

EFFECTIVE REMEDIES - IMPUNITY

I. JURISPRUDENCE

ICCPR

- *Rodríguez v. Uruguay* (322/1988), ICCPR, A/49/40 vol. II (19 July 1994) 5 (CCPR/C/51/D/322/1988) at paras. 2.1, 2.2, 12.1-12.4, 13 and 14.

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2.1 In June 1983, the Uruguayan police arrested the author and his wife, together with several other individuals. The author was taken by plainclothes policemen to the headquarters of the secret police (Dirección Nacional de Información e Inteligencia), where he allegedly was kept handcuffed for several hours, tied to a chair and with his head hooded. He was allegedly forced to stand naked, still handcuffed, and buckets of cold water were poured over him. The next day, he allegedly was forced to lie naked on a metal bedframe; his arms and legs were tied to the frame and electric charges were applied (*picana eléctrica*) to his eyelids, nose and genitals. Another method of ill-treatment consisted in coiling wire around fingers and genitals and applying electric current to the wire (*magneto*); at the same time, buckets of dirty water were poured over him. Subsequently, he allegedly was suspended by his arms, and electric shocks were applied to his fingers. This treatment continued for a week, after which the author was relocated to another cell; there he remained *incomunicado* for another week. On 24 June, he was brought before a military judge and indicted on unspecified charges. He remained detained at the "Libertad Prison" until 27 December 1984.

2.2 ...[T]he Parliament...enacted, on 22 December 1986, Law No. 15,848, the Limitations Act or Law of Expiry (*Ley de Caducidad*) which effectively provided for the immediate end of judicial investigation into such matters and made impossible the pursuit of this category of crimes committed during the years of military rule.

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12.1 With regard to the merits of the communication, the Committee notes that the State party has not disputed the author's allegations that he was subjected to torture by the authorities of the then military regime in Uruguay. Bearing in mind that the author's allegations are substantiated, the Committee finds that the facts as submitted sustain a finding that the military regime in Uruguay violated article 7 of the Covenant. In this context the Committee notes that, although the Optional Protocol lays down a procedure for the examination of individual communications, the State party has not addressed the issues raised by the author as a victim of torture nor submitted any information concerning an investigation into the author's allegations of torture. Instead, the State party has limited itself to justify, in general terms, the Uruguayan Government's decision to adopt an amnesty law.

12.2 As to the appropriate remedy that the author may claim pursuant to article 2, paragraph

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3, of the Covenant, the Committee finds that the adoption of Law No. 15,848 and subsequent practice in Uruguay have rendered the realization of the author's right to an adequate remedy extremely difficult.

12.3 The Committee cannot agree with the State party that it has no obligation to investigate violations of Covenant rights by a prior regime, especially when these include crimes as serious as torture. Article 2, paragraph 3 (a) of the Covenant clearly stipulates that each State party undertakes "to ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity". In this context, the Committee refers to its General Comment No. 20 (44) on article 7, d/ which provides that allegations of torture must be fully investigated by the State:

“Article 7 should be read in conjunction with article 2, paragraph 3...The right to lodge complaints against maltreatment prohibited by article 7 must be recognized in the domestic law. Complaints must be investigated promptly and impartially by competent authorities so as to make the remedy effective...”

“The Committee has noted that some States have granted amnesty in respect of acts of torture. Amnesties are generally incompatible with the duty of States to investigate such acts; to guarantee freedom from such acts within their jurisdiction; and to ensure that they do not occur in the future. States may not deprive individuals of the right to an effective remedy, including compensation and such full rehabilitation as may be possible.”

The State party has suggested that the author may still conduct private investigations into his torture. The Committee finds that the responsibility for investigations falls under the State party's obligation to grant an effective remedy. Having examined the specific circumstances of this case, the Committee finds that the author has not had an effective remedy.

12.4 The Committee moreover reaffirms its position that amnesties for gross violations of human rights and legislation such as Law No. 15,848, *Ley de Caducidad de la Pretensión Punitiva del Estado*, are incompatible with the obligations of the State party under the Covenant. The Committee notes with deep concern that the adoption of this law effectively excludes in a number of cases the possibility of investigation into past human rights abuses and thereby prevents the State party from discharging its responsibility to provide effective remedies to the victims of those abuses. Moreover, the Committee is concerned that, in adopting this law, the State party has contributed to an atmosphere of impunity which may undermine the democratic order and give rise to further grave human rights violations. e/

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13. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol, is of the view that the facts before it disclose a violation of article 7, in connection with article 2, paragraph 3, of the Covenant.

14. The Committee is of the view that Mr. Hugo Rodríguez is entitled, under article 2, paragraph 3(a), of the Covenant, to an effective remedy. It urges the State party to take effective measures (a) to carry out an official investigation into the author's allegations of torture, in order to identify the persons responsible for torture and ill-treatment and to enable the author to seek civil redress; (b) to grant appropriate compensation to Mr. Rodríguez; and (c) to ensure that similar violations do not occur in the future.

Notes

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d/ Adopted at the Committee's forty-fourth session, in 1992; see Official Records of the General Assembly, Forty-seventh Session, Supplement No. 40 (A/47/40), annex VI.A.

e/ See the comments of the Committee on Uruguay's third periodic report under article 40 of the Covenant, adopted on 8 April 1993, Official Records of the General Assembly, Forty-eighth session, Supplement No. 40 (A/48/40), chap. III.
