

## HUMAN RIGHTS COMMITTEE

### Silva v. Sweden

Communication No 748/1997

18 October 1999

CCPR/C/67/D/748/1997

### ADMISSIBILITY

*Submitted by:* Nelly Gómez Silva and family

*Alleged victim:* The authors

*State party:* Sweden

*Date of communication:* 4 June 1996

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

Meeting on 18 October 1999

Adopts the following:

#### **Decision on admissibility**

1. The author of the communication is Mr. Luis Fabio Barrero Lozano on behalf of his wife Mrs. Nelly Gómez Silva, and their children Carlos Eduardo, Marisol, Fabiola, Adriana and Francisco Habib, all Colombian citizens, residing in Colombia at the time of submission of the communication. He claims that his wife has been a victim of violations by Sweden of articles 9, paragraphs 1,2,3,4, and 5; 10, paragraph 1; 14, paragraph 2, 3 (a), (c) and (d) of the International Covenant on Civil and Political Rights.

#### Facts as submitted by the author

2.1 On 17 May 1991, Mr Barrero travelled to Sweden with two of his children, Adriana and Francisco Habib, then 13 and 12 years old respectively. He requested asylum there. Allegedly their lives had been threatened for political reasons. On 30 December 1991, Mrs Gómez arrived in

Sweden with her daughter Fabiola, then 15 years old. She applied for a residence permit. Sixteen months later the remaining two children Carlos Eduardo and Marisol, then 21 and 20 years old respectively, travelled to Sweden seeking family reunification.

2.2 On 24 June 1993, Mrs. Gómez and her family were refused residence permits and were asked to leave. On 2 July 1993 they were detained by the police. At 8.30 a.m., on that day, five policemen, an interpreter, the person in charge of the refugee centre and the social worker in charge of the Barrero family, informed them of the decision to deport them. Mr. Barrero and his son Carlos Eduardo were placed in different jails, while Mrs. Gómez and the rest of the family were put in a hotel room under police custody.

2.3 On 7 July 1993, Mr. Barrero, his son Carlos Eduardo and one of his daughters, were sent back to Colombia. In the meantime, the other three children (Francisco Habib, Adriana and Fabiola) who were with Mrs. Gómez, escaped from police custody. It would appear that Mrs. Gómez was kept in police custody until the children were found. However, on 28 July, Mrs. Gómez was deported back to Colombia. Her three children were sent back to Colombia in September and October.

### The complaint

3.1 The author alleges a violation of article 9, paragraphs 1 to 3, in that his wife was arbitrarily detained for 21 days, after the Swedish authorities had informed them of the rejection of their request for asylum in Sweden. In this respect, he claims that no charges were brought against his wife during her 21 day detention.

3.2 Mrs. Gómez appealed the rejection of her asylum request to the Enköping Tribunal. On 22 July 1993, she received a summons to appear before the Appeal Tribunal of Enköping. It is alleged that the police never allowed her to appear before that Tribunal and that there are no copies of the summons. In this respect, Mr. Barrero claims a violation of article 9, paragraph 4.

3.3 The author also claims that his wife is entitled to compensation, in accordance with article 9, paragraph 5, of the Covenant, for the violations suffered.

3.4 Mr. Barrero alleges a violation of article 10, paragraph 1, for the degrading treatment his wife received, during the 21 days she was detained. He further alleges that as a result of the conditions of detention, his wife now suffers from a bronchial disease, entailing great medical expenses.

3.5 Furthermore, the author alleges a violation of article 14, paragraph 2 of the Covenant, in respect of his wife, for the oral accusations made against her by the Borlänge police; she was accused of being the instigator of the children's escape.

3.6 Mr. Barrero claims a violation of article 14, paragraph 3 (a), (c) and (d) for the lack of procedural guarantees during the expulsion process. In this respect, he alleges that the legal aid lawyer only went to see Mrs. Gómez the day before she was deported.

