee urges the Uruguayan Government to reconsider its position in this case and to take effective steps (i) to establish what has happened to Eduardo Bleier since October 1975 to bring to justice any persons found to be responsible for his death, disappearance or ill-treatment; and to pay compensation to him or his family for any injury which he has suffered; and (ii) to ensure that similar violations do not occur in the future.

Notes

a/ Alcides Lanza Perdomo was one of the authors and one of the victims of communication No. R.2/8. Final views adopted on 3 April 1980 (CCPR/C/DR(IX)/R.2/8).