

HUMAN RIGHTS COMMITTEE

Nieto v. Uruguay

Communication No. 92/1981*

25 July 1983

VIEWS

Submitted by: Laura Almirati Garcia on behalf of her father, Juan Almirati Nieto

Alleged victim: Juan Almirati Nieto

State party concerned: Uruguay

Date of communication: 5 June 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 25 July 1983,

Having concluded its consideration of communication No. 92/1981 submitted to the Committee by Laura Almirati Garcia 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 followings

Views under article 5 (4) of the Optional Protocol

1.1 The author of the communication (initial letter dated 5 June 1981 and further submissions dated 22 October 1981 and 11 May 1982) is a Uruguayan national, residing at present in Belgium. She submitted the communication on behalf of her father, Juan Almirati Nieto.

1.2 The author states that her father, a Uruguayan Civil Engineer (born on 23 June 1932), was arrested in 1970 because he was alleged to be a member of the Movimiento de Liberacion Nacional. Criminal proceedings were then initiated against him for the following offences: association to break the law, conspiracy to overthrow the Constitution, use of false identity papers, robbery and other lesser offences such as resistance to authority. In May 1971, he escaped from prison but on 14 April 1972 he was rearrested, kept incommunicado and allegedly subjected to severe torture. He was then brought before the same judge who had been conducting his trial} after examining the situation this judge added to the list of offences already mentioned that of collaborating in a mass escape of political prisoners (women) which had occurred a few months before. The author adds that her father was held for short periods of time at several detention places and then transferred to the Penal de Libertad, where he is detained at present.

1.3 The author mentions that, on the night of 14 April 1972, the same day that her father was rearrested, the Executive authorities declared the "internal state of war" and, as a consequence thereof, martial law became applicable to all political offences. The author describes the general situation as follows,

"In July 1972, the Parliament, subjected to strong pressures and faced with open threats of dissolution by force, agreed to approve law No. 14,068 concerning 'Security of the State and the Internal Order' which increased the authority of the military judges by converting the political offences referred to in the Ordinary Penal Code into military offences and incorporating them in the Military Penal Code, regardless of whether those committing such offences were military personnel or civilians, thereby violating the Constitution which did not allow civilians to be judged by military judges On 29 December 1975, the Council of State (appointed by the Executive and claiming to take the place of the Parliament elected by the people, which was dissolved at the time of the coup d'etat of June 1973) approved law No. 14,493. That law broadened the sphere of action of the military judges, granting them retroactive competence to deal with political offences committed even before 14 April 1972 and entrusting to them the responsibility for dealing with all cases in progress before the ordinary courts in which a definite and final decision had not yet been reached

"When martial law was applied throughout the country, all kinds of defects and irregularities became evident in the procedures of the military courts, which made a mockery of the right to a fair and equitable trial and' the right of defence in criminal proceedings."

The author claims that all these developments adversely affected her father's situation.

1.4 She states that her father continued to be under the authority of the civil judges for a long time, because he had been arrested one day before the military -judges were empowered to try those suspected of political offences. She further submits that her father was sentenced by the civil judiciary, after an irregular trial marked by the restriction of procedural rights and guarantees, to a 10-year term of imprisonment. She informs the Committee that although her father finished serving his sentence in March 1981 (in a further submission of 11 May 1982 she mentions 14 April 1982 as the date for this)** he is still in prison. The author then relates the events leading to her father's continuing imprisonment, "Suddenly, in December

1980, new criminal proceedings were started against Almirati, this time by the military judiciary and based on the same facts as those for which he had already been tried and sentenced. There were no new elements or new offences other than those which had already been investigated; some of the new accusations had already been made in the past by the police and the security services of the armed forces and had been rejected by the civil judiciary. Thus the sacred principles of res judicata and non bis in idem have been violated, for my father is being tried a second time for the same acts, and all this started 10 years later, when the prisoner had three months to go to finish serving his entire sentence. The military prosecutor is now asking that Juan Almirati should be sentenced to 22 years' imprisonment. I must inform the Committee that, given the situation prevailing in Uruguay, I have not been able to obtain more information, nor, of course, a copy of the military prosecutor's indictment, and I would therefore suggest that the Committee should ask the Uruguayan Government to provide it and to inform it exactly what Almirati's legal situation is, what stage this second trial has reached and by virtue of what legal rules it is being conducted."

