

HUMAN RIGHTS COMMITTEE

Nunez v. Uruguay

Communication No. 108/1981*

22 July 1983

VIEWS

Submitted by: Carlos Varela Nunez

Alleged victim: The author

State party concerned: Uruguay

Date of communication: 27 October 1981 (date of initial letter)

Date of decision on admissibility: 27 October 1982

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

Meeting on 22 July 1983,

Having concluded its consideration of communication No. 108/1981 submitted to the Committee by Carlos Varela Nunez 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 27 October 1981, is Carlos Varela Nunez, a Uruguayan journalist, living at present in New York City, United States of America. (The communication is submitted by the author with the assistance of the International League for Human Rights.) Mr. Varela Nunez alleges that he is a victim of a breach by Uruguay of articles 12 (2) and 19 of the Covenant on Civil and Political Rights.

1.2 The author claims that his Uruguayan passport has been revoked by the Uruguayan authorities, without official notice or explanation, to punish him for the opinions which he holds and which he has expressed and still expresses in press articles critical of the policies of the Uruguayan Government and to prevent him from continuing to exercise fully his freedom of expression as a journalist. He claims that for the purpose of his complaint he comes within the jurisdiction of Uruguay.

2.1 The author states that he is a Uruguayan citizen born in Montevideo, Uruguay, on 25 May 1942. In the early 1960s, he was an active member of the Uruguayan Socialist Party, which then was a legally functioning party. At the same time, he was also working as a journalist for the Uruguayan newspapers "Epoca" and "Marcha". (Both newspapers and the Socialist Party were proscribed after the author left Uruguay.) The author affirms that throughout his career as a journalist in Uruguay and abroad, he has written press articles which have critically discussed Uruguay's human rights policies and practices.

2.2 On 11 March 1966, the author left Uruguay legally, in possession of a valid Uruguayan passport. In July 1970, Mr. Varela started to work for the Italian news agency, ANSA, and has been ANSA's correspondent at United Nations Headquarters in New York since 1973. When his passport expired in 1971, the Uruguayan consulate in Rome, Italy, issued to him a new passport (No. 151-922), with the expiration date of November 1981, provided that renewal of the passport be obtained in November 1976.

2.3 The author states that when he applied for the renewal of his passport at the Uruguayan consulate in New York in 1976, he was informed by the consular officer that there would probably be a long delay in the processing of his application. The author claims that after 1973 it had become the practice of the Uruguayan authorities, under the pretext of long delays, to deny the renewal of passports to certain persons. The author submits that, based upon personal knowledge of several such cases where Uruguayans had been waiting for the renewal of their passport for many years, without positive result, he informed the Uruguayan Ambassador to the United Nations that he intended to publicize his case. Subsequently, he obtained the renewal of his passport, valid then till November 1981.

2.4 The author states that, since the time of the "passport renewal incident", he has been afraid to return to Uruguay, for fear of reprisals because of his opinions and writings which have been critical of the Uruguayan Government's human rights record and other matters. The author adds that he is convinced that returning to Uruguay would place him in grave physical danger.

2.5 Mr. Varela claims that, in July 1980, he learned through foreign diplomats that the Uruguayan Government had notified foreign Governments in June of 1980 that his passport had been revoked. He himself, however, did not receive any written notice of the revocation, nor any statement of the reasons for that decision from the Uruguayan Government. His written inquiry regarding his passport, sent by registered mail to the Uruguayan consulate in New York on 5 May 1981, remained unanswered.

2.6 In March 1981, he was issued with a travel document by the Italian Government, based

on humanitarian grounds, which enables him for the time being to continue his work as ANSA correspondent at the United Nations in New York. The author states, however, that this travel document cannot be regarded as an adequate substitute for a Uruguayan passport, as it is issued to him at the discretion of the Italian Government, on an ad hoc basis, subject to revocation at any time and valid for travel only in a limited number of countries. He maintains, therefore, that his rights under article 12 (2), which allegedly have been and still are violated by the Uruguayan Government by revoking his passport, are not fully and permanently restored by the Italian travel document and continue to be severely curtailed.

2.7 The author also maintains that he continues to be a victim of a breach by Uruguay of article 19 of the Covenant, on the following grounds: his passport was revoked by the Uruguayan authorities allegedly in retaliation for his public criticism of the Government. The revocation of his passport by Uruguay entails serious consequences for his future work as a journalist, restricting his ability to cross frontiers freely in order to seek, receive and impart information.

2.8 The author indicates that no further domestic remedies are available in his case. He also states that the same matter has not been submitted to another procedure of international investigation and settlement.

2.9 The author points out that no derogation from the obligations under articles 12 and 19 can possibly be claimed by Uruguay in the circumstances of his case, because the specific conditions for derogation set out in article 4 (1) and (3) of the Covenant do not apply.

3. By its decision of 16 March 1982, 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.

4.1 By a note dated 14 July 1982, the State party objected to the competence of the Human Rights Committee on the ground that the communication did not meet the requirements for admissibility laid down in article 1 of the Optional Protocol "... in other words, Mr. Varela, on the date of submission of his petition, is outside the jurisdiction of the Uruguayan State ...".

4.2 The State party concludes that "it is therefore inappropriate for the Committee to deal with communications of this type, which detract it from its tasks and breach provisions of international norms".

4.3 The State party emphasizes that it has replied to the communication "simply out of its desire to carry on its unfailing co-operation with the Committee in promoting and protecting human rights".

4.4 As regards the contents of the communication, the State party in its submission dismisses the allegations of violations of articles 12 (2) and 19 of the Covenant by Uruguay as unfounded.

