

## HUMAN RIGHTS COMMITTEE

### Romero v. Uruguay

Communication No. 85/1981

29 March 1984

### VIEWS

*Submitted by:* Nelly Roverano de Romero on behalf of her husband, Hector Alfredo Romero

*Alleged victim:* Hector Alfredo Romero

*State party concerned:* Uruguay

*Date of communication:* 2 March 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 29 March 1984;

Having concluded its consideration of communication No. R.21/85 submitted to the Committee by Nelly Roverano de Romero 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 2 March 1981 and further letters dated 15 October 1982, 7 June 1983 and 22 February 1984) is a Uruguayan national, residing at present in Sweden. She submitted the communication on behalf of her husband, Hector Alfredo Romero, who is detained at Libertad prison (EMR No. 1) in Uruguay. The author

does not specify which articles of the International Covenant on Civil and Political Rights have been allegedly violated.

2.1 In describing her husband's situation, the author relies partly on information provided by Edgardo Carvalho, a former Uruguayan defence lawyer now residing in Spain, and on a more recent report given to her by David Campora Schweizer, a/ who, in December 1980, arrived from Uruguay in the Federal Republic of Germany, and according to whom Hector Alfredo Romero was being detained in a cell alone at Libertad prison and had been subjected during the entire month of November 1980 to punishment at a cell called "la Isla", where rainwater filters in and one lives in the midst of human excrement.

2.2 It is stated that Mr. Romero was a worker at an industrial plant, a militant trade unionist and member of the Resistencia Obrero Estudiantil, a leftist organization which was declared illegal by the military Government in Uruguay in December 1973. He was reportedly arrested for the first time in September 1970 on charges of attempted robbery and illicit association. He subsequently escaped from prison in September 1971 and was rearrested in December 1971. At the end of 1975 he was sentenced to a five-year prison term which, counting the time he had already spent in detention, was soon finished and his release was ordered. However, he was immediately transferred by order of the military authorities to the central police prison where he allegedly was held at the disposal of the executive authorities. His application to opt to leave Uruguay (a right applicable to a person so held and still valid at present) was rejected. From then on, Hector Romero was allegedly transferred from one police detention centre to another, held incommunicado, and during that time allegedly subjected to torture and ill-treatment in order to have him confess crimes he had not committed. At the end of May 1976, Hector Romero, together with other political prisoners, was brought briefly before journalists in order to silence rumours from abroad that he and other political prisoners had disappeared in Uruguay.

2.3 According to Jose Valdes Pieri, a former Uruguayan prisoner at present residing in Spain, Hector Romero was transferred by the military in November 1976 to an unknown place and kept incommunicado until the middle of 1977, when he again appeared in Libertad prison, awaiting another trial before a military tribunal. The author alleges that the new trial was a travesty of justice.

3. By its decision of 18 March 1981 the Human Rights Committee transmitted the communication under rule 91 of the provisional rules of procedure to the State 'party, requesting information and observations relevant to the admissibility of the communication and asking for copies of any court orders or decisions relevant to that case.

4. By a note of 3 June 1981 the State party objected to the admissibility of the communication on the ground that the same matter was already being examined by the Inter-American Commission on Human Rights (IACHR) as case No. 3106.

5. Further proceedings before the Human Rights Committee were delayed until it was ascertained that the case had been effectively withdrawn from IACHR pursuant to a written request by the author, dated 4 May 1982, subsequently confirmed by IACHR in December

1982. The State party was informed of the withdrawal by note of 1 March 1983.

6. In its reply dated 4 May 1983 the State party submitted

"that the person in question was arrested because of his links with the Tupamaros National Liberation Movement and while attacking a branch office of a bank. A sentence of second instance has been handed down in the case of Mr. Romero: he was sentenced to 25 years' imprisonment and to from 1 to 5 years' precautionary detention, having been found guilty of the offences of 'criminal conspiracy', 'aggravating circumstances', 'action to upset the Constitution amounting to a conspiracy followed by criminal preparations', 'co-perpetration of robbery', 'co-perpetration of deprivation of freedom', 'co-perpetration of the use of bombs, mortars or explosives in order to cause fear in the community', 'co-perpetration of usurpation of functions' and 'co-perpetration of damage', all offences in the Ordinary Criminal Code.

"Mr. Romero is currently imprisoned in EMR No. 1. The criminal trial was held in accordance with the relevant legal provisions. What the author wrongly presents as a travesty of justice is the stage in the trial when the sentence of first instance was handed down, and not a new trial. Finally, Mr. Romero was at no time subjected to physical maltreatment. In Uruguay, the integrity of prisoners is protected by strict provisions of positive law and also in fact."

