

## HUMAN RIGHTS COMMITTEE

### Simones v. Uruguay

Communication No. R.17/70

1 April 1982

### VIEWS

*Submitted by: Elsa Cubas on behalf of her sister, Mirta Cubas Simones*

*Alleged victim: Mirta Cubas Simones*

*State party concerned: Uruguay*

*Date of communication: 3 May 1980 {date of initial letter}*

*Date of decision on admissibility: 31 March 1981*

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

Meeting on 1 April 1982,

Having concluded its consideration of communication No. R.17/70, submitted to the Committee by Elsa Cubas 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 or 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 communication {initial letter dated 3 May 1980 and further submissions dated 14 July and 22 December 1980} is a Uruguayan national at present living in Canada. She submitted the communication on behalf of her sister, Mirta Cubas Simones, a 37-year-old Uruguayan national, alleging that she is imprisoned in Uruguay without any justifiable reason.

2.1 The author states that Mirta Cubas Simones was arrested without a warrant in her home on 27 January 1976, that she was held incommunicado until April 1976 and that during this period her detention was denied by the authorities although her mother and a sister were present at the time of her arrest. The author further states that in July 1976 her sister was brought to trial and charged with the offence of "aiding a conspiracy to violate the law" (Asistencia a la asociación para delinquir) and that a three-year prison sentence was requested by the public prosecutor. Upon appeal to the Supreme Military Tribunal in August 1978, she was charged in addition 'with the offence of "subversion", and the public prosecutor asked for the sentence to be increased to six years. In November 1979 a plea was made on the sister's behalf that the sentence asked for be reduced, but the author states that this plea has been rejected by the Supreme Military Tribunal, and adds that no more domestic remedies are available to her sister because all cases concerning political prisoners are under military jurisdiction. The author alleges that her sister had no fair and public hearing as the proceedings have taken place before a closed military tribunal and that she had no effective access to legal assistance as she had never been able to communicate with her court-appointed defence lawyer, Dr. Pereda. The author states that because of the absolute inaccessibility of the court records she is not in a position to provide more detailed information about 'the judicial proceedings concerning her sister. The author further alleges that since mid-1976 her sister has been subjected to severe and inhuman prison conditions, such as lack of food and solitary confinement in small cells over long periods of time, at Punta de Rieles, Montevideo.

2.2 The author declares that the same matter has not, to her knowledge, been submitted to another procedure of international investigation or settlement, and claims that her sister is a victim of violations of articles 7, 9, 10, 14, 15, 17 and 19 of the International Covenant on Civil and Political Rights.

3. By its decision of 11 July 1980, the Working Group of 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 admissibility of the communication.

4. By a note dated 17 October 1980, the State party objected to the admissibility of the communication on the ground that it did not fulfil the requirements of article 5, paragraph 2 (b), of the Optional Protocol to the International Covenant on Civil and Political Rights. In this connexion, the State party asserts that "although the appeals procedure which culminated in the judgement of the second instance pronounced on 2 October 1979 has been completed, there still remain available the extraordinary remedies of annulment and review, as provided for in article 507 of the Code of Military Penal Procedure and Law 3,439 of 5 April 1909, which have not been invoked'. The State party adds: 'similarly, Law 14,997 of 25 March 1980 establishes procedures for requesting early and conditional release in cases under military jurisdiction ... the party concerned has not so far petitioned the Supreme Court of Military Justice to apply that law to her case, ... consequently, all domestic remedies have not been exhausted".

5. On 22 December 1980, the author forwarded her comments in reply to the State party's

submission of 17 October 1980. She claims therein that the remedies provided for by the law and the various actions to be taken before the Supreme Court of Military Justice available under the law, referred to by the State party, even if they exist, have not been brought to her sister's attention by her military defence counsel, which indicates that the officially appointed defence counsel has failed in his duty. She points out that her sister does not have freedom of action, that she does not know the law governing her case and that she is tried 'under the military legal system to which the defence counsel belongs. The author further challenges the validity of the 'remedies' referred to by the State party on the ground that the climate of terror, the harsh and inhuman treatment to which her sister is subjected in prison and the lack of support from her defence counsel make it impossible for her to take action in her own defence. The author therefore concludes that the proceedings in her sister's case cannot be assessed according to what is applicable in a normal case ("no puede jugarse con la formalidad de un caso normal").

