

## HUMAN RIGHTS COMMITTEE

### Montero v. Uruguay

Communication No. 106/1981

31 March 1983

### VIEWS

*Submitted by: Mabel Pereira Montero*

*Alleged victim: The author of the communication*

*State party concerned: Uruguay*

*Date of communication: 29 August 1981*

*Date of decision on admissibility: 25 March 1982*

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

Meeting on 31 March 1983,

Having concluded its consideration of communication No. 106/1981 submitted to the Committee by Mabel Pereira Montero 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**

1.1 The author of the communication dated 29 August 1981, is Mabel Pereira Montero, a Uruguayan citizen residing at present in Berlin (West). The author, a student in chemical engineering at the Technical University of Berlin, submitted the communication on her own behalf, alleging that she is a victim of a breach by Uruguay of article 12 (2) of the International Covenant on Civil and Political Rights.

1.2 The author claims that the Uruguayan authorities have refused, without further explanation, to renew her passport.

2.1 She describes the relevant facts as follows.

2.2 In 1972, owing to financial difficulties, she decided to leave Uruguay and to pursue her studies in Chile. In September of the same year, she left Montevideo by boat "through normal channels". After the "coup d'etat" in Chile, in September 1973, she sought refuge at the Embassy of Mexico in Chile. Mabel Pereira Montero claims that she did not seek refuge for political reasons, but that she did so because, at the time, a feeling of insecurity prevailed in that country, particularly among foreigners.

2.3 In November 1973, the Uruguayan Consulate in Mexico issued the author with a new Uruguayan passport (No. 015374), with an expiration date of 22 November 1983, but subject to renewal in November 1978. In January 1974 she left Mexico for the Federal Republic of Germany. She obtained a scholarship and was admitted to the University in Berlin (West).

2.4 As her passport was due to expire on 22 November 1978 unless it was renewed, Mabel Pereira Montero applied in writing for its renewal at the Embassy of Uruguay in Bonn on 3 July 1978. She was told to address herself to the Consulate of Uruguay in Hamburg which she did by a letter dated 26 July 1978.

2.5 In December of that year, the author inquired at the Consulate of Hamburg about the position with regard to her passport renewal. She was told by telephone that the renewal of her passport had been refused. No reason was given by the consular officer. It followed from the author's telephone conversation and from inquiries undertaken on her behalf by her scholarship-sponsoring organization that the decision not to renew her passport was taken by the competent authorities in Montevideo and that she had the possibility to request, either through the Uruguayan Consulate in Hamburg or directly at the Ministry for Foreign Affairs in Montevideo, to be informed of the reasons why the renewal of her passport had been refused.

2.6 Mabel Pereira Montero claims that in February 1979 she addressed herself to the Uruguayan Consulate in Berlin (German Democratic Republic) requesting the renewal of her passport and that this request was also refused, again without any explanation. The author states that, during the year 1979, she also tried, without success, to contact a lawyer in Montevideo who could take up her case with the Uruguayan authorities there.

2.7 Consequently, the author sent a letter dated 27 November 1979 to the Uruguayan Consulate in Hamburg requesting that the Uruguayan authorities reconsider their negative decision, or that she be informed by the Uruguayan authorities about the reasons for this decision. She did not receive any reply to this letter till May 1980. Mabel Pereira Montero then telephoned the Consulate in Hamburg to inquire about her case. A consular officer told her that the Uruguayan authorities had upheld their decision to refuse renewal of her passport. He suggested that she repeat in writing her request of 27 November 1979, indicating in addition that she had no family members in Montevideo who could pursue her

case there. The author did so.

2.8 The author states that she also contacted the Uruguayan Embassy and the Uruguayan Consulate in Bonn regarding her case, but that she received there the same reply as in Hamburg.

2.9 At one time it was indicated to her that there was a recourse by way of appeal against the Government decision, but that this had to be done in Uruguay. She replied that she had no relatives in Montevideo who could represent her.

