



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE
Ninety-third session
7-25 July 2008

DECISION

Communication No. 1607/2007

<i>Submitted by:</i>	Alfonso Sanjuan Martínez, Myriam Piñeyro Martínez, Patricia Piñeyro Martínez and Yolanda Filpi Funicello
<i>Alleged victim:</i>	The authors
<i>State party:</i>	Uruguay
<i>Date of communication:</i>	6 December 2006 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 2 June 2003 (not issued in document form)

* Made public by decision of the Human Rights Committee.

Date of adoption of decision: 22 July 2008

Subject matter: Determination of amount of compensation for violations of human rights

Procedural issue:

Substantive issue: Violation of the right to an effective remedy

Articles of Covenant: 2, paragraph 3; 7.

Articles of Optional Protocol:

[ANNEX]

Annex

**DECISION OF THE HUMAN RIGHTS COMMITTEE UNDER THE
OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT
ON CIVIL AND POLITICAL RIGHTS**

Ninety-third session

concerning

Communication No. 1607/2007*

Submitted by: Alfonso Sanjuan Martínez, Myriam Piñeyro Martínez,
Patricia Piñeyro Martínez and Yolanda Filpi Funicello

Alleged victim: The authors

State party: Uruguay

Date of communication: 6 December 2006 (initial submission)

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

Meeting on 22 July 2008,

Adopts the following:

Decision on admissibility

1.1 The authors of the communication, dated 6 December 2006, are Alfonso Sanjuan Martínez, Myriam Piñeyro Martínez and Patricia Piñeyro Martínez (as heirs of Plácido Piñeyro) and Yolanda Filpi Funicello (as heir of Héctor Marcenaro Blundis),¹ Uruguayan nationals who claim

* The following members of the Committee took part in the consideration of the communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine Chanet, Mr. Maurice Glèlè-Ahanhanzo, Mr. Yuji Iwasawa, Mr. Edwin Johnson, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Mr. Michael O'Flaherty, Ms. Elisabeth Palm, Mr. José Luis Pérez Sanchez-Cerro, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Ivan Shearer and Ms. Ruth Wedgwood.

¹ Ms. Myriam Piñeyro Martínez and Ms. Patricia Piñeyro Martínez provided a copy of a notarized document certifying that they are the heirs of Plácido Piñeyro Bandera, who died intestate on 2 May 1996, being his daughters. Ms. Yolanda Filpi Funicello, sister-in-law of Mr. Héctor Marcenaro Blundis, presented a notarized document certifying that she is the successor creditor in respect of the debt owed to Mr. Héctor Marcenaro Blundis and his wife, both deceased, by the National Port Administration and the Ministry of Defence.

to be the victims of a violation by Uruguay of article 2, paragraph 3, read together with article 7 of the Covenant. The Optional Protocol entered into force for the State party on 23 March 1976. The authors are not represented by counsel.

1.2 On 11 December 2007, the Special Rapporteur on New Communications and Interim Measures decided that the admissibility of the communication should be considered separately from the merits.

The facts as submitted by the authors

2.1 Messrs. Alfonso Sanjuan Martínez, Plácido Piñeyro and Héctor Marcenaro Blundis, employees of the National Port Administration, were detained on 4 April 1975 by members of the Armed Forces, who did not present any warrant. They were taken to Infantry Battalion No. 2, where they were interrogated and subjected to torture, including beatings, electric shocks, simulated drowning and food deprivation, as well as being forced to take hallucinogenic drugs. A month later they were brought before the military courts; not having found any evidence that a military offence had been committed, the military justice system then referred the case to the ordinary courts.

2.2 They were released on 31 July of the same year, having been found not guilty of all the charges against them (arms smuggling and theft in the port). Nonetheless, the Government of the day ordered that they be disqualified from holding public office, which prevented them from returning to their jobs after their release.

2.3 Once normal democracy had been restored in the country in 1985, the men returned to their jobs. On 26 May 1989, together with others in the same situation, they filed a complaint against the State of Uruguay (Ministry of National Defence and National Port Administration), claiming compensation for the harm they had suffered as a result of their detention and disqualification. On 22 October 1998, nine years after the complaint was filed, a decision was handed down by the court of first instance sentencing the State to pay compensation to the plaintiffs. In its decision, the court found that the fact that they had been deprived of their jobs, the injuries they allegedly sustained as a result of torture, and the fact that they had been isolated, ostracized and suspected of theft constituted compensable moral injury. It therefore set the amount of compensation at 10,000 pesos per day for each of the 117 days they had been held in prison and the after-effects each had suffered, taking into account the fact that they had been deprived of decent employment after their release. As a result, each plaintiff was to be paid 1,170,000 pesos, and this sum was to be adjusted from the date of the complaint to the date of payment, and interests paid at the legal rate.