3.7 On 12 August 1993, Mrs. Gómez submitted a complaint to the Human Rights Office in Santiago de Cali (Personeria Municipal de Santiago de Cali/Delegada para la Defensa de los Derechos

Humanos). The Human Rights Officer (Personero Delegado I para la Defensa de los Derechos Humanos) Mr. Hernan Sandoval Quintero, recommended that she take her case to the Swedish courts, and then to the Human Rights Committee. The author submitted the case to the Swedish Ombudsman, who on 6 December 1995, informed him that he was not competent to deal with the compensation claim for the arbitrary detention suffered by his wife. On 5 January 1996, the Chancellor of Justice (Highest Authority advising the Ombudsman on legal matters), informed Mrs. Gómez that there were no grounds for compensation, as her detention had been in conformity with law. With this, it is alleged that all domestic remedies have been exhausted.

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

4.1 In a submission dated 7 May 1997, the State party contends that the communication should be declared inadmissible for non exhaustion of domestic remedies, since the author has not brought the claim for damages before any court in Sweden.

4.2 With respect to the facts of the case the State party claims that these were that the Barrero Gómez family arrived in Sweden legally and requested asylum which was denied them. When deportation was to take place Mrs Gómez Silva tried to commit suicide and the 3 youngest children absconded. Mr. Barrero and his two eldest children were returned to Colombia on 7 July 1993. Mrs Gómez Silva was sent back to Colombia on 29 July 1993 after an additional request for asylum had been rejected by the board. Two of the absconded children were sent back in September of 1993 and the last child was returned on 6 October 1993. On 8 July 1993 Mrs Gómez Silva lodged an appeal to the Administrative Court of Appeal of Jonkoping against the detention order of 7 July. This was dismissed on 14 July. The Court stated *inter alia* that Mr Gómez Silva's activities were of such a character that the conditions for issuing a detention order were met. It emphasized that the family had not been separated due to the detention order but rather due to the children's behaviour. On 30 July the Administrative Court decided not to examine a fresh appeal lodged by Mrs Gómez Silva since the question of the detention had already been settled by the Court in its previous ruling.<sup>1</sup>

4.3 With respect to the procedures to be followed by asylum seekers the State party informs the Committee that the Government has no jurisdiction of its own in alien cases, since these are referred to one of two Independent Boards. Mrs Gómez Silva appealed to the Administrative Court of Appeal against the detention order of 7 July 1993, but lodged no further appeal to the Supreme Administrative Court. However, the State party also states that "it is of course not likely that she would be granted leave to appeal, which is a precondition for the Supreme Administrative Court to examine a case".

4.4 With regard to paragraph 4, of article 9, the State party contends that Mrs Gómez Silva did in fact avail herself of this right since she challenged the lawfulness of her detention before the Court. In this respect, the State party further points out that had the detention indeed been unlawful Mrs Gómez Silva would have been entitled to a remedy under the 1974 Act on Damages for the Restrictions of Liberty.

4.5 Mrs Gómez Silva complained to the Parliamentary Ombudsman and tried to claim damages, the Parliamentary Ombudsman decided not to examine the matter since the case was also before the Chancellor of Justice and it was being investigated. The State party contends that the complaint

before the Chancellor of Justice was for a mere allegation of a violation of human rights with no reference to any particular right, she just requested an investigation and claimed damages for her unlawful arrest. The Chancellor of Justice decided, on 5 January 1996, not to grant compensation, since in his view the deprivation of liberty had not been manifestly ill-founded and the State was not liable under the 1974 Act on Damages for Restrictions on Liberty. Nor were there any other grounds for granting compensation. The State party accordingly considers that the case should be declared inadmissible for non exhaustion of domestic remedies, since the claim for damages was not brought before any Swedish court.

4.6 The State party further goes on to explain the provisions of the Aliens Act and the conditions under which aliens may be placed in detention or under special supervision, as well as the specific conditions applicable to aliens under the age of 16, in that these may not be detained but only placed under supervision. In particular, it refers to the provision under which aliens may not be detained for a period longer than two months unless there are strong reasons for an extension. These orders will be reconsidered in a period of no more than two months following the day on which the detention order was put into effect and within six months after it was issued.

4.7 With respect to the allegations under article 9, paragraph 1, of the Covenant the State party considers that the detention orders were issued according to law and consequently were not arbitrary in any way. It also contends that paragraph 2, of article 9, is not applicable to the present case since Mrs Gómez Silva was not charged for a criminal offence.<sup>2</sup> It does, however, point out that from the decision of the Chancellor of Justice it appears that Mrs Gómez Silva was duly informed in her own language of the reasons for her arrest. The State party further considers that the communication does not raise any issues relating to article 9, paragraph 5.