2.10 In December 1980, she was offered by the Uruguayan authorities a safe-conduct to travel to Uruguay in order to resolve her problem there. The author felt that she could not accept this offer, because she did not have the financial means to undertake the journey and because her studies would be unduly interrupted.

2.11 The author claims that, owing to the increasing instability of her situation caused by the refusal of the Uruguayan authorities to renew her passport, she approached the Ambassador of the Federal Republic of Germany in Uruguay, in August 1980, asking for his good offices in her case. The Embassy's efforts were also without success. There were, however, according to the Embassy of the Federal Republic of Germany, certain indications that the refusal to renew the author's passport stemmed, inter alia, from the belief that Mabel Per. ira Montero was married to a 'Tupamaro' who figured on the list of 'wanted persons' in Uruguay. In a letter to the Foreign Ministry in Bonn, dated 9 March 1981, the author rejected this allegation as totally unfounded. She stated that she had never married, that the parson in question was a friend from childhood because they both came from the same village, and that she never was active in politics or had had any contacts with the Tupamaros.

2.12 On 18 March 1981, the author was requested orally by the Uruguayan Consul in Hamburg to provide, for the use of the authorities in Montevideo, a written description of her life since she left Uruguay in 1972 and of the reasons why she left the country. She did so.

2.13 On 10 July 1981, the Uruguayan Consulate in Hamburg received by telegram final instructions from the authorities in Montevideo not to renew the author's passport. No reasons were given. The author states that a copy of this telegram is the only written notice she possesses with regard to the refusal of the Uruguayan authorities to renew her passport.

2.14 The author concludes that she has exhausted all domestic remedies available to her in the case.

3. There is no indication in the communication that the same matter has been submitted to another procedure of international investigation or settlement.

4. By its decision of 14 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 not later than two months from the date of the transmittal of the decision. This time-limit expired on 26 January 1982. No reply had been received from the State party at that time.

5. Before taking its decision on the admissibility of the communication, the Human Rights Committee examined, ex officio, whether the fact that Mabel Per. ira Montero resides abroad affects the competence of the Committee to 'receive and consider the communication under article 1 of the Optional Protocol, taking into account the provisions of article 2 (1) of the Covenant.. In that context, the Committee made the following observations: article 1 of the Optional Protocol applies to individuals subject to the jurisdiction of the State concerned who claim to be victims of a violation by that State of any of the Covenant rights. The issue of a passport to a Uruguayan citizen is clearly a matter within the jurisdiction of the Uruguayan authorities and he is 'subject to the jurisdiction' of Uruguay for that purpose. Moreover, a passport is a means of enabling him 'to leave any country including his own', as required by article

12 (2) of the Covenant. Consequently, the Committee found that it followed from the very nature of that right that, in the case of a citizen resident abroad, it imposed obligations both on the State of residence and on the State of nationality and that, therefore, article 2 (1) of the Covenant could not be interpreted as limiting the obligations of Uruguay under article 12 (2) to citizens within its own territory.

6.1 The Committee found, on the basis of the information before it, 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 the case, there were effective domestic remedies available to the alleged victim which she failed to exhaust. Accordingly, the Committee found that the communication was not inadmissible under article 5 (2) (b) of the Optional Protocol.

6.2 On 25 March 1982, the Human Rights Committee therefore decided:

- (a) That the communication was admissible;
- (b) That, in accordance with article 4 (2) of the 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 its;
- (c) That the State party be informed that the written explanations or statements submitted by it under article 4 (2) of the Protocol must primarily relate to the substance of the matter under consideration and, in particular, the specific violations of the Covenant alleged to have occurred.

