

COMMITTEE AGAINST TORTURE

Núñez Chipana v. Venezuela

Communication No 110/1998

10 November 1998

CAT/C/21/D/110/1998

VIEWS

Submitted by: Cecilia Rosana Núñez Chipana (represented by counsel)

Alleged victim: The author

State party: Venezuela

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 10 November 1998,

Having concluded its consideration of communication No. 110/1998, submitted to the Committee against Torture under article 22 of the Convention,

Having taken into account all information made available to it by the author of the communication and the State party,

Adopts its

Views under article 22, paragraph 7, of the Convention

1. The author of the communication is Cecilia Rosana Núñez Chipana, a Peruvian citizen detained in Venezuela and subjected to extradition proceedings at the request of the Government of Peru. She claims that her forced return to Peru would be a violation by Venezuela of article 3 of the Convention. She is represented by counsel.

The facts described by the author

2.1 The Committee received the first letter from the author on 30 April 1998. She stated that

she was arrested in Caracas on 16 February 1998 by officials of the Intelligence and Prevention Services Department (DISIP). The Government of Peru requested her extradition on 26 February 1998, and extradition proceedings were instituted in the Criminal Chamber of the Supreme Court of Justice.

2.2 The author maintained that the nature of the accusations against her would place her in the group of persons liable to be subjected to torture. The Peruvian authorities accused her of the offence of disturbing public order (terrorism against the State) and being a member of the subversive movement Sendero Luminoso. The main evidence in support of these accusations was testimony by two persons under the repentance legislation (a legal device for the benefit of persons who are involved in acts of terrorism and who provide useful information to the authorities) in which they stated that they recognized the author in a photograph, as well as the police reports stating that subversive propaganda had been found in the place where the witnesses say the author carried out the acts of which she was accused. According to the author, the witnesses did not meet the requirements for being regarded as competent witnesses in accordance with the State party's procedural legislation because they were co-defendants in the proceedings against her. She also pointed out that her sister had been arrested in 1992, tried for her alleged involvement in subversive acts and kept in prison for four years until an appeal court declared her innocent.

2.3 The author denied the charges, although she admitted that she belonged to the lawful organization "United Left Movement" and to lawful community organizations such as the "Glass of Milk Committees" and the "Popular Libraries Committees". She said she had worked as an instructor in literacy campaigns for low-income groups in Peru. She also said she fled her country as a result of well-founded fears that her freedom and physical integrity were in danger, when she learned in the press that she was being accused of terrorism; she recognized that she used legal identity documents belonging to her sister to enter and stay in Venezuela. She also said she had not applied for political asylum in the State party, where she was working as a teacher, because she did not know the law and was afraid because she was undocumented.

2.4 If the Supreme Court of Justice authorized the extradition, it would take place within a few hours under an Executive order by which the Supreme Court would notify the Ministry of Justice, which would in turn notify the Ministry of Foreign Affairs, which would establish contact with the Government of Peru to make arrangements for the person's return to Peru.

2.5 In an earlier communication, the author informed the Committee that the Supreme Court had agreed to extradition in a decision published on 16 June 1998. It was subject to the following conditions: (a) that the author should not be liable to life imprisonment or the death penalty; (b) that she should not be liable to more than 30 years' imprisonment; and (c) that she should not be liable to detention incommunicado, isolation, torture or any other procedure that would cause physical or mental suffering while she was on trial or serving her sentence. The author's counsel filed an application for constitutional amparo which was declared inadmissible by the Supreme Court. Extradition took place on 3 July 1998.

2.6 The author also informed the Committee that, on 24 March 1998, she formally submitted

her application for asylum in writing and that, on 12 June 1998, her counsel formally requested that the Office of the United Nations High Commissioner for Refugees should regard her as a candidate for refugee status.

