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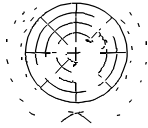

International Covenant on Civil and Political Rights

Distr.
RESTRICTED*/

CCPR/C/51/D/322/1988
9 August 1994

Original: ENGLISH

HUMAN RIGHTS COMMITTEE
Fifty-first session

VIEWS

Communication No. 322/1988

Submitted by: Hugo Rodríguez

Victim: The author

State party: Uruguay

Date of communication: 23 July 1988 (initial submission)

Documentation references: Prior decisions:
- CCPR/C/WG/34/D/322/1988 (Decision taken by the Working Group on 24 October 1988 under rule 91)
- CCPR/C/44/D/322/1988 (Decision on admissibility, dated 20 March 1992)

Date of adoption of Views: 19 July 1994

On 19 July 1994, the Human Rights Committee adopted its Views under article 5, paragraph 4, of the Optional Protocol, in respect of communication No. 322/1988. The text of the Views is annexed to the present document.

[Annex]

*/ Made public by decision of the Human Rights Committee.

ANNEX

Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights - Fifty-first session -

concerning

Communication No. 322/1988

Submitted by: Hugo Rodríguez

Victim: The author

State party: Uruguay

Date of communication: 23 July 1988 (initial submission)

Date of decision on admissibility: 20 March 1992

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

Meeting on 19 July 1994,

Having concluded its consideration of communication No. 322/1988 submitted to the Human Rights Committee by Mr. Hugo Rodríguez 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 the State party,

Adopts its Views under article 5, paragraph 4, of the Optional Protocol.

1. The author of the communication is Hugo Rodríguez, a Uruguayan citizen residing in Montevideo. Although he invokes violations by Uruguay of articles 7, 9, 10, 14, 15, 18 and 19 of the International Covenant on Civil and Political Rights, he requests the Human Rights Committee to focus on his allegations concerning article 7 of the Covenant and on the State party's alleged failure properly to investigate his case, to punish the guilty and to award him appropriate compensation. The author is the husband of Lucía Arzuaga Gilboa, whose communication No. 147/1983 was also considered by the Committee.[1]

The facts as submitted by the author:

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 The author states that during his detention and even thereafter, until the transition from military to civilian rule, no judicial investigation of his case could be initiated. After the re-introduction of constitutional guarantees in March 1985, a formal complaint was filed with the competent authorities. On 27 September 1985, a class action was brought before the Court of First Instance (Juzgado Letrado de Primera Instancia en lo Penal de 4 Turno) denouncing the torture, including that suffered by the author, perpetrated on the premises of the secret police. The judicial investigation was not, however, initiated because of a dispute over the courts' jurisdiction, as the military insisted that only military courts could legitimately carry out the investigations. At the end of 1986, the Supreme Court of Uruguay held that the civilian courts were competent, but in the meantime, the Parliament had 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.

[1] Views adopted during the twenty-sixth session, on 1 November 1985, in which the Committee held that the facts disclosed violations of articles 7 and 10, paragraph 1, of the Covenant.

The complaint:

3. The author denounces the acts of torture to which he was subjected as a violation of article 7 of the Covenant and contends that he and others have been denied appropriate redress in the form of investigation of the abuses allegedly committed by the military authorities, punishment of those held responsible and compensation to the victims. In this context, he notes that the State party has systematically instructed judges to apply Law No. 15,848 uniformly and close pending investigations; the President of the Republic himself allegedly advised that this procedure should be applied without exceptions. The author further contends that the State party cannot, by simple legislative act, violate its international commitments and thus deny justice to all the victims of human rights abuses committed under the previous military régime.

The State party's information and observations and the author's comments thereon:

4.1 The State party argues that the communication should be declared inadmissible on the ground of non-exhaustion of domestic remedies. It rejects the author's contention that his complaints and the judicial proceedings were frustrated by the enactment of Law No. 15,848. First, the enactment of the law did not necessarily result in the immediate suspension of the investigation of allegations of torture and other wrongdoings, and article 3 of the Law provides for a procedure of consultation between the Executive and the Judiciary. Secondly, article 4 does not prohibit investigations into situations similar to those invoked by the author, since the provision "authorizes an investigation by the Executive Power to clarify cases in which the disappearance of persons in presumed military or police operations has been denounced". Thirdly, the author could have invoked the unconstitutionality of Law No. 15,848; if his application had been accepted, any judicial investigation into the facts alleged to have occurred would have been reopened.

4.2 The State party further explains that there are other remedies, judicial and non-judicial, which were not exhausted in the case: first, "the only thing which Law No. 15,848 does not permit ... is criminal prosecution of the offenders; it does not leave the victims of the alleged offences without a remedy". Thus, victims of torture may file claims for compensation through appropriate judicial or administrative channels; compensation from the State of Uruguay may, for instance, be claimed in the competent administrative court. The State party notes that many such claims for compensation have been granted, and similar actions are pending before the courts.