7.1 In a note, dated 14 July 1982, which appears to be a late submission under rule 91, the State party rejects the competence of the Committee to consider the communication on the grounds that the requirements for submission of a communication to the Committee under

article 1 of the Optional Protocol to the 'International Covenant on Civil and Political Rights are not met. Article 1 of the Optional Protocol recognizes the competence of the Committee to receive and consider communications from individuals "subject to its jurisdiction". The State party argues that "at the time of the submission of her request (to have her passport renewed), Miss Mabel Pereira Montero was not subject to the jurisdiction of the Uruguayan State" and that "... it is consequently inappropriate for the Committee to deal with communications of this kind which are outside its terms of reference and violate international provisions". It is further submitted that "Miss Pereira Montero can return to her country at any time and in any circumstances", even without a valid passport, to clear up her situation personally. In conclusion, the State party asserts that "in Uruguay the right to freedom of residence and movement is protected, subject only to domestic legal provisions, and constitutionally recognized".

7.2 In a further note, dated 13 August 1982, the State party, in response to the request for a submission under article 4 (2), refers to the contents of its earlier note.

8.1 On 7 January 1983, the author of the communication forwarded her comments in reply to the State party's submissions of 14 July and 13 August 1982.

8.2 She rejects the State party's formal contention that in the present case she does not come within the jurisdiction of Uruguay. She claims that her sojourn in a foreign country is subject to her possessing a valid Uruguayan passport and that, consequently, she does come within the jurisdiction of the State of Uruguay in the matter under consideration.

8.3 The author of the communication further points out that it is the normal procedure for Uruguayan citizens residing abroad to have their passport renewed by Uruguayan consulates. She adds that she applied to all appropriate consular posts and that nowhere were any reasons given to her as to why the renewal of her passport was constantly refused.

8.4 Miss Pereira Montero also states that she regards it as abnormal that the Uruguayan authorities suggested that she travel to Uruguay in order to have her passport renewed when consular authorities fully deal with such matters.

9.1 The Human Rights Committee has considered the present communication in the light of all information made available to it, as provided in article 5 (1) of the Optional Protocol.

9.2 The Committee decides to base its views on the following facts which seem to be uncontested: Mabel Pereira Montero, a Uruguayan citizen residing at present in Berlin (West), and holder of a Uruguayan passport issued in 1973 in Mexico with a 10-year's validity upon condition that the passport be renewed after 5 years, was refused such renewal by the Uruguayan authorities, without explanation, several times between 1978 and 1981. In December 1980, she was offered a safe-conduct which would have entitled her to travel to Uruguay. The author declined this offer, because she did not have the financial means to undertake the travel and because her studies would have been unduly interrupted.

9.3 The Committee does not accept the State party's contention that the Committee is not

competent to deal with the communication because the author does not fulfil the requirements of article 1 of the Optional Protocol. It refers, in that respect, to the reasons stated in paragraph 5 above.

9.4 As to the alleged violation of article 12 (2) of the Covenant, the Committee has observed (see para. 5 above) that a passport is a means of enabling an individual "to leave any country, including his own" as required by that provision: consequently, it follows from the very nature of that right that, in the case of a citizen resident abroad, article 12 (2) imposes obligations on the State of nationality as well as on the State of residence and, therefore, article 2 (1) of the Covenant cannot be interpreted as limiting the obligations of Uruguay under article 12 (2) to citizens within its own territory. The right recognized by article 12 (2) may, in accordance with article 12 (3), be subject to such restrictions as are "provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the Covenant". There are, therefore, circumstances in which a State; if its law so provides, may refuse passport facilities to one of its citizens. However, in the present case, the State party has not, in its submissions to the Committee, put forward any such justification for refusing to renew the passport of Mabel Pereira Montero.

10. The Human Rights Committee, acting under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights, is therefore of the view that the facts as found by it disclose a violation of article 12 (2) of the Covenant, because Mabel Pereira Montero was refused the renewal of her passport without any justification therefor, thereby preventing her from leaving any country, including her own.

11. Accordingly, the Committee is of the view that the State party is under an obligation to provide Mabel Pereira Montero with effective remedies pursuant to article 2 (3) of the Covenant.