

## HUMAN RIGHTS COMMITTEE

### Estradet v. Uruguay

Communication No. 105/1981\*

21 July 1983

### VIEWS

*Submitted by: Maria A. Cabreira de Estradet, on behalf of her son, Luis Alberto Estradet Cabreira*

*Alleged victim: Luis Alberto Estradet Cabreira*

*State party concerned: Uruguay*

*Date of communication: 3 August 1981 (date of initial letter)*

*Date of decision on admissibility: 22 October 1982*

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. 105/1981 submitted to the Committee by Maria A. Cabreira de Estradet 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 7 August 1981 and further submissions dated 5 June and 3 September and one postmarked 23 September 1982) is a Brazilian national, residing at present in the Netherlands. She submitted the communication on behalf of her son, Luis Alberto Estradet Cabreira.

2.1 The author states that her son (born on 14 August 1947) was arrested in Uruguay on 13 July 1972. During the first six months he was allegedly kept incommunicado and subjected to torture ("picana electrica", "submarino", "platonos", beatings and lack of food).

2.2 The author further states that, from January 1973 to the present, her son has been detained at the Penal de Libertad, a prison which is allegedly only for political detainees and which is run by army personnel. The author describes her son's present conditions of imprisonment as follows: he shares a cell measuring 2 by 13.50 m with another detainee; he is kept in his cell 23 hours each day; he is allowed to go into the open air only one hour per day, provided that he is not being punished.. He is not allowed to work, to read newspapers or to listen to the radio. The author further states that visits may take place every 15 days and last only for 20 minutes. The only persons authorized to visit him are close relatives. The visitors and the alleged victim are separated by a thick window and the conversations are conducted by telephone and can be followed by the prison guards. The author claims that the worst part of her son's imprisonment is the continuous harassment by the guards and the severe punishment for such actions as reporting to relatives on prison conditions or speaking with other inmates without authorization. Punishments may amount to detainees being held at "La Isla", a punishment cell, in solitary confinement as long as 90 days. The author alleges that the penitentiary system is not aimed at the reformation of prisoners but at the destruction of their resistance. As soon as they enter at Libertad, their heads are shaved, they are given a number and they are never called by their names. The author further alleges that detainees are continuously kept in a state of anxiety and tension because they live in constant fear of being again interrogated in connection with their prior convictions or with purported political activities in prison. Because of this situation, the physical and mental health of detainees is seriously endangered and the author gives the names of three detainees who were going to be re-tried and recently died, and of five other detainees in poor health, who also died. She refers also to the case of Rafael Wins who tried to commit suicide in the beginning of 1982.

2.3 With respect to the judicial proceedings against her son, the author states that on 24 January 1973 her son was charged on grounds of offences against the security of the State (arts. 281, 324, 244, 132 (6), 137 and 60 (v) of the Military Panel Code) for being a member of a clandestine political organization, the Movimiento de Liberacion Nacional-Tupamaros (MLN-T). She further states that her son was sentenced to nine years of imprisonment and in addition to six months to three years of precautionary detention (medias de seguridad eliminativas) by a military tribunal of first instance. On appeal, the Supreme Military Tribunal increased the prison term to 12 years and imposed the same security measures. The author alleges that the judgement of the Supreme Military Tribunal (of 15 February 1977) contained grave technical defects (e.g. with regard to offences which could not be proven, offences not mentioned in the indictment and acts for which her son was allegedly punished twice). Because of this, the defence lawyer submitted an appeal (recurso de casacion) which, however, was dismissed. The author further alleges that her son's conviction was based on confessions that were extracted from him under torture. She claims that, although the torture took place before 23 March 1976 (the date on which the Covenant entered into force for Uruguay), it has had effects up to date, because it was on the basis of the confessions made under torture that her son was sentenced to 12 years of imprisonment which he continues to serve at present. She emphasizes that all charges against her son stem

from his political activities and that he is therefore a political prisoner. In particular she states that article 2 (1) and article 26 of the Covenant have been violated "since he has been made a victim of discrimination on the ground of his political opinions, having been treated far worse than the perpetrator of an ordinary offence".

2.4 The author claims that domestic remedies have been exhausted. She maintains that the domestic remedies which are provided for in the Uruguayan legislation cannot protect her son, 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. She further alleges that military judges are not impartial and in particular that they conceal continuous illegal acts to which political detainees are subjected.