1.5 The author maintains that the military judiciary lacks certain essential attributes, that it is not independent since it depends on the Executive, that it is not impartial since the judges are military officials who are acting temporarily in this capacity, and that it is not competent since the judges and prosecutors are not required to be lawyers or practitioners of the law but merely military officers of a certain rank, according to the importance of the court. She further maintains that the domestic remedies which are provided for the Uruguayan legislation cannot protect her father, because none of them is allegedly applicable in practice if the human rights violation has been committed by military personnel or by members of the police in connection with State security as interpreted by the military forces.

1.6 The author alleges that her father has been arrested, tortured, ill-treated, tried, sentenced and kept in detention only because of his political ideas and 'that, under the conditions in which political prisoners like her father are detained, he has no possibility of recourse either to domestic remedies or to an international body to seek redress for the violation of his rights.

1.7 The author alleges that at the Penal de Libertad her father is subjected to inhuman prison conditions. She stresses in this connection, the following points: "My father shares a cell measuring 2 by 3.50 m with another detainee, and they are kept in it continuously for 23 hours a day} if the weather is good and they are not being punished, they are taken out for one hour in the open air. Since he is being held in the part of the prison set aside for those the military have classified as 'dangerous', my father is never taken out of his cell to work, to eat or for anything other than exercise and visits. It should be pointed out that the qualification 'dangerous', is the result of an evaluation, not by the judge but by the prison commandant. The conditions applied in this sector (the second floor of the prison) are much harsher even than those applied to other detainees located in other sectors (the prison population amounts at present to some 1,100 political prisoners), which are already harsh enough. My father can study or read books only if the commandant on duty feels like allowing it, and books are frequently confiscated without any explanation. In any case he can read only those books which pass the military censorship My father is not allowed to read newspapers because they are all prohibited, whether national or foreign} he cannot listen to

the radio, because it, too, is prohibited} all of which naturally means that he is cut off from the world at large, thus aggravating the tensions which are natural in a prison and forcing him to live disconnected from the outside world." The author further alleges that detainees live under constant fear and are subject to harassment by the guards who are at liberty to impose sanctions on prisoners for petty contraventions (such as speaking with other inmates at certain times); that from time to time a prisoner is taken out of prison and brought to military quarters in order to be interrogated and tortured again, either in connection with his prior conviction or with alleged political activities in prison, and that because of this situation the physical and mental health of detainees is seriously endangered. The author also alleges that, because of insufficient food, her father has lost more than 15 kilos during his imprisonment. She claims that the treatment inflicted upon her father amounts to mental torture.

1.8 The author states that the same matter has not been submitted to another procedure of investigation or settlement.

1.9 The author claims that her father is a victim of violations of articles 2 {1) and (3), 7, 10 (1) and (3), 14 (1), (2), (3) and (7) and 26 of the International Covenant on Civil and Political Rights.

2. By its decision of 23 July 1981, the Human Rights Committee, having decided that the author of the communication was justified in acting on behalf of the alleged victim, 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 Human Rights Committee also requested the author of the communication to explain in detail which of the alleged events had taken place after 23 March 1976 (the date of the entry into force of the Covenant and Protocol for Uruguay), including the treatment and conditions of imprisonment of her father after that date and his access to legal counsel in connection with the charges brought against him in the new proceedings initiated in December 1980.

3. In a further letter, dated 22 October 1981, submitted by the author in reply to the Committee's request for additional information, she repeated that the conditions in which her father was serving his term of imprisonment constituted a deliberate form of cruel, inhuman and degrading treatment and that although this treatment began before, it had continued after March 1976 and was still continuing. She also repeated that the new criminal proceedings conducted against him violate the principles of res judicata and non bis in idem. The author further stated that, when the second proceedings were begun in December 1980, her father's defence lawyer was not informed, that he was later presented with *fais accomplis* and that, in August 1981, when her father was taken before the First Military Court to be interrogated for the purposes of the second trial, everything was done without the knowledge of his defence lawyer and consequently without any possibility of his participating and defending her father's interest.

4. The Human Rights Committee, taking note that no submission has been received from the State party concerning the question of the admissibility of the communication, on the basis

of the information before it, 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.

5. On 25 March 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) or which, although occurring before that date, continued or had effects alleged to constitute a violation after that date;

(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 have 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.

