

HUMAN RIGHTS COMMITTEE

Caldas v. Uruguay

Communication No. 43/1979 *

21 July 1983

VIEWS

Submitted by: Ivonne Ibarburu de Drescher, on behalf of her husband, Adolfo Drescher Caldas

Alleged victim: Adolfo Drescher Caldas

State party concerned: Uruguay

Date of communication: 11 January 1979

Date of decision on admissibility: 24 October 1979

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

Meeting on 21 July 1983,

Having concluded its consideration of communication No. 43/1979 submitted to the Committee by Ivonne Ibarburu de Drescher 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 11 January 1979 and further submissions dated 19 September 1979 and 3 May 1983) is a Uruguayan national, residing at present in Mexico. She submitted the communication on behalf of her husband, Adolfo Drescher Caldas, a 44-year-old Uruguayan national at present imprisoned in Uruguay.

2.1 The author states that her husband, who has been an official of the trade union corresponding to his occupation (the Bank Employees' Association of Uruguay), was arrested in Montevideo, Uruguay, on 3 October 1978 by officials who did not identify themselves or produce any judicial warrant and who apparently belonged to the Navy. She adds that the reasons for his arrest were not stated and are still unknown to his family. The author believes that her husband was arrested because of his trade-union activities. She alleges that he was held for two months incommunicado and his whereabouts were not revealed to his relatives. In the beginning of December 1978, he was transferred to Libertad prison, where his father was allowed to visit him. In the beginning of January 1979, however, he was removed from that prison and the family was again unable to find out his whereabouts.

2.2 The author claims that there were no local remedies to be exhausted, habeas corpus being inoperative under the regime of prompt security measures.

2.3 By her initial communication of 11 January 1979, the author requests that a medical examination should be permitted by doctors indicated by her husband's family.

2.4 In her initial communication of 11 January 1979, the author claims that her husband is a victim of violations of articles 2 (3) (a) and (b); 3; 9 (1), (2), (3) and (4); 10 (3); 12 (1), (2) and (3); 15 (1); 17; 18 (1); 19 (1) and (2); 22; 25; 26 and possibly of articles 6, 7 and 14 of the International Covenant on Civil and Political Rights.

3. By its decision of 23 April 1979, the Human Rights Committee held that the author of the communication was justified by reason of close family connection in acting on behalf of the alleged victim. By that same decision 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 Committee further drew the State party's attention to the concern expressed by the author with regard to the state of health and whereabouts of her husband; and it requested the State party to furnish information to the Committee thereon.

4. In its submission under rule 91 of the provisional rules of procedure dated 13 July 1979, the State party states that Adolfo Drescher Caldas was arrested on 28 September 1978 in conformity with the prompt security measures for his alleged involvement in subversive activities. He was charged on 7 November 1978 before a Military Examining Judge with violations of article 60 (V) of the Military Criminal Code and articles 340 (theft), 237 (forgery or alteration of an official document by a private individual) and 54 (accumulation of offences) of the Ordinary Criminal Code. He had a defending counsel appointed by the court, a colonel of the army. The State party argues that domestic remedies have not been exhausted as no complaint or petition whatsoever was submitted to any Uruguayan authorities. The State party further

(a) rejects the contention that Adolfo Drescher Caldas was illegally held incommunicado, since the state of incommunicado was terminated by the Military Examining Judge in the warrant for commitment;

(b) denies that his whereabouts were not revealed to his relatives;

(c) asserts that at the time of his arrest he was informed that he was being arrested in conformity with the prompt security measures.

The State party informs the Committee that Adolfo Drescher Caldas is being held in Military Detention Establishment No. 1 which has its own permanent and emergency medical service and that medical inspections are carried out daily.

5. In a further letter of 19 September 1979, the author commented on the State party's submission under rule 91 of the Committee's provisional rules of procedure.

5.1 With respect to the State party's argument that domestic remedies had not been exhausted in the case of Adolfo Drescher Caldas, the author argues that the State party completely ignored the Committee's request for information as to any specific remedy that might have been available in this particular case.

5.2 The author further contests the State party's submission as to the substance of her allegations. She maintains her allegation that her husband was held incommunicado at the beginning of his detention and that his relatives did not know his whereabouts. She argues that the State party admitted this fact when it declared that the state of incommunicado was lifted by the Military Examining Judge in the warrant of commitment after it had stated that he was charged on 7 November 1978 before the Military Examining Judge. The author concludes that the State party admits that Adolfo Drescher Caldas was held incommunicado from his arrest until 7 November 1978, i.e., for about six weeks. The author further contests the State party's affirmation that her husband was informed of the reason for his arrest at the time of his arrest, because he was told that he had been arrested under the prompt security measures. The author argues that this explanation amounted exactly to the same thing as giving no reason at all, for the power of arrest was said to be entirely discretionary under this 'regime'. The author also claims that her husband had no counsel of his own choosing because he only could choose between two court-appointed defending counsels. She alleges that he was 'tried by a Colonel and defended by a Colonel and charged with theft and forgery in a clumsy attempt to disguise political persecution'.