2.4 According to the authors, the adjustment referred to in the judgement is provided for in Legislative Decree No. 14,500 of 8 March 1976, which lays down the rules for the settlement of obligations consisting in the payment of a sum of money. The aim of the Decree is to ensure that

the initial value of the claim is not affected by devaluation that might occur while the judicial proceedings are under way. Hence the Decree refers to the value of the currency in relation to changes in the cost of living in the country.²

2.5 The Government of Uruguay lodged an appeal against the decision with the Fourth Rota Civil Court of Appeal, which upheld the decision of the court of first instance on 3 November 1999, but annulled the part of the decision referring to the amounts of compensation for moral injury. This resulted in a substantial reduction in the amount of compensation, which was fixed at 210,600 Uruguayan pesos for each person, based on the values on the date of the judgement, without prejudice to the interest accruing since the date of the complaint. This reduction in value was based on the court's special interpretation of Legislative Decree No. 14,500, which set different dates for the purposes of adjustment of the amount of compensation fixed. The date of the appellate decision (3 November 1999) was thus taken as the basis for adjustment, and the date on which the complaint was filed (26 May 1989) as the basis for the payment of accrued interests. This is not the interpretation given in the Decree, which provides that the adjustment of compensation and payment of interests shall begin from the date on which the complaint was filed.

2.6 The authors filed an application for review with the Supreme Court of Justice, alleging that the Legislative Decree, among others, had been infringed and/or misapplied. In a judgement handed down on 29 July 2002, the Court found that the method used by the Court of Appeal to adjust the amount of compensation was lawful, but increased the compensation to 800,000 pesos. That amount was to be adjusted as from the date of the appellate decision, until the date on which it was paid. The judgement added that, contrary to the appellants' view, the method of calculating the amount of compensation based on the amount estimated on the date of the appellate decision was lawful, because the Court had already tacitly taken devaluation into account when it had set the amount.³

² According to article 2 of the Legislative Decree, "variations in the value of the currency shall be determined in the light of changes in the general consumer price index fixed every month by the Ministry of the Economy and Finance. To that end, a comparison shall be made between the index for the month in which the obligation was incurred or fell due, as appropriate, and that fixed for the month preceding the date on which the obligation was extinguished". Under article 686 of Act No. 16,170, the date of extinction of an obligation should be understood to mean the date on which the settlement is deposited.

³ The Court ruled that "although generally speaking, under the system established by Legislative Decree No. 14,500, the amount of compensation should be set at the date on which the obligation to pay was incurred, and the statutory adjustment should be applied from that date (as maintained by the plaintiff), when the court fixes the amount of such compensation on the date of the judgement, as in this case, it obviously takes into account devaluations that have occurred up to the time at which the amount is set, thus tacitly applying the adjustment provided for in Legislative Decree No. 14,500. This method enables the judge to determine the amount deemed fair in the circumstances, by bringing the time of the decision closer to the date that serves as the basis for determining the monetary value of the compensation due, and does not, in the view of the Court, involve the breach of the law invoked".

2.7 The authors contest the fact that the Court upheld the interpretation of the Court of Appeal, which set 3 November 1999 as the basis for adjustment of the new amount that had been fixed and 26 May 1989, the date on which the complaint was filed, as the basis for payment of the interests that had accrued while the proceedings were under way. This misinterpretation of the Legislative Decree had resulted in a difference of 10 years and 5 months in the adjustment, and hence a devaluation of 95 per cent compared to the amount that would have resulted from a correct application of the Decree.

The complaint

3. The authors maintain that the arbitrary interpretation of Legislative Decree No. 14,500 by the Supreme Court constituted a violation of article 2, paragraph 3, read together with article 7 of the Covenant. As a result, despite the time that has elapsed, the State party has not met its obligation under the law to compensate the harm caused.

