

## HUMAN RIGHTS COMMITTEE

### de Voituret v. Uruguay

Communication No. 109/1981

10 April 1984

### VIEWS

*Submitted by: Maria Dolores Perez de Gomez*

*Alleged victim: Teresa Gomez de Voituret (author's daughter)*

*State party concerned: Uruguay*

*Date of communication: 17 August 1981*

*Date of decision on admissibility: 22 July 1983*

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

Meeting on 10 April 1984;

Having concluded its consideration of communication No. R.25/109 submitted to the Committee by Maria Dolores Perez de Gomez 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 17 August 1981, further letters dated 20 November 1981 and 18 September 1982) is Maria Dolores Perez de Gomez, a Uruguayan national living in Montevideo, Uruguay, writing on behalf of her daughter, Teresa Gomez de Voituret, who is allegedly detained in Uruguay and is not in a position to present her case herself to the Human Rights Committee. Mrs. Perez de Gomez claims that her daughter is

a victim of a breach by Uruguay of article 10 (1) of the International Covenant on Civil and Political Rights.

2.1 The author states that Teresa Gomez de Voituret, a medical doctor, was arrested on 27 November 1980 at the airport of Carrasco, Uruguay, upon her return from a medical seminar held in Buenos Aires, Argentina, from 24 to 27 November 1980.

2.2 The author submits that her daughter was arrested by plainclothes men without any warrant and taken to Military Unit No. 1 of the Artillery in the area of Cerro, where she allegedly was held in solitary confinement in a cell almost without natural light and which she was not allowed to leave until she was brought to trial in June 1981. From then on she was allowed periods of recreation outside her cell, hooded and forced to walk without interruption during this time.

2.3 The author was allowed to visit her daughter in the Military Unit 30 days after the arrest occurred. The visit took place in the presence of three guards who listened to every word of the discussion between mother and daughter. The author states that these kinds of visits continued, once every two weeks, until Teresa Gomez de Voituret was transferred to the Punta de Rieles prison where she is still detained. In Punta de Rieles prison she is allowed one half-hour visit by close family members every two weeks.

2.4 Mrs. Perez de Gomez states that at her first visit in the Military Unit she could observe that her daughter's state of health had visibly deteriorated since the time before her arrest. She claims, based upon information she received from a person who had been detained for some time in the same place as Teresa Gomez de Voituret and who had later been released, that her daughter was subjected to torture during interrogation in order to extract confessions from her.

2.5 Thus, Teresa Gomez de Voituret falsely confessed that she was a member of a political group which kept close links with persons in and outside Libertad prison where her husband has been detained since 27 December 1974. Teresa Gomez de Voituret later revoked this statement in her written declarations before the court. She further admitted during interrogation that she had tried to mobilize international human rights bodies and related religious institutions, inside and outside Uruguay, drawing their attention to the critical situation of her husband and other prisoners in Libertad prison, claiming thereby that her husband's life was in grave danger because of death threats he allegedly had received from prison personnel.

2.6 The author claims that the Uruguayan authorities perceived her daughter's efforts before these human rights bodies as a threat to the country's image abroad.

2.7 In June 1981, Teresa Gomez de Voituret was charged with "subversive association and attempt against the Constitution followed by preparatory acts".

2.8 The author alleges that the proceedings in her daughter's case before the military court of first instance do not provide the necessary guarantees for a fair judicial process as they

do not permit her daughter to be brought before the judge in person, but provide only for written statements by her daughter which are taken by a court clerk. The author further alleges in this connection that, although her daughter had been given the possibility to appoint a defence lawyer of her own choice, in reality she can expect only very little assistance from him because she is prevented from consulting him freely. The conversations have to take place by telephone, while the defence lawyer and her daughter are separated by a glass wall and continuously watched by guards standing at their side.

2.9 The author maintains that there are no domestic remedies which could be effectively pursued in her daughter's case. The author also submits that to her knowledge the same matter has not been submitted to the Inter-American Commission for Human Rights.

2.10 Finally, the author states that she submits the case of her daughter to the Human Rights Committee with the request that the Committee take appropriate action to secure a fair trial for her daughter and her subsequent release.

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. The State party was also requested (a) to provide the Committee with copies of any court orders or decisions relevant to this case} and (b) to inform the Committee whether the alleged victim was brought before the military judge of first instance in person and what were the relevant laws and practices in this respect.

4.1 By a note dated 24 June 1982 the State party informed the Committee that Teresa Gomez de Voituret was tried on 23 March 1982, charged with the offence of "subversive association" under article 60 (V) of the Military Criminal Code. The State party adds that Teresa Gomez de Voituret had been accused of this offence "on the basis of evidence confirming her active participation in the subversive movement known as 'Seispuntismo', which sought to reactivate MLN and about which the Committee has already been informed". The State party stresses that

"Teresa Gomez de Voituret was a member of the most active centre of agitation and propaganda and [that] her primary task was to try to recruit new members for this seditious organization".

4.2 The State party did not however submit copies of any court orders or decisions of relevance to the case or reply to the specific questions set out in paragraph 3 above.