4.8 With regard to the particulars of Mrs Gómez Silva's treatment while in detention, the State party considers that: "the Government is in no position to make any comments since these circumstances are not known to the Government." It considers that there is no claim since the Chancellor of Justice saw no reason to take any action against the enforcement authorities or against any public officials as a consequence of Mr. Barrero's allegations. Furthermore, since 4 years have elapsed since the events occurred, it is not in a position to look into the case. The State party considers these claims as mere blanket allegations with no substantiation.

4.9 Finally, regarding the allegations under article 14 of the Covenant the State party considers that Mrs Gómez Silva has not availed herself of the mechanisms available to guarantee these rights. With regard to the claims under article 14, paragraphs 2 and 3, it considers that these guarantees only apply to persons charged with a criminal offence which is not the situation in the present case.

5.1 The author of the communication challenges certain facts provided by the State party. He points out that his wife did not try to commit suicide because of the deportation order but rather because of the atmosphere that was created in the apartment when the police authorities, the interpreter, etc came to order them to the police station. He himself was not allowed to finish his toilette since he was dragged out of the bathroom when the police arrived. The author further contests the State party's allegation that Mrs. Gómez Silva had constant telephone contact with her absconded children, and states that she only had contact with her nephews who live legally in Sweden. He claims that this can be attested to by the interpreter, who was present with the doctor who attended

to Mrs. Gómez Silva .

5.2 With respect to the events related to the detention he states that he and all his family were detained at the same time and taken in various cars to the Borlänge police station. On arrival at the police station his son Carlos Eduardo Barrero was searched and put into a cell. Mr. Barrero was the second to arrive together with his daughter Adriana Barrero Gómez, in a car that went into an underground car park. Behind them was a further car with his wife Nelly Gómez and the three younger children Marisol, David and Fabiola, who also entered through the underground access. In the basement they were taken towards an elevator and Mr. Barrero claims to have strongly resisted being taken into the elevator. The police consequently, dragged him into it, ill-treating him in front of his family. This is what caused the hysteria of his daughters. He was taken to the retaining cells where he was searched and placed in a cell. The rest of his family were put back into a van and taken from the basement to the front of the police station where they were placed in one of the police station's offices, where they spent approximately 5 hours. Later they were taken to a hotel which is just opposite the police station where they were guarded by four policemen who didn't let them out of their sight even to go to the toilet. He reiterates that his wife and children remained there for 4 days guarded night and day. On the fifth day the three youngest children were taken back to the police station accompanied by two policemen. On the way from the hotel to the police station the three children managed to abscond. The police searched for them. After the three youngest children absconded Mr. Barrero Lozano and his two eldest children were sent back to Colombia on 7 July 1993. Mrs Nelly Gómez was taken to a lock up cell where she was kept for 21 days before she was sent back to Colombia.

5.3 The author stresses that he is not questioning the Swedish authorities' decision not to grant him asylum, nor the family's deportation but rather the way in which the deportation order was executed by the Borlänge Chief of Police, in particular the fact that his wife was kept in a lock up cell for 21 days allegedly awaiting the return of the absconded children and yet she was deported 21 days later with the children still missing.

#### Issues and proceedings before the Committee:

6.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

6.2 The Committee considers that the information before it and the arguments advanced by the author do not substantiate, for purposes of admissibility, the author's claim that his wife's rights under articles 9, paragraphs 2, 3, 4 and 5, 10, paragraph 1, and article 14 were violated.

7. The Human Rights Committee therefore decides:

(a) that the communication is inadmissible under article 2 of the Optional Protocol.

(b) that this decision shall be communicated to the State party and to the author.

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\*The following members of the Committee participated in the examination the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra N. Bhagwati, Ms. Christine Chanet, Lord Colville, Ms. Elizabeth Evatt, Mr. Louis Henkin, Mr. Eckart Klein, Mr. David Kretzmer, Ms. Cecilia Medina Quiroga, Mr. Fausto Pocar, Mr. Martin Scheinin, Mr. Hipólito Solari Yrigoyen, Mr. Roman Wieruszewski and Mr. Maxwell Yalden.

[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.]

Notes:

1/ On 30 July 1993 Mrs Gómez Silva, by the State party's own admission had already been deported.

2/ Reference is made to page 168 of M. Novak's Commentary on the Covenant.