4.3 Subsidiarily, it is submitted that Law No. 15,848 is consistent with the State party's international legal obligations. The State party explains that the law "did establish an amnesty of a special kind and subject to certain conditions for military and police personnel alleged to have been engaged in violations of human rights during the period of the previous ... régime .... The object of these legal normative measures was, and still is, to consolidate the institution of democracy and to ensure the social peace necessary for the establishment of a solid foundation of respect of human rights". It is further contended that the legality of acts of clemency decreed by a sovereign State, such as an amnesty or an exemption, may be derived from article 6, paragraph 4, of the Covenant and article 4 of the American Convention on Human Rights. In short, an amnesty or abstention from criminal prosecution should be considered not only as a valid form of legal action but also the most appropriate means of ensuring that situations endangering the respect for human rights do not occur in the future. The State party invokes a

judgment of the Inter-American Court of Human Rights in support of its contention.[2]

5.1 Commenting on the State party's submission, the author maintains that Law No. 15,848 does not authorize investigations of instances of torture by the Executive: its article 4 only applies to the alleged disappearance of individuals.

5.2 With respect to a constitutional challenge of the law, the author points out that other complainants have already challenged Law No. 15,848 and that the Supreme Court has ruled that it is constitutional.

Admissibility considerations and decision:

6.1 At its 44th session, the Committee considered the admissibility of the communication. The Committee ascertained, as it is required to do under article 5, paragraph 2(a), of the Optional Protocol, that the matter was not being examined by the Inter-American Commission on Human Rights.

6.2 The Committee further took note of the State party's contention that the author had failed to exhaust available domestic remedies, and that civil and administrative, as well as constitutional, remedies remained open to him. It observed that article 5, paragraph 2(b), of the Optional Protocol required exhaustion of local remedies only to the extent that these are both available and effective; authors are not required to resort to extraordinary remedies or remedies the availability of which is not reasonably evident.

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[2] Judgment of the Inter-American Court of Human Rights in the case of Velasquez Rodríguez, given on 29 July 1988. Compare, however, the Advisory Opinion OC-13/93 of 16 July 1993, affirming the Commission's competence to find any norm of the internal law of a State party to be in violation of the latter's obligations under the American Convention. See also Resolution No. 22/88 in case No. 9850 concerning Argentina, given on 4 October 1990, and Report No. 29/92 of 2 October 1992 concerning the Uruguayan cases 10.029, 10.036, 10.145, 10.305, 10.372, 10.373, 10.374 and 10.375, in which the Commission concluded "that Law 15,848 of December 22, 1986 is incompatible with Article XVIII (right to a fair trial) of the American Declaration of the Rights and Duties of Man, and Articles 1, 8 and 25 of the American Convention on Human Rights." The IACHR further recommended to the Government of Uruguay that it give the applicant victims or their rightful claimants just compensation, and that "it adopt the measures necessary to clarify the facts and identify those responsible for the human rights violations that occurred during the de facto period." Annual Report of the Inter-American Commission on Human Rights, 1992-1993, p. 165.

6.3 In the Committee's opinion, a constitutional challenge of Law No. 15,848 fell into the latter category, especially given that the Supreme Court of Uruguay has deemed the Law to be constitutional. Similarly, to the extent that the State party indicated the availability of administrative remedies possibly leading to the author's compensation, the author plausibly submitted that the strict application of Law No. 15,848 frustrates any attempt to obtain compensation, as the enforcement of the Law bars an official investigation of his allegations. Moreover, the author stated that on 27 September 1985 he and others started an action with the Juzgado Letrado de Primera Instancia en lo Penal, in order to have the alleged abuses investigated. The State party did not explain why no investigations were carried out. In the light of the gravity of the allegations, it was the State party's responsibility to carry out investigations, even if as a result of Law No. 15,848 no penal sanctions could be imposed on persons responsible for torture and ill-treatment of prisoners. The absence of such investigation and of a final report constituted a considerable impediment to the pursuit of civil remedies, e.g. for compensation. In these circumstances, the Committee found that the State party itself had frustrated the exhaustion of domestic remedies, and that the author's complaint to the Juzgado Letrado de Primera Instancia should be deemed as a reasonable effort to comply with the requirements of article 5, paragraph 2(b).

6.4 To the extent that the author claimed that the enforcement of Law No. 15,848 frustrated his right to see certain former government officials criminally prosecuted, the Committee recalled its prior jurisprudence that the Covenant does not provide a right for an individual to require that the State party criminally prosecute another person.[3] Accordingly, this part of the communication was found to be inadmissible ratione materiae as incompatible with the provisions of the Covenant.