5.1 On 18 September 1982, the author of the communication forwarded her comments in reply to the State party's submission of 24 June 1982. She rejects the State party's contention that her daughter ever was an active member of MLN. She claims, in this connection, that "the Military Government of Uruguay simply invented the subversive movement known as 'Seispuntismo' in order to bring to trial once again a group of prisoners who had completed or almost completed their sentences in Libertad prison". .

5.2 Mrs. Perez de Gomez asserts that her daughter merely reported to the Red Cross and to the organization "Justicia y Par" in Buenos Aires the physical, psychological and moral pressure that was being exerted at that time in Libertad prison against her husband Jorge Voituret Pazos and other political prisoners. She maintains that acting thus in defence of her husband was the only offence her daughter committed.

6. In reply to the author's comments and observations on its submission of 24 June 1982, the State party, in a further note dated 28 December 1982, reaffirms its statement on the case as contained in its note of 24 June 1982.

7. On 3 May 1983 the State party was again requested to furnish additional information inter alia as to whether judgement of first instance had already been rendered in the case. The time-limit for the State party's response expired on 20 June 1983'. No such additional information had been received from the State party when the Committee decided on the admissibility of the communication in July 1983.

8. With regard to article 5 (2) (a), the author's assertion that the same matter had not been submitted to any other procedure of international investigation or settlement was not contested by the State party. As to the question of exhaustion of domestic remedies, the State party did not contest the author's statement concerning the absence of effective remedies in her daughter's case. The Committee noted in this regard that it would appear that the trial of Teresa Gomez de Voituret, although begun on 23 March 1982, might not yet have been concluded, since the Committee had no information that judgement had been given. However, the allegations of violations of the Covenant related to ill-treatment in Prison and the lack of guarantees of a fair trial, as required by the Covenant, in respect of which the State party did not claim that there was an effective domestic remedy which the alleged victim had failed to exhaust. The Committee therefore was unable to conclude that in the circumstances of this case there were domestic remedies which could have been effectively pursued. Accordingly, the Committee found that the communication was not inadmissible under article 5 (2) (a) and (b) of the Optional Protocol.

9. On 22 July 1983 the Human Rights Committee therefore decided:

1. That the communication was admissible;
2. That, in accordance with article 4 (2) of the Optional Protocol, the State party be requested to submit to the Committee, within six months of the date of transmittal to it of the decision, written explanations or statements clarifying the matter and the remedy, if any, that might have been taken by it;
3. 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 again requested (a) to enclose copies of any court orders or decisions

of relevance to the matter under consideration, (b) to inform the Committee whether the alleged victim was brought before the military judge of first instance in person and what were the relevant laws and practices in that respect, and (c) to inform the Committee as to the outcome of the trial at first instance of Teresa Gomez de Voituret and whether the judgement of the court of first instance was subject to appeal.

10. By a note of 22 August 1983 in response to the Committee's request of 3 May 1983, the State party submitted the following additional information:

"In the proceedings against Teresa Gomez de Voituret, the accused was sentenced at first instance on 28 September 1982 to five years' rigorous imprisonment on conviction of the offences of 'subversive association' and 'conspiracy to undermine the Constitution followed by criminal acts'.

"On 15 June 1983 judgement was given at second instance confirming the sentence. The proceedings were conducted with all the guarantees provided for under the Uruguayan legal system, including that relating to the right of the accused to appropriate legal assistance."

11.1 In its submission under article 4 (2) of the Optional Protocol, dated 14 December 1983, the State party added:

"In all cases the legally established trial procedures are observed, which includes appearance before the competent judge. With respect to the judgements of first and second instance there are remedies to which recourse may be had within the prescribed periods. Finally, it must be pointed out that in Uruguay maltreatment and threats are not methods employed, and the physical integrity of prisoners is fully protected."

The Committee notes with concern that, in spite of its repeated requests, it has not been furnished with any copies of court orders or decisions of relevance to the matter under consideration.

11.2 No further submission has been received from the author.

12.1 The Human Rights Committee, having examined the present communication in the light of all the information made available to it by the parties as provided in article 5 (1) of the Optional Protocol, hereby decides to base its views on the following facts, which appear uncontested.

12.2 Teresa Gomez de Voituret was arrested on 27 November 1980 by plainclothes men without any warrant and taken to Military Unit No. 1, where she was held in solitary confinement in a cell almost without natural light and which she was not allowed to leave until she was brought to trial in June 1981. She was subsequently transferred to Punta de Rieles prison, where she is still detained. In June 1981 she was charged with "subversive association and attempt against the Constitution followed by preparatory acts". Her trial at first instance began on 23 March 1982 and she was sentenced on 28 September 1982 to five years' rigorous imprisonment. On 15 June 1983 judgement was given at second instance

confirming the sentence.

13. 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 a violation of article 10 (1) of the International Covenant on Civil and Political Rights, because Teresa Gomez de Voituret was kept in solitary confinement for several months in conditions which failed to respect the inherent dignity of the human person.

15. The Committee, accordingly, is of the view that the State party is under an obligation to ensure that Teresa Gomez de Voituret is treated with humanity and to transmit a copy of these views to her.