

COMMITTEE AGAINST TORTURE

L. M. T. D. v. Sweden

15 May 2002

Communication No 164/2000

CAT/C/28/D/164/2000

VIEWS

Submitted by: *L. M. T. D. (name withheld)*

Alleged victim: *The complainant*

State party: *Sweden*

Date of submission of complaint: *22 March 2000*

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

Meeting on 15 May 2002,

Having concluded its consideration of complaint No. 164/2000, submitted to the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

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

Adopts the following decision under article 22, paragraph 7, of the Convention.

1.1 The complainant is L. M. T. D., a Venezuelan citizen currently residing in Sweden. She claims that her return to Venezuela following Sweden's refusal to grant her political asylum would constitute a violation of article 3 of the Convention. She is represented by counsel.

The facts as submitted by the complainant:

2.1 The complainant worked as a procurator for juveniles in the office of the Attorney-General of the Republic of Venezuela from 1988 to 1997. One of her functions was to regularize the registration of children in the civil registers so that they might later obtain an identity card. This procedure took place on the basis of an authorization by a civil court.

2.2 In 1995, the complainant discovered that some Chinese nationals had obtained Venezuelan identity cards and passports by using forged documents, such as copies of registration decisions bearing her signature and stamp and the stamp of the Civil Court. The complainant reported this fact to the Attorney-General of the Republic for the latter to institute an investigation to determine who was responsible for the forgery. On 22 February 1995, the complainant filed a complaint with Caracas Criminal Court of First Instance No. 15. In 1996, she requested a judicial or eyewitness inspection of the National Identification Office (ONI) and of the files of the Aliens' Department (DEX), where the forged documents were found. The inspection was never carried out because, according to the complainant, the heads of the two bodies in question were linked to the Convergencia political party, which received large amounts of money for granting Venezuelan nationality to Chinese nationals.

2.3 In March 1997, the complainant was dismissed from the Office of the Attorney-General of the Republic with no explanation, but still continued with the investigation. From then on, she started receiving threats by telephone and anonymous threats pushed under her door. Her daughter was the victim of a kidnapping attempt and her husband was brutally pistol whipped on the head and back. She was also warned that she had to stop investigating and filing complaints.

2.4 In August 1997 and as a result of what had happened, the complainant and her family moved from Caracas to Maracaibo. In December 1997, the complainant's car was stolen and later burned. She was also harassed by telephone and told that, if she filed any more complaints, she was the one who would be accused of being responsible for the forgeries. As a result, she and her family fled to the city of Maracay in January 1998. That was when they decided to sell everything they owned and leave the country for Sweden.

2.5 The complainant and her family applied for political asylum in Sweden on 19 March 1998. The Swedish National Migration Board rejected the application on 24 August 1998, claiming that the facts did not in any way constitute grounds for asylum in Sweden and that, in addition, the complainant could prove her innocence through legal channels. An appeal against that decision was submitted to the Aliens' Commission, which upheld the initial decision on 3 March 2000. An application for inhibition was later filed with the Aliens' Commission, but it was denied on 14 March 2000.

The complaint:

3. The complainant claims that there are substantial grounds for believing that, if she is returned to Venezuela, the persecution against her will continue and she will be prosecuted for denouncing corrupt politicians in a legal system where there is no guarantee of being able to prove that she is innocent of the forgeries. She also claims that the security forces continue to torture and ill-treat detainees both mentally and psychologically and that she is in danger of being arrested, all in

violation of article 3 of the Convention.

The State party's observations:

4.1 In its observations of 28 August 2000, the State party replies to the complainant's claims in respect of admissibility and the merits. After giving a brief description of Swedish legislation relating to aliens, the State party describes how the complainant, who was born in 1958, and her husband and children entered Sweden with valid passports on 26 February 1998. They applied for asylum on 19 March 1998, claiming that they had been subjected to harassment as a result of a bribery scandal and that they were afraid to return to Venezuela. The application was turned down on 24 August 1998. The Aliens' Commission rejected the appeal on 3 March 2000.