4.5 In substantiation of its rebuttal, the State party draws the Committee's attention to Mr. Varela's activities abroad, as journalist for the Italian news agency, ANSA, and to his actual enjoyment of the right to move demonstrated by his "free" departure from Uruguay and his visits to Czechoslovakia and Cuba in 1967-1968. The State party further points out that Mr. Varela, like all Uruguayan citizens, has the constitutional right to return to his country at any time, even if his passport has expired. The State party further asserts that it never prevented or tried to prevent the author of the communication from freely expressing his opinions, citing Mr. Varela's activities in Uruguay as a member of and a spokesman for the Movimiento Popular Unitario.

5.1 On 21 September 1982, the author of the communication forwarded his comments in reply to the State party's submission of 14 July 1982.

5.2 He rejects the State party's contention that the communication is inadmissible under the provisions of article 1 of the Optional Protocol because he does not come within its jurisdiction in the matter concerned. Mr. Varela maintains that he is a Uruguayan citizen who is subject to the jurisdiction of the State party with respect to the granting of a passport. Should Uruguay's statement that it has no jurisdiction in the case imply that his citizenship has been revoked, Mr. Varela contends that he has never received a notice of withdrawal of citizenship, an act which would be arbitrary and in violation of international norms.

5.3 The author refers, in this connection, to the case of Guillermo Waksman (R.7/31)[**](#) which, similar to his own, concerned the denial of a passport, in violation of articles 12 (2) and 19 of the Covenant, by Uruguay to a Uruguayan citizen living abroad and which after being declared admissible by the Human Rights Committee led to the issuance of a new passport to Mr. Waksman by the appropriate Uruguayan consular authorities.

5.4 The author also rejects the State party's contention that his rights under article 12 have not been violated. Mr. Varela points out that article 12 does not merely protect the right to leave one's country and to return to it for the purpose of a single journey, but that it protects a more far-reaching right to travel, namely to be free to leave any country, including one's own. As to the State party's further contention that he travelled to Czechoslovakia and Cuba in 1967-1968, the author stresses the fact that at that time he was still in possession of a valid Uruguayan passport. He further maintains that the Italian travel document which he has been able to acquire permits only limited travel and is valid only till July 1983. The author reaffirms that he is a victim of a breach by Uruguay of article 19, firstly because he must assume, in the absence of clarifications to this point from the State party, that reporting critically on human rights developments in Uruguay, as part of his work as a United Nations journalist, led to the difficulties concerning his passport, and secondly because, by the lack of a passport, he is restricted in his work as a journalist which would require him to cross frontiers freely to seek information.'

5.5 He finally dismisses as inaccurate the State party's reference to his political activities in Uruguay as member and spokesman of the Movimiento Popular Unitario, declaring that he never was a member or spokesman for that political group or any other group or political party affiliated to the Frente Izquierdo de Liberacion.

6.1 When considering the admissibility of the communication, the Human Rights Committee did not accept the State party's contention that it was not competent to deal with the communication because the author did not fulfil the requirements of article 1 of the Optional Protocol. In that connection, the Committee made the following observations: article 1 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, article 12 (2) 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.

6.2 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 this case, there were effective domestic 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.

6.3 On 27 October 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 it;
- (c) That the State party should 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. By a note dated 20 April 1983, the State party reiterated the opinion put forward in its earlier submission of 14 July 1982 on the question of the admissibility of the communication, namely "that the Committee has no competence to deal with this case".

8. On 30 May 1983, in reply to the State party's submission of 20 April 1983, the author informed the Committee that his passport continued to be withheld by the Government of Uruguay, in violation of his rights under articles 12 and 19 of the Covenant. Referring to the State party's failure to respond to the merits of his case, the author concluded that the State party thereby 'appears to acknowledge the indefensibility of its actions against Mr. Varela'.

9.1 The Human Rights 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.

9.2 The Committee decides to base its views on the following facts which appear to be uncontested: Carlos Varela Nunez is a Uruguayan citizen living in New York City since 1973 where he is working as a correspondent for the Italian news agency "ANSA". In 1980 his passport (valid then till November 1981) was revoked by the Uruguayan Government which so notified foreign Governments in June 1980. Mr. Varela himself never received any written notice of the revocation, nor any statement of the reason for that decision, from the Uruguayan Government. His written inquiry, regarding his passport, sent by registered mail to the Uruguayan consulate in New York, remained unanswered. In March 1981, he was issued with a travel document by the Italian Government which, however, could not be regarded as an adequate substitute for a Uruguayan passport (see para. 2.6 above).

9.3 As to the alleged violation of article 12 (2) of the Covenant, the Committee reiterates that 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. On the other hand, article 12 does not guarantee an unrestricted right to travel from one country to another. In particular, it confers no right for a person to enter a country other than his own. Moreover, 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 (orato 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 put forward any such justification for revoking Mr. Varela's passport. The facilities afforded by Italy do not, in the opinion of the Committee, relieve Uruguay of its obligations in this regard.

9.4 As to the allegations made by the author with regard to a breach of article 19 of the Covenant, which were refuted by the State party, the Committee observes that these allegations are in such general terms that it makes no findings in regard to them.

10. 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 found by it disclose a violation of article 12 of the Covenant, because the passport of Carlos Varela Nunez was revoked without any justification, thus preventing him from fully enjoying the rights under article 12 of the Covenant.

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

*/ 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.

**/ The Human Rights Committee decided to discontinue case No. R.7/31 (31/1978) on 28 March 1980.