2.5 The author expresses deep concern about her son's state of health. She mentions that he suffers from a heart disease, that he has been operated on twice, that he urgently needs a third operation and that he is denied proper medical attention.

2.6 The author states that the same matter is not being examined under another procedure of international investigation or settlement since she has expressly withdrawn her complaint to the Inter-American Commission on Human Rights.

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

3. By its decision of 14 October 1981, the Working Group of the Human Rights Committee decided that the author was justified in acting on behalf of the alleged victim and 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 Working Group also requested the State party to provide the Committee with information on the state of health of Luis Alberto Estradet Cabreira.

4. By a note dated 25 June 1982, the State party informed the Committee that Luis Alberto Estradet was arrested on 13 July 1972 and that, contrary to the author's statement, he is not a political prisoner. It stated that in 1969 Luis Estradet became a member of the Movimiento de Liberacion Nacional and he had taken part in terrorist activities. On 24 January 1973, he was charged by a military judge on grounds of offences contained in articles 281, 324, 344, 132 (6) of the Ordinary Penal Code and article 60 (v) of the Military Penal Code (i.e. mainly on grounds of: use of fire-arms, subversive association and attempt against the Constitution). The State party further stated that Luis Estradet was sentenced by a tribunal of first instance to nine years and six months of imprisonment and in addition to six months to three years of precautionary detention (medidas de Seguridad eliminativas). On 15 February 1977, on appeal, the Supreme Military Tribunal sentenced him to 12 years of imprisonment and in addition to one to three years of "security measures" basically for the same offences with aggravating circumstances. It further informed the Committee that Luis Estradet is presently detained at the Establecimiento Militar de Reclusion No. 1. In a further submission, dated 20 October 1982, the State party contests the author's description of the prison conditions

and states that detainees in military prisons are not isolated from the outside world, *that* they enjoy periodical visits in accordance with the regulations for military prisons, that they can listen to radio programmes transmitted by loud speakers, that they may see films and read books which are either available in the prison library or are brought by their relatives and are handed to the prisoners after a normal inspection for security reasons. The State party further denies in general terms the author's allegations of mistreatment, psychological tension and arbitrary punishment at the Establecimiento de Reclusion No. 1. The State party also points out that some paragraphs of the author's submission of 5 June 1982 are identical to paragraphs of another communication before the Committee and that this proves that the author has merely signed her communication and that there is an organized campaign aimed at preparing complaints for submission to international organizations. The State party further states that Luis Estradet's sentence was increased due to the discovery of new facts which amount to aggravating circumstances. As far as Luis Estradet's health is concerned, the State party informs the Committee that he is given regular medical examinations and that there is no reason to be concerned about his physical state of health.

5. Commenting on the State party's submission, the author maintains, in her letter dated 3 September 1982, that her son is not a terrorist, that he was arrested for the first time in 1969 for having distributed some pamphlets to the workers of a tire factory (FUNSA) in Montevideo and that he was released five months later, in February 1970, without any charges of "terrorism" having been retained against him. She reiterates that he was re-arrested on 13 July 1972 and that he was sentenced on the basis of confessions extracted from him under torture. She also reiterates that her son suffers from a heart disease and that his state of health is extremely poor and is aggravated by inhuman conditions of imprisonment. The author, in her further comments postmarked 23 September 1982, alleges that the Supreme Military Tribunal which on appeal on 15 February 1977 increased the sentence imposed on her son by the military tribunal of first instance, has transgressed Uruguayan law and jurisprudence of several decades, because the offences were the same. She further alleges that the imposition of precautionary detention measures (medidas de seguridad eliminativas) is illegal and that such measures merely serve the purpose of preventing any proceedings aimed at obtaining a release on parole. She adds that military justice has often imposed such measures when dealing with political offences. The author reiterates that article 14 of the Covenant has been violated in particular because her son only, received a final sentence four years and seven months after his arrest.

6. The author's assertion that the same matter was not being examined by another international body had not been contested by the State party. As to the question of exhaustion of domestic remedies, the Committee was unable to conclude that, in the circumstances of this case, there were effective remedies which Luis Estradet had failed to exhaust. Accordingly, the Committee found that the communication was not inadmissible under article 5 (2) (a) and (b) of the Optional Protocol.