4.2 With regard to admissibility, the State party maintains that the application should be declared inadmissible ratione materiae, for lack of proof that the complaint is compatible with the Convention, in accordance with article 22, paragraph 2, of the Convention. In this connection, the State party argues that the complainant claims that, if she is returned to Venezuela, she will be arrested, tried and sentenced to prison, without proper guarantees of a fair trial. However, according to the State party, although the complainant has referred to article 3 of the Convention, she has not specifically stated that she will be subjected to torture if she returns to Venezuela. Rather, when the complainant was asked about prison conditions in Venezuela during her interview with the National Immigration Department official, she said that the police did not use torture. The State party maintains that the facts which may cause the complainant to be afraid of being returned to Venezuela do not come within the definition of torture contained in the Convention.

4.3 With regard to the merits of the complaint, the State party draws a distinction between the general human rights situation in Venezuela and the personal situation of the complainant if she were returned to Venezuela.

(a) The State party affirms that, with regard to the general human rights situation in Venezuela, although the human rights situation continues to be poor in some respects, there are no grounds for stating that there is a consistent pattern of gross, flagrant or mass violations of human rights. The State party recalls that, although some reports of human rights violations in Venezuela, such as the 1999 United States State Department report on human rights in Venezuela, the 1999 Human Rights Watch report on Venezuela and the 2000 Amnesty International report, refer to extrajudicial executions by the army and the police, as well as to an increase in cases of torture and ill-treatment of detainees, women detainees are held in separate prisons, where conditions are better than in prisons for men. The State party also reports that, in February 1999, the administration of President Cháávez re-established the articles of the Constitution relating to the prohibition of arrests without a warrant and to freedom of movement. The State party lastly recalls that such reports refer to torture, indicating that the security forces continue to torture and ill-treat detainees both physically and mentally. However, although the general human rights situation in Venezuela leaves much to be desired, particularly with regard to conditions of detention, that does not constitute sufficient grounds for concluding that a person will be tortured if he or she is returned to Venezuela.

(b) With regard to the complainant's personal situation, the State party recalls that, unlike many other

authors of complaints submitted to the Committee, the complainant has not belonged to any party or political organization. Her complaint is based on the fact that she was wrongfully suspected of being involved in a bribery scandal, for which she could be sentenced to imprisonment if she returned to Venezuela, in poor conditions of detention. Moreover, she does not claim that she was ever subjected to torture in the past and, more importantly, has not explicitly demonstrated how she would be subjected to torture if she returned to Venezuela. The State party also points out that Venezuela has not requested the complainant's extradition and that there are no grounds for believing that the Venezuelan authorities intend to imprison her. On the contrary, the State party was able to ascertain that the head of the ONI, the primary suspect in the bribery scandal, has not been arrested.

4.4 The State party reports that, in their decisions of 24 August 1998 and 14 March 2000, respectively, the National Migration Board and the Aliens' Commission argued that the fact of being in danger of being tried for a crime or of being subjected to harassment in Venezuela is not a reason for granting asylum in Sweden. Both bodies also ascertain that, if she was tried, the complainant would have a fair trial and would have a good chance of winning her case. The State party adds that it does not question the complainant's testimony about the bribery scandal and the subsequent harassment. However, it does trust the arguments put forward by the two bodies.

Comments by the complainant:

5.1 In her comments of 27 March 2002, the complainant recognizes that the State party does not contest her statements on factual grounds, but rather in respect of the fact that she would run the risk of being subjected to torture if she returned to Venezuela. The complainant nevertheless maintains that there is a clear danger that she would be put on trial and given a long prison sentence and that there is therefore also a danger that she would be subjected to torture in a Venezuelan prison, in violation of article 3 of the Convention.