6.1 The Human Rights Committee noted the State party's assertion that there were further remedies available to Mirta Cubas Simones. The State party, however, did not adduce any grounds to show that the remedies which in other cases have been described as being exceptional in character, should be pursued in the present case. On the contrary, the Committee noted that the officially appointed defence counsel had not invoked them on behalf of Mirta Cubas Simones although more than a year had passed since the Supreme Military Court rendered judgement against her. They could not therefore be regarded as having, in effect, been "available" within the meaning of article 5 (2) (b) of the Optional Protocol.

6.2 In the circumstances, the Committee was unable to conclude, on the basis of the information submitted by the State party, that the communication was inadmissible under article 5 (2) (b).

6.3 In its submission dated 17 October 1980 the State party did not contest the author's assertion that the same matter had not been submitted to any other international body.

6.4 Consequently, the Committee found that it was not precluded by article 5 (2) (a) of the Optional Protocol from considering the communication.

7. On 31 March 1981, 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 and the remedy, if any, that may have been taken by it;

(c) That the State party should 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 allegations which had been made by the author of the communication, and the State party's explanations of the actions taken by it. The State party was requested in this connexion, to enclose copies of any court orders or decisions of relevance to the matter under consideration.

8. By a note dated 15 October 1981, the State party submitted the following explanations under article 4 (2) of the Optional Protocol:

"It (the Government of Uruguay) rejects the libellous assertions in the communication, regarding 'the climate of terror' and 'the harsh and inhuman treatment' to which Miss Mirta Cubas was said to be subjected~ it is also incorrect to state that the case of the above-mentioned detainee 'cannot be assessed according to what is applicable in a normal case' ('no puede jugarse con la formalidad de un caso normal'). The proceedings were conducted with all the guarantees required in the relevant legislation. The reason why the application to the Supreme Court of Military Justice for a reduction of her sentence was rejected was simply the nature of the offences committed and the fact that they were duly proved.

"The Government of Uruguay also wishes to state that, on 7 August 1981, an application for conditional release for Miss Mirta Cubas was submitted to the Supreme Court of Military Justice. The application is being considered by the Court."

9. The Human Rights Committee notes the State party's observation that an application for conditional release for Mirta Cubas Simones has been submitted to the Supreme Court of Military Justice. This is not, of course, a remedy within the meaning of article 5 (2) (b) of the Optional Protocol concerning exhaustion of domestic remedies in regard to the violations of the Covenant complained of. Nevertheless, her release would constitute an important step towards alleviating her situation.

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.

11.1 The Committee decides to base its views on the following facts which have either been confirmed by the State party or are uncontested, except for denials or a general character offering no particular information or explanation:

11.2 Mirta Cubas Simones was arrested on 27 January 1976, without any warrant for her arrest, in her family's home, in the presence of her mother and her sister. For the subsequent three months she was held incommunicado at an unknown place. During this time the Uruguayan authorities denied her detention. In July 1976, five months after her arrest, Mirta Cubas Simones was brought to trial and charged with the offence of "aiding a conspiracy to violate the law" (asistencia a la asociación para delinquir) and a three-year prison sentence was requested by the public prosecutor. Upon appeal to the Supreme Military Tribunal in August 1978, she was charged in addition with the offence of "subversion", and the public prosecutor asked for the sentence to be increased to six years. Judgement was pronounced on 2 October 1979. In November 1979 a plea was made on her behalf that the sentence be reduced. This plea was rejected by the Supreme Military Tribunal. Mirta Cubas Simones was

tried in camera, the trial was conducted without her presence and the judgement was not rendered in public. She was assigned a court-appointed military defence counsel whom she was unable to consult. The Committee further notes that the State party did not comply with the Committee's request to enclose copies of any court order or decisions of relevance to the matter under consideration. For all these reasons the Committee is unable to accept that Mirta Cubas Simones had a fair trial. In addition, since 1978 Mirta Cubas Simones has been subjected to continuously harsh prison conditions.

12. Accordingly, the Human Rights Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts as found by it, in so far as they occurred after 23 March 1976 (the date on which the Covenant entered into force in respect of Uruguay), disclose the following violations of the Covenant, in particular:

of article 10 (1), because Mirta Cubas Simones was held incommunicado for three months and during this period the authorities wrongfully denied that she was detained;

of article 14 (1), because she did not have a fair and public hearing;

of article 14 (3) (b), because she was unable to communicate with her court-appointed defence lawyer and therefore did not have adequate facilities for the preparation of her defence;

of article 14 (3) (d) , because she was not tried in her presence.

13. The Committee, accordingly, is of the opinion that the State party is under an obligation to provide the victim with effective remedies, including compensation, for the violations she has suffered and to take steps to ensure that similar violations do not occur in the future.