

HUMAN RIGHTS COMMITTEE

Larrosa v. Uruguay

Communication No. 88/1981

29 March 1983

VIEWS

Submitted by: Daniel Larrosa on behalf of his brother Gustavo Raul Larrosa Bequio

Alleged victim: Gustavo Raul Larrosa Bequio

State party concerned: Uruguay

Date of communication: 14 March 1981

Date of decision on admissibility: 2 April 1982

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

Meeting on 29 March 1983,

Having concluded its consideration of communication No. 88/1981 submitted to the Committee by Daniel Larrosa 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 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 communication (initial letter dated 14 March 1981 and further submissions dated 25 March, 21 July, 29 August and 15 December 1981 and 16 November 1982) is a Uruguayan national, residing at present in France. He submitted the communication on behalf of his brother, Gustavo Raul Larrosa Bequio, a 38-year-old Uruguayan national at present imprisoned in Uruguay.

2.1 The author states that his brother, who had been an active member of the political organization Frente Amplio, was arrested in Uruguay on 30 May 1972 because he was suspected of being a member of the Movimiento de Liberacion Nacional (Tupamaros). The author further alleges that his brother was kept incommunicado for a long period of time, that he has been held in several military prisons, that he is at present detained at the Penal de Libertad and that he has been subjected to torture and inhuman prison conditions. The author mentions that his brother has lost his hearing in one ear because of the beatings inflicted upon him, that his sight has diminished to an extent that he now needs glasses and that owing to the insufficient food he has lost much weight during his imprisonment. The author also mentioned that his brother is not allowed to do any exercise, to read or to write and that his mental health has suffered accordingly.

2.2 With respect to the judicial proceedings against his brother, the author states that he was charged by the Military Criminal Investigation Court of First Instance (file No. 2216, vol. 4, p. 75) with the offences of conspiracy to upset the Constitution, aiding and abetting the escape of prisoners, manufacturing or being in possession of explosive substances and kidnapping. After the pre-trial proceedings, he was prosecuted by the Military Prosecutor of First Instance, Captain (R) Roberto A. Reinoso (Navy), and convicted of the offences of kidnapping, attempts to upset the Constitution, both as an accessory and in conspiracy with others, and criminal conspiracy (under articles 61 and 281, 62 and 132, 137 and 150 of the Penal Code).

2.3 The First Military Judge of First Instance rejected the 12-year sentence requested by the Military Prosecutor on the grounds that it had been miscalculated and reduced it to a 9-year sentence.

2.4 The sentence was appealed and the case went to the Supreme Court of Military Justice, which upheld the decision of the Court of First Instance on 11 September 1979 but increased the prison term to 10 years and imposed security measures for one to five years. The judgement by the Supreme Military Court can be considered final since no further remedies at law are available to modify it. Moreover, because security measures have been imposed, it is impossible to obtain release from custody or release on parole, since the security measures have to be served, once the main term is completed, and these can last for up to five years.

2.5 With respect to the conditions of his imprisonment, the author alleges that his brother has been removed from prison on several occasions in order to be tortured, that he is often punished by the prison authorities and not allowed to receive visits or parcels. He adds that his brother was punished in mid-October 1980 for unknown reasons and that since then, up to March 1981, he has been allowed to receive only one visit on 21 February 1981. He has also been held in what is called "La Isla", a prison wing of small cells without windows, where the artificial light is left on 24 hours a day and there is a cement bed and a hole in the floor for a WC; the prisoner was kept in solitary confinement there for more than one month there are cases of people who have spent more than 90 days in "La Isla".

2.6 By letter of 21 July 1981, the author informed the Committee that he had withdrawn his

complaint to the Inter-American Commission on Human Rights and enclosed a copy of his withdrawal.

2.7 The author claims that his brother is a victim of violations of articles 2 (1) and (3), 6, 7, 10 and 14 of the International Covenant on Civil and Political Rights.

3. By its decision of 13 October 1981, 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 question of admissibility of the communication. The Working Group also requested the State party to give the Committee information on the state of health of Gustavo Rau1 Larrosa Bequio.

4. By a further letter of 15 December 1981, the author requested that his brother be furnished with copies of the material pertaining to the proceedings in the case.

5. The Human Rights Committee took note that no submission had been received from the State party concerning the question of the admissibility of the communication. On the basis of the information before it, the Committee found that it was not precluded by article 5 (2) (a) of the Optional Protocol from considering the communication. The Committee was also unable to conclude that, in the circumstances of this case, there were effective remedies available to the alleged victim which he had failed to exhaust. Accordingly, the Committee found that the communication was not inadmissible under article 5 (2) (b) of the Optional Protocol.

6. On 2 April 1982, the Human Rights Committee therefore decided:

(a) That the Communication was admissible in so far as it related to events said to have occurred on or after 23 March 1976, the date on which the Covenant and the Optional Protocol entered into force for Uruguay;

(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 connection, to enclose copies of any court orders or decisions of relevance to the matter under consideration;

(d) That the State party should be requested to furnish the Committee with information on the present state of health of Gustavo Larrosa and the medical treatment given to him;

(e) That the State party should be requested to transmit copies of the material pertaining to the case of Gustavo Larrosa and to grant him the opportunity to communicate directly with the Committee.