The complaint

3.1 The author maintained that her forced return to Peru would place her in danger of being subjected to torture. Such a situation had to be borne in mind, particularly in the context of the existence in Peru of a consistent pattern of violations of human rights, an aspect of which was the frequent use of torture against persons accused of belonging to insurgent organizations, as noted by United Nations bodies, the Organization of American States and non-governmental organizations. The author therefore asked the Committee to request the State party to refrain from carrying out her forced return to Peru while her communication was being considered by the Committee.

3.2 She also maintained that, if she was extradited, proceedings would be brought against her that would not guarantee the fundamental principles of due process, since serious irregularities were committed every day in Peru during the trial of persons accused of belonging to an insurgent organization. Such irregularities were contrary to the provisions of the international human rights instruments ratified by Peru and by the State party.

Observations by the State party

4.1 Through its Special Rapporteur on New Communications, the Committee transmitted the communication to the State party on 11 May 1998, requesting it to submit its observations on the admissibility and, if it did not object thereto, on the merits of the communication. It also requested the State party to refrain from expelling or extraditing the author while her communication was being considered by the Committee.

4.2 On 2 July 1998, the State party informed the Committee that the Supreme Court's decision had been adopted in accordance with domestic legislation, particularly the Penal Code and the Code of Criminal Procedure, and the 1928 Convention on Private International Law, to which Peru and Venezuela were parties. The activities attributed to the author, namely, involvement in manufacturing and planting car bombs for later attacks which killed and wounded a large number of people, constituted a serious ordinary offence, not a political offence. The State party also indicated that the defence had not provided any factual evidence to indicate whether or not article 3, paragraph 1, of the Convention against Torture was applicable. The statements by witnesses who accused the author and whom the defence claimed had been subjected to torture had been made without any coercion, as shown by the fact that they had been given in the presence of representatives of the Public Prosecutor's Department and the defence lawyers.

Comments by the author

5.1 In her comments on the observations by the State party, the author maintained that the extradition took place even though legal remedies had not been exhausted, at the time when

the Supreme Court was considering an application for amparo with a request for precautionary measures against the decision granting extradition. The extradition took place on 3 July and only on 7 July 1998 did the Court rule on the application for amparo, declaring it inadmissible, together with the precautionary measure requested. In addition, the transfer to Peru took place by surprise, since the date was not communicated in advance either to the author or to her counsel.

5.2 The Supreme Court decision did not refer at all to the content of the reports submitted by the defence, but did refer at length to the opinion in favour of extradition issued by the Attorney-General of the Republic. The decision also did not refer to the provisional measures requested by the Committee, even though they were invoked by the defence. Only the dissenting judge referred to those measures, also noting that there were no grounds for convicting the author of the charges against her, that conditions in Peru did not guarantee due process and that international organizations had stated their views on flagrant human rights violations in Peru. As an argument against the opinion of the Supreme Court, the author also referred to the political nature of the offences with which she was charged in Peru.

5.3 The author said that neither she nor her counsel had received any reply in respect of the application for asylum, contrary to what the Minister for Foreign Affairs had stated when questioned by the Chamber of Deputies' Standing Committee on Domestic Policy. According to what he said, the Minister had informed the author, in a letter dated 27 March 1998, that the application for asylum did not contain evidence of political persecution and that the final decision lay with the Supreme Court.

5.4 He said that the State party had ratified the 1951 Convention relating to the Status of Refugees and the 1967 Protocol relating to the Status of Refugees, which provided that States had an obligation to set up the necessary machinery for their implementation. There were, however, no procedures or authorities in the State party to guarantee that asylum seekers would be guaranteed that right. Moreover, the Executive authorities of the State party had said that they could take a decision on asylum only after the Supreme Court had ruled on extradition. That argument was wrong, however, because asylum and extradition are two different and autonomous legal institutions.

5.5 The author reported to the Committee that, following her extradition, she was sentenced in Peru to 25 years' imprisonment on 10 August 1998, after a trial without proper guarantees. At present, she is being held in a maximum security prison, where, inter alia, she is confined to her cell for the first year (23 hours in her cell and 1 hour outside each day) and can receive family visits in a visiting room for only one hour a week.