State party's observations on admissibility

4.1 In its observations of 4 December 2007, the State party questions the admissibility of the communication on the grounds that the issue had been thoroughly examined by the competent authorities and that the claimants had received the compensation awarded by the court as full reparation for the harm suffered, including the adjustments due under Legislative Decree No. 14,500. The Ministry of Defence had taken all the necessary steps to ensure that the claimants in the domestic proceedings and their successors would receive the amounts awarded as compensation in the judgement, which were as follows (in Uruguayan pesos):⁴

- Mr. Alfonso Sanjuan received 1,379,492 pesos
- Ms. Yolanda Filpi received 1,379,667 pesos
- Ms. Myriam Piñeyro received 587,559.50 pesos
- Ms. Patricia Piñeyro received 527,863.50 pesos

4.2 These amounts were disbursed in staggered payments. Mr. Sanjuan received payments on 15 different dates between February 2001 and May 2006. Ms. Filpi received 10 payments between March 2002 and May 2006. Ms. Myriam Piñeyro received 13 payments between December 2002 and May 2006. Ms. Patricia Piñeyro received 11 payments between December 2002 and May 2006.

4.3 As regards the application of Legislative Decree No. 14,500, which the complainants called into question, the State party adds that the Uruguayan legal system does not contain any provision requiring judges to grant specified amounts as compensation for harm suffered in the case of moral injury. Accordingly, each judge, and even the Supreme Court, as is clear from the

⁴ The State party points out that, on the date of its reply to the Committee, one United States dollar was worth 22.52 Uruguayan pesos.

judgements cited, applied different criteria when assessing the harm suffered and used different methods of calculation, all equally valid and duly reasoned. In its ruling, the Supreme Court expressly acknowledges the claimants' suffering; moreover, when it set the amount of compensation, it did not fail to take account of devaluation up to the time the compensation was awarded, and thus tacitly applied the adjustment provided for in the Legislative Decree.

4.4 Moreover, once the judgement had become enforceable and up to the time at which the compensation was actually paid, the amount awarded was adjusted according to the consumer price index, as provided by the Legislative Decree, in addition to the accrued interest at the legal rate. In addition, when the Court set the amount it deemed adequate at the time the judgement was handed down, it applied the principle of full reparation for the harm suffered, which enabled it to assess the compensation appropriate in this case, with the obvious intention of including devaluation in the amount of compensation awarded.

4.5 The legal system empowers judges to determine, to the best of their knowledge and belief, how the application of the principle of full reparation for harm suffered translates into purely monetary terms. This was taken into account throughout the judgement in question and in the amounts paid to the claimants. The amount of compensation awarded is in the same range as that set by the courts in similar cases, taking into consideration economic and social conditions in Uruguay.

Authors' comments

5. On 14 January 2008, the authors stated that what they were claiming was not specific amounts of compensation, but strict compliance with the legislation in force, which prescribed the time from which the amount of compensation was to be adjusted. Moreover, if the Supreme Court had increased the amount of compensation, that was the result of 14 years of legal proceedings. They repeat that misapplication of the Legislative Decree had deprived them of 10 years' compensation.

Issues and proceedings before the Committee

6.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

6.2 As it is obliged to do pursuant to article 5, paragraph 2 (a), of the Optional Protocol, the Committee ascertained that the same matter is not being examined under another procedure of international investigation or settlement.

6.3 The issue before the Committee is whether the State party violated the authors' rights under the Covenant when the Supreme Court of Justice set the amount of compensation to be paid to them in respect of acts of arbitrary detention, torture and disqualification for which the domestic courts had sentenced the State of Uruguay. The Committee observes that the Supreme Court of Justice, when it set the amount of compensation, deemed that the Court of Appeal had rightly interpreted Legislative Decree No. 14,500 when it fixed the compensation

based on the amount estimated on the date of the appellate decision, and not the date of the complaint, as submitted by the authors. The Supreme Court considered that this approach already tacitly took account of any devaluation since the date of the complaint.

6.4 The Committee recalls that it has repeatedly held that it is not a final instance competent to re-evaluate findings of fact or the application of domestic legislation, unless it can be ascertained that the proceedings before the domestic courts were arbitrary or amounted to a denial of justice.⁵ The Committee considers that the authors have failed to substantiate, for purposes of admissibility, that the conduct of the Supreme Court amounted to arbitrariness or a denial of justice. Accordingly, the communication is inadmissible under article 2 of the Optional Protocol.

7. The Human Rights Committee therefore decides:

- (a) That the communication is inadmissible under article 2 of the Optional Protocol;
- (b) That this decision be transmitted to the State party and to the authors.

[Adopted in English, French and Spanish, the Spanish 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.]

⁵ See Communications No. 541/1993, *Errol Simms v. Jamaica*, decision of 3 April 1995, paragraph 6.2; 1138/2002, *Arenz et al. v. Germany*, decision of 24 March 2004, paragraph 8.6; 917/2000, *Arutyunyan v. Uzbekistan*, Views of 29 March 2004, paragraph 5.7; 1528/2006, *Fernández Murcia v. Spain*, decision of 1 April 2008.