6. The Human Rights Committee, after having considered the State party's as well as the author's submissions with regard to the question of exhaustion of domestic remedies and on the basis of the information before it, found that it was not precluded by article 5 (2) (b) of the Optional Protocol from considering the communication. The Committee was also unable to conclude that, in the circumstances of this case, the communication was inadmissible under article 5 (2) (a) of the Optional Protocol.

7. On 24 October 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 and the remedy, if any, that may have been taken by it

(c) 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 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.

8. In its submission under article 4 (2) of the Optional Protocol dated 16 June 1980, the State party stated that the case of Mr. Drescher Caldas had been before the Inter-American Commission on Human Rights (case No. 3439) since 5 October 1978, i.e., before Mrs. de Drescher made her submission to the Committee.

9. By a letter of 18 August 1981, the secretariat of the Human Rights Committee was informed by the secretariat of the Inter-American Commission on Human Rights that case No. 3439 was submitted by a letter of 25 October 1978 by a close family member of Adolfo Drescher Caldas, but that the complaint had been withdrawn from IACHR by a letter sent to the Commission in September 1979.

10. In her submission of 3 May 1983, under rule 93 (3) of the provisional rules of procedure, the author confirms that she withdrew the case of her husband from IACHR. She alleges that he continues to be imprisoned under the same conditions as previously denounced.

11. 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.

12. 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.

12.1 Adolfo Drescher Caldas, a former trade-union official, was arrested in Montevideo, Uruguay, on 28 September 1978, by officials who did not identify themselves or produce any judicial warrant and who apparently belonged to the Navy. He was informed that he was arrested under the prompt security measures, but not, it appears, more specifically of the reasons for his arrest. During the first six weeks of his detention he was kept incommunicado and his relatives did not know his whereabouts. Recourse to habeas corpus was not available to him. On 7 November 1978, he was charged before the Military Examining Judge with violations of article 60 (V) of the Military Criminal Code and article 340 (theft), 237 (forgery or alteration of an official document by a private individual) and 54 (accumulation of offences) of the Ordinary Criminal Code. He had a defending counsel appointed by the court, Colonel Alfredo Ramirez, and in July 1979 his case was before the Military Court of the fourth sitting. In December 1978, he was brought to Libertad prison, the Military

Detention Establishment No. 1, where he continues to be detained.

13.1 In formulating its views, the Human Rights Committee also takes into account the following considerations.

13.2 With regard to the author's contention that her husband was not duly informed of the reasons for his arrest, the Committee is of the opinion that article 9 (2) of the Covenant requires that anyone who is arrested shall be informed sufficiently of the reasons for his arrest to enable him to take immediate steps to secure his release if he believes that the reasons given are invalid or unfounded. It is the view of the Committee that it was not sufficient simply to inform Adolfo Drescher Caldas that he was being arrested under the prompt security measures without any indication of the substance of the complaint against him.

13.3 The Committee observes that the holding of a detainee incommunicado for six weeks after his arrest is not only incompatible with the standard of humane treatment required by article 10 (1) of the Covenant, but it also deprives him, at a critical stage, of the possibility of communicating with counsel of his own choosing as required by article 14 (3) (b) and, therefore, of one of the most important facilities for the preparation of his defence.

13.4 In operative paragraph 3 of its decision of 24 October 1979, the Committee requested the State party to submit copies of any court orders or decisions of relevance to the matter under consideration. The Committee notes with regret that it has not been furnished with any of the relevant documents or with any information about the outcome of the criminal proceedings commenced against Adolfo Drescher Caldas in 1978. It must be concluded that he has not been tried without undue delay as required by article 14 (3) (c) of the Covenant.

14. 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 disclose violations of the International Covenant on Civil and Political Rights, particularly

of article 9 (2), because, at the time of his arrest, Adolfo Drescher Caldas was not sufficiently informed of the reasons for his arrest;

of article 9 (4), because recourse to habeas corpus was not available to him;

of article 10 (1), because he was kept incommunicado for six weeks after his arrest;

of article 14 (3) (b), because he was unable, particularly while kept incommunicado, to communicate with counsel of his own choosing;

of article 14 (3) (c), because he was not tried without undue delay.

15. 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: (b) to transmit a copy of these views to Adolfo Drescher Caldas (c) to take steps to ensure that similar violations do not occur in the future.

*/ Mr. Walter Surma Tarnopolsky did not participate in the adoption of the views of the Committee under article 5 (4) of the Optional Protocol in this matter.