7. On 22 October 1982, the Human Rights Committee therefore decided:

(a) That the communication was admissible in so far as it relates 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;

(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 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, (i) to enclose copies of any court orders or decisions of relevance to the matter under consideration, (ii) to submit its observations concerning the author's allegations that the judgement of the Supreme Military Tribunal on 15 February 1977, contained "grave technical defects" and that "because of this the defence lawyer submitted an appeal (recurso de casacion)" and (iii) to inform the Committee on what legal grounds such appeal (recurso de casacion) was dismissed}

(d) That the State party be requested to inform the Committee whether Luis Alberto Estradet suffered from a heart disease and, if so, whether he was being given appropriate medical treatment.

8.1 By a note dated 27 May 1983, the State party submitted further information on the state of health of Luis Alberto Estradet, as follows;

"Record prior to his detention: in 1971 he was operated on for a stab wound in the right ventricle. Since being imprisoned in Military Detention Establishment No. 1, he has been given regular check-ups by a cardiologist. He occasionally suffers from atypical precordial pains. Electrocardiograms are made every month. Special examinations of the heart vessels, coronary arteries, etc., reveal the following: myocardial bridge in one third of the front descendens; moderate prolapse of the valve behind the mitral valve; moderate hypertrophy of the left ventricle; coronaries normal; fibrosis in parts of the front surface of the left ventricle. An ergometer examination produced negative results, with excellent tolerance of the test. He has been given the following medication as required: Difixil, Opranol, Adalat, Bromzegan, Nitrazegan, Acamipan and Nitrangor. He continues to undergo examinations at the medical and cardiological polyclinic for persistent precordialgia, but does not have dyspnea or palpitations and has good tolerance for sports. Periodic electrocardiograms. No notable irregularities.

'Present examination: good general condition, skin and mucosa normal colour, no notable lesions. Buccopharyngeal region: no special features; lymphatic vessels and lymph nodes: no special features; bones and joints: no special features. Auscultation: steady rhythm of 75 pulsations per minute, firm beats, no murmur, blood pressure 120/70, full peripheral pulses. Pleuropulmonary region: MAV in good overall condition, no wheezing. Abdomen: no special features. Genitals and perineum: no special features. Lower limbs: no edemas."

8.2 The time-limit for the State party's submission under article 4 (2) of the Optional Protocol expired on 22 May 1983. No submissions other than those of 25 June and 20 October 1982 and 27 May 1983 have been received. The Committee notes with appreciation the information furnished by the State party concerning the state of health of Luis Alberto Estradet. It regrets, however, the failure of the State party to respond to the specific requests for information, and copies of court orders or decisions, made in paragraph 3 of the Committee's decision of 22 October 1982.

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:

Luis Alberto Estradet Cabreira was arrested on 13 July 1972. During the first six months he was kept incommunicado and subjected to ill-treatment. On 24 January 1973 he was tried by the Court of first instance and sentenced to nine years and six months of imprisonment and in addition to six months to three years of precautionary detention (medidas de seguridad eliminativas). In January 1973, he was transferred to Libertad prison.

#### 9.3 Events subsequent to the entry into force of the Covenant:

On 15 February 1977, the Supreme Military Tribunal increased the sentence imposed on Luis Alberto Estradet Cabreira to 12 years of imprisonment and in addition to one to three years of precautionary detention. The defence lawyer lodged an appeal (recurso de casacion) for reasons of technical defects in the judgement of the Supreme Military Tribunal. This appeal was rejected.

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

10.2 The Committee notes that the State party in its submission of 20 October 1982 has, apart from denials in general terms, replied only to certain of the author's allegations that her son has been ill-treated and held under inhuman prison conditions at Libertad and, in particular, the State party has not satisfied the Committee that living conditions and the treatment received by Luis Alberto Estradet at Libertad have met the requirements of article 10 (1) of the Covenant. In this connection, 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, Luis Alberto Estradet 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.

10.3 As to the alleged technical defects in the judgement at second instance, the Committee considers that due to the lack of specific information provided by the author it cannot make a finding on the question of the alleged violations of articles 2 (3) and 14 of the Covenant.

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 23 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 Luis Alberto Estradet has not been treated in prison with humanity and with respect for the inherent dignity of the human person.

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, to extend to Luis Alberto Estradet treatment as laid down for detained persons in article 10 of the Covenant.

### Notes

a/ For the views 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 XIII 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.