7. In a further submission dated 7 June 1983 the author alleges that, according to information obtained through the Swedish Embassy in Uruguay, her husband has been subjected to three judicial proceedings, two under civilian and one under military justice, and that he has been sentenced to 25 years' imprisonment and to 1 to 5 years' precautionary detention.

8.1 With regard to article 5 (2) (a) of the Optional Protocol, the Committee ascertained from the secretariat of the Inter-American Commission on Human Rights that the case concerning Hector Alfredo Romero, submitted to the Commission by a close family member on 20 July 1979 and registered under number 3106, had been withdrawn from active consideration in September 1982. Accordingly, the Committee found that the communication was not inadmissible under article 5 (2) (a) of the Optional Protocol.

8.2 With regard to the exhaustion of local remedies the Committee was unable to conclude, on the basis of the information before it, that there were effective remedies available to the alleged victim which he should have pursued. Accordingly, the Committee found that the communication was not inadmissible under article 5 (2) (b) of the Optional Protocol.

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

(1) That the communication was admissible in so far as it related to events which allegedly continued or took place on or after 23 March 1976, the date on which the Covenant and the Optional Protocol entered into force for Uruguay;

(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 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;

(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 requested, in this connection, (i) to enclose copies of any court orders or decisions of relevance to the matter under consideration and in particular to Mr. Romero's continued detention after he had served a five-year prison term to which he was sentenced in 1975, (ii) to inform the Committee of the reasons for his continued detention and of any further proceedings against him, and (iii) to inquire into the allegations made concerning the conditions in which Mr. Romero has been detained (paras. 2.1, 2.2 and 2.3 above) and to inform the Committee of the result of its inquiries.

10.1 In its Submission under article 4 (2) of the Optional Protocol, dated 23 January 1984, the State party reiterated what was stated in its reply to the Committee dated 4 May 1983, explaining the grounds on which Mr. Romero was imprisoned. The State party also reiterated "that the conditions to which prisoners are subject have been observed by international officials and diplomats accredited in Uruguay, in the course of numerous visits made by them to the various prison establishments".

10.2 In her letter of 22 February 1984, the author maintains her allegations and points out that the State party has not specified who are the international officials and diplomats who have visited the prison establishments, whereas she mentions all her witnesses by name, e.g., Edgardo Carvalho, David Campora Schweizer and Jose Valdes Pieri.

11.1 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.

11.2 Hector Alfredo Romero was a militant trade unionist and member of the Resistencia Obrero Estudiantil; he was arrested for the first time in September 1970 on charges of attempted robbery and illicit association; in second instance he was sentenced to 25 years' imprisonment and to from 1 to 5 years' precautionary detention; from November 1976 to the middle of 1977 he was held incommunicado at an unknown place of detention.

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

12.2 In operative paragraph 3 of the Working Group's decision of 18 March 1981 and again in operative paragraph 3 of the Committee's decision of 22 July 1983, the State party was requested to enclose copies of any court orders or decisions of relevance to the case, and in particular with respect to Mr. Romero's continued detention after he had served a five-year

prison term to which he had been sentenced in 1975. The State party was also requested to investigate the author's allegations with regard to the conditions of Mr. Romero's detention (paras. 2.1, 2.2 and 2.3 above) and to inform the Committee of the result of its inquiries. The Committee notes with regret that it has not received the requested information.

12.3 With regard to the burden of proof, the Committee has already established in other cases (e.g., No. 30/1978) that this cannot rest alone on the author of the communication, especially considering that the author and the State party do not always have equal access to the evidence and that frequently the State party alone has access to relevant information. It is implicit in article 4 (2) of the Optional Protocol that the State party has the duty to investigate in good faith all allegations of violations of the Covenant made against it and its authorities and to furnish to the Committee the information available to it. In cases where the author has submitted to the Committee allegations supported by witness testimony, as in this case, and where further clarification of the case depends on information exclusively in the hands of the State party, the Committee may consider such allegations as substantiated in the absence of satisfactory evidence and explanations to the contrary submitted by the State party.

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, 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:

- Article 10, paragraph 1 of the International Covenant on Civil and Political Rights, because Hector Alfredo Romero has not been treated with humanity and with respect for the inherent dignity of the human person, in particular because he was kept incommunicado at an unknown place of detention for several months (from November 1976 to the middle of 1977) during which time his fate and his whereabouts were unknown.

14. The Committee, accordingly, is of the view that the State party is under an obligation to ensure that Hector Alfredo Romero is henceforth treated with humanity, and to transmit a copy of these views to him.

#### Notes

a/ The Committee's views in the Campora Schweizer case were adopted at its seventeenth session (CCPR/C/D/(XVII)/66/1980).