5.2 With regard to the arguments of the State party that the complaint should be declared inadmissible ratione materiae, the complainant says that, when she left her post, she lost the protection of her status as a civil servant and became exposed to harassment and threats by the ONI and the DEX, where she was told she would be accused of having forged the documents herself. The complainant argues that, since the threats come from persons who are still in high political office, it is very doubtful whether she would receive a fair trial. She adds that the decisions taken by the State party in this case are based on erroneous information, so that they fail to distinguish between the Attorney-General on the one hand and the ONI and the DEX on the other or to take account of the fact that the head of the ONI was at no time her supervisor. In addition, while the complainant acknowledges that she had stated during questioning by the officials of the National Migration Board that torture was not permitted in Venezuela, she had also stated that she feared torture and the conditions in Venezuelan prisons.

5.3 With regard to the State party's arguments regarding the merits of the case, the complainant says that she has substantial grounds for fearing for her safety and that the State party's argument that the general conditions in a country do not constitute sufficient grounds for determining whether a person returning to the country would be in danger of being subjected to torture is unconvincing. Moreover, despite the so-called improvements introduced by President Chávez, the degree of corruption within

the Venezuelan administration is common knowledge. What is more, the complainant continues, the State of Venezuela itself has established that more than one person a day is tortured.

5.4 The complainant rejects the State party's arguments that she was never a member of any political party or politically active: while she may have been only a civil servant, the fact that those responsible for the forgeries were political officials entailed political implications which give her substantial grounds for fearing for her safety on returning to the country. With regard to the State party's argument that the head of ONI has not been arrested, the complainant says that is not a point that can be used as evidence that she will be safe, since the powerful always protect the powerful.

5.5 Lastly, the complainant reiterates that the current situation in Venezuela following the coup d'état against President Chávez makes her more fearful than ever for her safety if she returns to the country.

Issues and proceedings before the Committee:

6. Before considering any claims contained in a complaint, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. In this respect, the Committee has ascertained, as it is required to under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement. The Committee also notes that the exhaustion of domestic remedies is not contested by the State party. It further notes the State party's view that the complaint should be declared inadmissible ratione materiae on the basis that the Convention is not applicable to the facts alleged, since the acts the complainant will allegedly face if she is returned to Venezuela do not fall within the definition of "torture" set out in article 1 of the Convention. The Committee is, however, of the opinion that the State party's argument raises a substantive issue which should be dealt with at the merits and not the admissibility stage. Since the Committee sees no further obstacles to admissibility, it declares the communication admissible and, since both the complainant and the State party have provided observations on the merits of the communication, the Committee will proceed to examine those merits.

7. In accordance with article 3, paragraph 1, of the Convention, the Committee must decide whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture if she returned to Venezuela. In order to reach its conclusion, the Committee must take account of all relevant considerations, in accordance with article 3, paragraph 2, of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. The aim is, however, to determine whether the individual concerned would personally be in danger of torture in the country to which he or she would return. The existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient grounds for determining whether a person would be in danger of being subjected to torture upon his or her return to that country; additional grounds must be adduced to show that the individual concerned would be in danger. In the present case, the Committee must determine whether the expulsion of the complainant to Venezuela would entail a *foreseeable, real and personal* risk of being arrested and tortured.

8. The Committee notes the State party's arguments that, although the human rights situation in Venezuela remains poor, particularly with regard to prison conditions, there are no grounds for stating that a consistent pattern of gross, flagrant or mass violations of human rights exists in Venezuela. The Committee also notes the exchange of arguments between the complainant and the State party concerning the alleged risk to the complainant of being subjected to torture and considers that the complainant has not provided sufficient evidence to show that she runs a foreseeable, real and personal risk of being tortured in Venezuela.

9. The Committee agrees with arguments put forward by the State party and takes the view that the information submitted does not show substantial grounds for believing that the complainant would personally be in danger of being subjected to torture if she was returned to Venezuela.

10. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the decision of the State party to return the complainant to Venezuela does not constitute a violation of article 3 of the Convention.