6. In a further letter, dated 11 May 1982, the author stressed that, as a result of the treatment inflicted upon her father at Libertad, his health had been declining continuously and that he was in a state of chronic malnutrition and had serious eye problems. She further stated that:

"After ten years of imprisonment, fresh inquiry proceedings have been initiated against him } this is the third time that his trial has been started anew. They want to accuse him of new offences and for this the military need witnesses to accuse him. We all know that the passage of time is not sufficient to protect prisoners from new offences; when a prisoner is of interest to the military intelligence services, particularly when they have not managed to cow him, as is the case with my father, completion of sentence does not lead to release, because under this infernal machine, in which the prisoner is at the mercy of his tormentors, he may be taken out of the prison to torture and interrogation centres and then returned to Military Detention Establishment No. 1 with offences on his file that equal the number of years the regime wishes to keep him in prison."

7. In its submission under article 4 (2) of the Optional Protocol, dated 13 August 1982, the State party referred to the contents of an earlier note, dated 1 July 1982, which appeared to be a late submission under rule 91 of the provisional rules of procedure. The text of this note reads as follows:

"... the Government of Uruguay wishes to stress that this communication is based on an unacceptable premise in describing the person with whose situation it is concerned as a 'political prisoner'. Mr. Almirati was a member of the MLN subversive group and participated actively in it, serving as co-ordinator of one of the sections into which this organization was divided, known as the 'North column'. He directed the construction of 'berretines' - hiding-places for the concealment of weapons or persons and premises for the movement. He was responsible for the operation in which Paysandu airport was attacked and surrounded. He took part in the raid on an important local enterprise, subduing the caretakers under threat of firearms. He took part in the operation for the escape of prisoners from the women's prison. On that occasion, he assaulted and forcibly subdued one of the police officers on guard. It is obvious that acts of this kind cannot be considered to constitute 'political activities', nor can their perpetrator be regarded as a victim of persecution. Further proceedings were taken against Mr. Almirati on 8 October 1981 for the offences of 'robbery' and 'assault on the safety of transport'. In this communication, it is asserted that the principles of res judicata and of non bis in idem have been violated. This is untrue, since the proceedings concerned were brought because of the emergence of fresh evidence regarding the commission of the above offences. The fact that these offences had been investigated by the police authorities in no way signifies that there was any repetition of proceedings; no proceedings had been instituted on that account, since the authorities did not possess the evidence now available. The Government of Uruguay also wishes to stress that this communication contains completely unfounded and meaningless statements; for example, the assertion that martial law was introduced in Uruguay or that the Uruguayan Parliament acted under threats. Despite the information supplied, this Government maintains that with reference to the second proceedings, use has not been made of the domestic remedies available to the accused such as appeal and review."

8. In a further submission under article 4 (2) of the Optional Protocol, dated 11 October 1982, the State party ... "categorically rejects the term 'concentration camp' used to describe Detention Establishment No. 1. In fact, far from having such an evil status, the standard in this establishment is above the international average for detention establishments. The system is the normal one, and every prisoner, without exception, is given the necessary food and attention to keep him in good physical and mental condition. Secondly, it is emphasized that the terms 'terrible harassment' and 'taken away and tortured', used to describe alleged treatment to which Mr. Almirati had been or was about to be subjected, are untrue and malicious. It must be stated categorically that no type of physical or mental coercion is used in Uruguay on persons under detention and that Mr. Almirati is "in prison and is unable to enjoy normal relations with his family, not because the Government of Uruguay so wishes, but because, as a member of the subversive Tupamaros NLM, he committed numerous offences classified by the Uruguayan legal system and he was duly tried and sentenced for them. It should be emphasized, however, that the relatives of every prisoner are permitted to make fortnightly visits, and the visiting hours are even adjusted for those who, for employment reasons, are unable to attend on working days. With respect to Mr. Almirati's present state of 'chronic malnutrition', we wish to state that the diets in Uruguayan detention establishments are prepared by professional dietitians on the staff of such establishments. It is further pointed out that the prisoners -themselves participate in the tasks of preparing their food, on a group rota system. Mr. Almirati is in good health and he has recently had a

number of clinical examinations and blood pressure tests."