7.1 On 18 June 1982, 17 days after the transmittal to the State party of the decision on admissibility, the State party submitted a note which appears to be a late submission under rule 91, asserting, inter alia, that the communication contains serious errors:

"First, it is stated that Mr. Larrosa was tried in September 1979, i.e., seven years after his arrest. This is completely untrue. The actual date of the proceedings against Mr. Larrosa was 4 September 1972. The date mentioned by the complainant is the one on which the judgement of second instance was rendered. At that time the sentence was increased from 9 to 10 years as a result of the appearance of fresh evidence of the offences provided for in articles 150 and 132 (6) of the Ordinary Penal Code: criminal conspiracy and action to upset the Constitution. In other words, the increased sentence was not arbitrary but was based on new and duly substantiated facts With regard to the allegations of ill-treatment, the Government of Uruguay rejects the assertions made in this communication."

7.2 By a note of 24 June 1982, the State party supplemented its earlier submission without, however, referring to the Committee's decision on admissibility. It stated, inter alia, that:

"as a member of the subversive organization Movimiento de Liberacion Nacional, (National Liberation Movement) enrolled in Column 15, services sector, this person set up a mechanic's workshop for the purpose of concealing certain of that organization's activities. What is known in subversive jargon as a "berretin" was constructed on the premises, i.e. an underground hiding place for weapons or persons. A photographer from Police Headquarters in Montevideo was abducted and held prisoner there by the subversives."

7.3 By a note of 23 August 1982, the State party referred to its previous submission of 24 June 1982 as a response to the Committee's decision on admissibility.

8.1 In his submission under rule 93 (3), dated 16 November 1982, the author states that his brother was retired on 2 June 1982 without, however, appearing before a judge; that the tribunal was neither competent nor independent and that he had no opportunity to prepare his defence properly, to communicate with counsel of his own choosing, or to present witnesses on his behalf.

8.2 With respect to his brother's state of health, the author deplors that the State party has not complied with the Committee's specific request for information.

8.3 With respect to the current treatment of his brother at Libertad Prison, the author indicates that the State party has not commented on his initial allegation, in particular, that the Uruguayan Government has not explained why Gustavo Larrosa has been subjected to frequent punishment, nor indicated when his visiting rights were suspended and the reason for taking that step.

8.4 The author also deploras that, according to the information available to him, the State party has not complied with the Committee's request that copies of the material pertaining to this case should be transmitted to Gustavo Larrosa and that he should be granted the opportunity to communicate directly with the Committee.

9. 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.

10.1 The Committee 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.

10.2 Events prior to the entry into force of the Covenant: Gustavo Raul Larrosa Bequio was arrested on 30 May 1972 as a suspected member of the Movimiento de Liberacion Nacional (Tupamaros). Criminal proceedings were instituted against him on 4 September 1972.

10.3 Events subsequent to the entry into force of the Covenant: On 11 September 1979, the Supreme Court of Military Justice upheld the decision of the Court of First Instance, but increased the prison term to 10 years and imposed security measures from one to five years. Gustavo Larrosa has been frequently punished at prison, and from October 1980 to March 1981 he was allowed to receive only one visit. He has also been held in what is called "La Isla", a prison wing of small cells without windows, where the artificial light is left on 24 hours a day and the prisoner was kept in solitary confinement for over a month.

11.1 In formulating its views, the Human Rights Committee also takes into account the following considerations, which reflect a failure by the State party to furnish the information and clarifications necessary for the Committee to formulate final views on a number of important issues.

11.2 In operative paragraphs 3, 4 and 5 of its decision on admissibility of 2 April 1982, the State party was requested to enclose copies of any court orders or decisions relating to this case, to furnish information on the present state of health of Gustavo Larrosa, to transmit copies of the Committee's case file to Gustavo Larrosa and to grant him the opportunity to communicate directly with the Committee. The Committee notes with regret that it has not received the information requested nor any confirmation that Gustavo Larrosa has been informed of the proceedings before the Committee and given the possibility of communicating directly with the Committee.

11.3 With respect to the state of health of the alleged victim, the Committee finds that the author's allegations as to his brother's loss of hearing in one ear, loss of weight and impaired vision called for more precise information from the State party. Similarly, with respect to general prison conditions and the allegations of ill-treatment made by the author, the State party has adduced no evidence that these allegations have been adequately investigated. A refutation of these allegations in general terms, as contained in the State party's submissions, is not sufficient.

11.4 With respect to the author's allegations that his brother has been retried, the Committee does not have sufficient information from the author or from the State party to make a finding on this point. The Committee notes, however, that if Gustavo Larrosa was retried on 2 June 1982, this fact should have been mentioned in the State party's subsequent submissions.

11.5 With regard to the burden of proof, the Committee has already established in its views in other cases (e.g., R. 7/30) that said burden 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.

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 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, particularly:

of articles 7 and 10 (1), because Gustavo Raul Larrosa Bequio has not been treated in prison with humanity and with respect for the inherent dignity of the human person.

13. The Committee, accordingly, is of the view that the State party is under an obligation to take immediate steps (a) to ensure strict observance of the provisions of the Covenant and provide effective remedies to the victim, in particular, to extend to Gustavo Larrosa treatment as laid down for detained persons in article 10 of the Covenant; (b) to ensure that he receives all necessary medical care; (c) to transmit a copy of these views to him; and (d) to take steps to ensure that similar violations do not occur in the future.