
Basso vs. Uruguay

CCPR/C/100/D/1887/2009

Communication No. 1887/2009

5 May 2009 (initial submission)

19 Oct. 2010 (adoption of views)

Facts

The author's family owned a several businesses including Banco de Montevideo. An official investigation led to the 7 August 2002 arrest of the author's father and sons concerning their responsibilities as directors and administrators of limited companies.

The author arrived in the United States 26 June 2002, applied for residency in March 2003 and was granted a permanent resident card ("green card") on 29 May 2005. Uruguay issued an international warrant for the author's arrest for fleeing the country. On 19 May 2006 the author was detained in the United States, and was extradited to Uruguay on 10 September 2008. The next day he was brought before a court on bankruptcy fraud charges, a crime that has a sentence of 12 months to 10 years.

The author was denied bail in the court of first instance and in the Court of Criminal Appeal. The Supreme court denied a request for release *ex gratia* without providing an explanation, in contradiction to domestic law. The court also denied the author's application for "temporary leave" to spend Christmas and New Year with his family. The Court attributed its decision to the author's 2002 flight from Uruguay during a criminal investigation. The Court stated that the earlier flight made him a flight risk and disqualified him from any release.

During his time in COMCAR prison, the author was attacked verbally and physically by a group of inmates. COMCAR prison is the most overcrowded prison facility in Uruguay as noted by the United Nations Special Rapporteur on torture. Author was later moved to a different facility.

The author submitted a complaint to the HR Committee for violations of articles 2, paragraphs 1,2 and 3 (a); 5, paragraph 3; 7; 9, paragraph 3; 10; 14, paragraphs 1,2 and 3; 15 paragraph 2; and 26.

The state submitted a reply and refuted the author's allegations. The state argues that the author is/was a flight risk because he has hid his identity since leaving Uruguay and that no due process violations have taken place because he was put on trial the day after his arrival in Uruguay after extradition from the United States. The state also argues that the author has not exhausted his domestic remedies.

Consideration of admissibility

Article 2 of Optional Protocol: The Committee decided that because the author's complaints are related more to the way in which the case against him is handled than the final outcome, the state's argument is not germane with respect to several of the author's complaints.

The Committee rejects the complaints under **article 2 of the ICCPR** because the article lists general obligations for State parties and does not give rise to a claim in communication under the Optional Protocol. (No. 802/1998, *Rogerson v. Australia*, 2002.(no link?)).

The author claims to be a victim of a violation of **article 26 of the Covenant** because he is being tried for an offence under a different law than his family but on the basis of the same facts and evidence. The Committee finds this portion of the

Key words

- Personal Liberty
- Pre trial Detention
- Due Process
- Fair Trial
- Presumption of Innocence

Relevant Provisions

- Article 7
- Article 9
- Article 10
- Article 14
- Article 15
- Article 26
- Article 2 of OP

Violated Provision

- Article 14

communication inadmissible under article 2 of the Optional Protocol. (No. 526/1993, *Hill v. Spain*, 1997).

With respect to detention in COMCAR and alleged violations of **article 7 and 10**, the Committee finds the claims inadmissible because it is unfounded under article 2 of the OP. There was an investigation of the violence and steps were taken by the state to ensure author's safety.

The Committee finds that the author's claims concerning the denial of provisional release, his right to be presumed innocent and right to be tried without undue delay are substantiated and thus the issues regarding **articles 5, paragraph 3; 14 paragraph 3; and 15, paragraph 2** should be considered on the merits.

The Committee further finds that domestic remedies have been exhausted with respect to **articles 5, 14 and 15**.

Consideration of merits

Article 9: The Committee finds no violation of article 9, paragraph 3. Although the denial of bail is the exception, the Committee finds the state's argument convincing. (No. 526/1993, *Hill v. Spain*, 1997).

The author left the country in 2002 and did not return until he was captured and extradited by United States authorities.

Article 14: Since there was no violation of article 9 of the Covenant the Committee does not need to discuss article 14, paragraph 2.

The Committee finds a violation of the author's right under article 14, paragraph 3 (c), of the Covenant. The case against the author was initiated 11 September 2008 and the proceedings have been in pre trial stage since. The state has not issued any explanation for the delay.

Conclusions

The Committee finds a violation of article 14, paragraph 3 (c) and requests a report from the state on steps taken to provide the author with a speedy trial and an effective remedy. The report should have been submitted within 180 days. In addition, it requests the State party to publish the Committee's Views.

Dissent/Concurrence

N/A