7. On 20 March 1992, the Human Rights Committee decided that the communication was admissible in so far as it appeared to raise issues under article 7 of the Covenant.

The State party's observations:

8.1 On 3 November 1992 the State party submitted its observations on the Committee's admissibility decision, focusing on the legality of Law No. 15,848 in the light of international law. It considered the Committee's decision to be unfounded, since the State's power to declare an amnesty or to bar criminal proceedings are "matters pertaining exclusively to its domestic legal system, which by definition have constitutional precedence".

8.2 The State party emphasizes that Law No. 15,848 on the lapsing of State prosecution was endorsed in 1989 by referendum, "an exemplary expression of direct democracy on the part of the Uruguayan people". Moreover, by decision of 2 May 1988, the Supreme Court declared the Law to be constitutional. It maintains that the law constitutes a sovereign act of clemency that is fully in accord and harmony with the international instruments on human rights.

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[3] See communication No. 213/1986 (H.C.M.A. v. The Netherlands), declared inadmissible on 30 March 1989, paragraph 11.6; communication No. 275/1988 (S.E. v. Argentina), declared inadmissible on 26 March 1990, paragraph 5.5.

8.3 It is argued that notions of democracy and reconciliation ought to be taken into account when considering laws on amnesty and on the lapsing of prosecutions. In this context, the State party indicates that other relevant laws were adopted, including Law No. 15,737, adopted on 15 March 1985, which decreed an amnesty for all ordinary political and related military offences committed since 1 January 1962, and which recognizes the right of all Uruguayans wishing to return to the country to do so, and the right of all public officials dismissed by the military government to be reinstated in their respective positions. This law expressly excluded from the amnesty offences involving inhuman or degrading treatment or the disappearance of persons under the responsibility of police officers or members of the armed forces. By Law No. 15,783 of 28 November 1985, persons who had been arbitrarily dismissed for political, ideological or trade-union reasons were entitled to reinstatement.

8.4 With regard to the right to judicial safeguards and the obligation to investigate, the State party asserts that Law No. 15,848 in no way restricts the system of judicial remedies established in article 2, paragraph 3, of the Covenant. Pursuant to this Law only the State's right to bring criminal charges lapsed. The law did not eliminate the legal effects of offences in areas outside the sphere of criminal law. Moreover, the State argues, its position is consistent with the judgment of the Inter-American Court of Human Rights in the case of Velasquez Rodríguez that the international protection of human rights should not be confused with criminal justice (paragraph 174).

8.5 In this connection, the State party contends that "to investigate past events ... is tantamount to reviving the confrontation between persons and groups. This certainly will not contribute to reconciliation, pacification and the strengthening of democratic institutions". Moreover, "the duty to investigate does not appear in the Covenant or any express provision and there are consequently no rules governing the way this function is to be exercised. Nor is there any indication in the Convention text concerning its precedence or superiority over other duties - such as the duty to punish - nor, of course, concerning any sort of independent legal effect detached from the legal and political context within which human rights as a whole come into play ... the State can, subject to the law and in certain circumstances, refrain from making available to the person concerned the means of establishing the truth formally and officially in a criminal court, which is governed by public, not private interest. This, of course, does not prevent or limit the free exercise by such a person of his individual rights, such as the right to information, which in many cases in themselves lead to the discovery of the truth, even if it is not the public authorities themselves that concern themselves with the matter".

8.6 With regard to the author's contention that Law No. 15,848 "frustrates any attempt to obtain compensation, as the enforcement of the law bars an official investigation of his allegations" the State party asserts that there have been many cases in which claims similar to that of the author have succeeded in civil actions and that payment has been obtained.

9. The State party's submission was transmitted to the author for comments on 5 January 1993. In spite of a reminder dated 9 June 1993, no comments were received from the author.

The Committee's Views on the merits:

10. The Committee has taken due note of the State party's contention that the Committee's decision on admissibility was not well founded.

11. Even though the State party has not specifically invoked article 93, paragraph 4, of the Committee's rules of procedure, the Committee has ex officio reviewed its decision of 20 March 1992 in the light of the State party's arguments. The Committee reiterates its finding that the criteria of admissibility of the communication were satisfied and holds that there is no reason to set aside the decision.

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 régime 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 régime 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 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 régime, 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 on article 7[4], 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."

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[4] Adopted at the Committee's forty-fourth session in 1992.

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 the 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.[5]

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.

15. The Committee would wish to receive information, within 90 days, on any relevant measures adopted by the State party in respect of the Committee's Views.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

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[5] See the Comments of the Committee on Uruguay's third periodic report under article 40 of the Covenant, adopted on 8 April 1993 (CCPR/C/64/Add.4). Report of the Human Rights Committee to the General Assembly, 1993, Official Records of the General Assembly, Forty-eighth session, Supplement No. 40 (A/48/48), pp. 102-111.