5.6 The author recognizes that States and the international community are entitled to take action to combat terrorism. However, such action cannot be carried out in breach of the rule of law and international human rights standards. The right not to be returned to a country where a person's life, liberty and integrity are threatened would be seriously jeopardized if the requesting State had only to claim that there was a charge of terrorism against the person wanted for extradition. Such a situation is even worse if the accusation is made on the basis

of national anti-terrorist legislation, with open-ended criminal penalties, broad definitions of "terrorist acts" and judicial systems of doubtful independence.

5.7 The author maintains that the State party has violated the obligation "to refrain" imposed on it by article 3 of the Convention. This makes it an obligation for the State party to take measures to prevent acts of torture from being committed against the author for the duration of the custodial penalty imposed by the Peruvian authorities or for as long as the Peruvian Government in any way prohibits her from leaving the country as a result of the charges which led to the proceedings against her. The State party therefore has to establish suitable machinery to follow up the conditions which it imposed and which were accepted by the Peruvian authorities.

Issues and proceedings before the Committee

6.1 Before examining any complaint contained in a communication, the Committee against Torture must determine whether it is admissible under article 22 of the Convention. The Committee has ascertained that, as required under article 22, paragraph 5 (a), the same matter has not been, and is not being, examined under another procedure of international investigation or settlement. The Committee notes that the State party has not submitted objections to the admissibility of the communication and is of the opinion that, in view of the Supreme Court's decision declaring inadmissible the application for amparo against the sentence of extradition, all available domestic remedies have been exhausted. The Committee therefore concludes that there are no reasons why the communication should not be declared admissible. Since both the State party and the author have submitted observations on the merits of the communication, the Committee will consider it as to the merits.

6.2 The question that must be elucidated by the Committee is whether the author's extradition to Peru would violate the obligation assumed by the State party under article 3 of the Convention not to extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

6.3 The Committee must then decide whether there are well-founded reasons for believing that the author would be in danger of being subjected to torture on her return to Peru. In accordance with article 3, paragraph 2, of the Convention, the Committee should take account, for the purpose of determining whether there are such grounds, of all relevant considerations, including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights. However, the existence of a pattern of this nature does not in itself constitute a sufficient reason for deciding whether the person in question is in danger of being subjected to torture on her return to this country; there must be specific reasons for believing that the person concerned is personally in danger. Similarly, the absence of this pattern does not mean that a person is not in danger of being subjected to torture in her specific case.

6.4 When considering the periodic reports of Peru, 1/ the Committee received numerous allegations from reliable sources concerning the use of torture by law enforcement officials

in connection with the investigation of the offences of terrorism and treason with a view to obtaining information or a confession. The Committee therefore considers that, in view of the nature of the accusations made by the Peruvian authorities in requesting the extradition and the type of evidence on which they based their request, as described by the parties, the author was in a situation where she was in danger of being placed in police custody and tortured on her return to Peru.

7. In the light of the above, the Committee, acting in accordance with article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, considers that the State party failed to fulfil its obligation not to extradite the author, which constitutes a violation of article 3 of the Convention.

8. Furthermore, the Committee is deeply concerned by the fact that the State party did not accede to the request made by the Committee under rule 108, paragraph 3, of its rules of procedure that it should refrain from expelling or extraditing the author while her communication was being considered by the Committee and thereby failed to comply with the spirit of the Convention. The Committee considers that the State party, in ratifying the Convention and voluntarily accepting the Committee's competence under article 22, undertook to cooperate with it in good faith in applying the procedure. Compliance with the provisional measures called for by the Committee in cases it considers reasonable is essential in order to protect the person in question from irreparable harm, which could, moreover, nullify the end result of the proceedings before the Committee.

[Done in English, French, Russian and Spanish, Spanish being the original.]

Note

1/ A/50/44, paras. 62-73, and A/53/44, paras. 197-205.