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

9.2 Events prior to the entry into force of the Covenant

Juan Almirati Nieto was arrested in Uruguay in 1970. Criminal proceedings were then initiated against him for the following offences: association to break the law, conspiracy to overthrow the Constitution, use of false identity papers, robbery and other lesser offences such as resistance to authority. In May 1971, he escaped from prison. On 14 April 1972, he was rearrested. The judge added to the list of offences already mentioned that of collaborating in a mass escape of women detainees. He was held for short periods of time at several detention places and he was then transferred to Libertad. He was sentenced by the civil judiciary to 10 years of imprisonment.

9.3 Events subsequent to the entry into force of the Covenant

Towards the end of 1980, shortly before he was due for release upon the completion of his term of imprisonment, new criminal proceedings were started against Juan Almirati Nieto by the military judiciary without the knowledge of his defence lawyer for offences alleged to have been committed prior to his imprisonment and in respect of which new evidence was alleged to have emerged. The military prosecutor has asked that Juan Almirati Nieto should be sentenced to 22 years' imprisonment. The Committee has received no information as to the outcome of these proceedings or that they have been concluded.

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

10.2 In its decision of 25 March 1982, the Committee requested the State party to submit copies of any relevant court orders or decisions. The Committee notes with regret the failure of the State party to respond to this request.

10.3 The Committee notes that it has been informed by the State party, in submissions of 1 July and 13 August 1982, that with reference to "the second proceedings, use has not been made of the domestic remedies available to the accused such as appeal and review". The Committee is unable to conclude, however, that these remedies are available in respect of the particular violations of the Covenant which it finds in the present case.

10.4. The Committee observes that the State party, in its submission of 11 October 1982, refuted only in general terms the author's detailed allegations that her father is held under inhuman prison conditions at Libertad (see para. 1.7 above). The submissions of the State party in this respect are an insufficient answer to the allegations made. The Committee recalls its findings in other cases a/ that a practice of inhuman treatment existed at Libertad prison during the period to which the present communication relates and that it has come to

this conclusion on the basis of specific accounts by former detainees themselves. The Committee concludes that in the present case also Juan Almirati Nieto has not been treated with humanity and with respect for the inherent dignity of the human person as required by article 10 (1) of the Covenant.

10.5 Concerning the allegation of the authors that article 14 (7) of the Covenant has been violated by the State party because the new criminal proceedings, started by the military judiciary against her father in December 1980, were based on the same facts as those for which he had been tried and sentenced to 10 years of imprisonment by the civil judiciary, the State party in its submissions dated 1 July and 13 August 1982 refuted this allegation on the ground that "the proceedings concerned were brought because of the emergence of fresh evidence regarding the commission of the offences of "robbery" and "assault on the safety of transport". The Committee observes, in this connection, that the State party has not specified what the new evidence was which prompted the Uruguayan authorities to initiate new proceedings. In the absence of information, as to the outcome of those proceedings, the Committee makes no finding on the question of a violation of article 14 (7), but it is of the view that the facts indicate a failure to comply with the requirement of article 14 (3) (c) of the Covenant that an accused person should be tried 'without undue delay'.

10.6 As to the allegations made by the author with regard to breaches of articles 2 (1) and 26 of the Covenant, they are in such general terms that the Committee makes no finding with regard to them.

11. 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 26 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 article 10 (1), because Juan Almirati Nieto has not been treated in prison with humanity and with respect for the inherent dignity of the human person;

of article 14 (3) (b) and (d), because he has not had adequate facilities for the preparation of his defence and he has been unable to defend himself through legal assistance;

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

12. The Committee, accordingly, is of the view that the State party is under an obligation to take immediate steps to ensure strict observance of the provisions of the Covenant and in particular (a) that Juan Almirati Nieto is treated with humanity as required by article 10 of the Covenant, and (b) that the guarantees prescribed by article 14 are fully respected and, in so far as this has not been done in any proceedings already taken, an effective remedy will be applied.

Notes

a/ For the review of the Committee, see annex VIII to the present report concerning communication No. 66/1980 (Campora Schweizer V. Uruguay), adopted on 12 October 1982, and annex XII to the present report, concerning communication 74/1980 (Miguel Angel Estrella V. Uruguay), adopted on 29 March 1983.

*/ 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 discrepancy in the dates appears to be due to the fact that the author either counted from her father's first arrest in 1970 or from his rearrest on 14 April 1972.