

COMMITTEE AGAINST TORTURE

E. J. V. M. v. Sweden

Communication No. 213/2002

14 November 2003

CAT/C/31/D/213/2002

VIEWS

Submitted by: Mr. E. J. V. M.

Alleged victim: The complainant

State party: Sweden

Date of complaint: 17 May 2002 (initial submission)

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

Meeting on 14 November 2003,

Having concluded its consideration of complaint No. 213/2002, submitted to the Committee against Torture by Mr. E. J. V. M. 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 E. J. V. M., a Costa Rican citizen, born in 1956, currently residing clandestinely in Sweden, following the rejection by Sweden on 19 February 2002 of his application for asylum. He claims that his deportation to Costa Rica would constitute a violation by Sweden of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (henceforth referred to as "the Convention"). He is not represented by counsel.

1.2 The State party ratified the Convention on 8 January 1986, when it also made the declaration under article 22 of the Convention. The Convention entered into force for the State party on 26 June 1987.

1.3 In accordance with article 22, paragraph 3, of the Convention, the Committee transmitted the complaint to the State party on 1 July 2002.

The facts as submitted by the complainant:

2.1 The complainant joined the Youth Section of the Popular Vanguard Party (Communist) of Costa Rica in 1975, when he was a drama student at the University of Costa Rica. As an active member of Costa Rica's Vanguard Youth (JVC), he participated in various student political and cultural activities.

2.2 The complainant was arrested for the first time in 1975 during a student political meeting. Along with the other participants he was taken to a prison in San Juan de Tibás, where he alleges that he was physically and mentally tortured - insulted, threatened, kicked, his hair pulled, beaten on the ribs and spat on.

2.3 The complainant managed to escape from prison and made for the province of Limón. He alleges that he was arrested several times and imprisoned in inhumane conditions, among convicted criminals, in rat-infested premises, with neither food nor a blanket nor anywhere to sleep. He alleges that he was arrested and released on numerous occasions, being allowed to leave and then being arrested again after 50 metres. He was finally able to escape and return to San José.

2.4 In San José, the complainant again became involved in political activities at university. He alleges that he was arrested several times; while in detention he received death threats and was beaten and burned with cigarettes. He says that on one occasion he was taken to the General Detention Facility of the Ministry of Public Security, where he was subjected to numerous types of physical and mental ill-treatment, including being severely kicked and beaten, immersed in cold water in the early morning and forced to perform sexual acts with his captors.

2.5 The complainant claims that, because of his Communist affiliations, he was prevented from working in the National Theatre Company and suspended from his acting classes. He also alleges that he was publicly attacked because he was bisexual.

2.6 The complainant says that he fled to Venezuela, where he lived for two years before returning to Costa Rica in 1982. On his return he set up an underground theatre from which *Radio Venceremos*, the official medium of the Frente Farabundo Martí para la Liberación Nacional (FMLN), used to make clandestine broadcasts. He alleges that in 1985 security forces raided his house, beat him up and took him to San Juan de Tibás prison, where he was physically and mentally tortured.

2.7 The complainant alleges that one night in the early 1990s, he was again detained, beaten and forced to perform fellatio on one of the guards while another insulted him. A third guard then started kicking him, causing such injuries to his face and body that he had to be taken to a hospital: he was

threatened with death if he told what had happened. On his release, he reported the facts to the prosecutor's office in San Pedro de Montes de Oca and to the Public Prosecutor's Office in San José. He claims that his complaint was not examined.

2.8 Between 1992 and 1993, as a result of his participation in the defence of the rights of Limón peasants who were under pressure to sell their land cheaply, the complainant alleges that he was arrested in an operation coordinated by the national police and paramilitary groups opposed to the peasants. He says that he was taken to Limón prison, put in a cell swimming in urine and excrement, beaten and drenched with cold water. On his release, he found that his house had been raided and his personal belongings destroyed.

2.9 The complainant claims that between 1994 and 1997 he was detained on more than 30 occasions and taken to court four times, accused, inter alia, of illegal possession of firearms, manufacture of explosives, occupation of land, aggravated threats and attempted homicide.

2.10 He also says that his life and that of his partner, P. A. M., a female-to-male transsexual, with whom he shared his political activities, was in danger. He says that their house was shot at on several occasions and that although they asked for police protection their requests were ignored. He asserts that they had to install a metal stockade in the living room of their house for protection.

2.11 The complainant alleges that in 1995 there was an attempt to murder him: he received a bullet wound to his left hand from an individual to whom a uniformed police officer had given a gun.

2.12 On 17 May 1997, the complainant left Costa Rica for good. With P. A. M. he made for Canada, where they applied for asylum. The Canadian Center for Victims of Torture took up their case and gave them legal, linguistic, health-care and psychiatric support. The Canadian authorities, however, refused their application for asylum.

2.13 On 12 July 2000, the complainant and P. A. M. fled to Sweden, where they immediately applied for asylum. The Swedish authorities refused their application. The complainant says that he is currently having to live clandestinely in Sweden in order not to be deported, since all domestic remedies have been exhausted in the State party.

The complaint:

3.1 The complainant argues that his deportation would be a violation by Sweden of article 3 of the Convention, since he is in danger of being subjected to further torture in Costa Rica.

3.2 The complainant claims that the decision by the Swedish authorities was a mechanical one, that it was biased, that the officials showed a lack of humanitarian interest and that they considered only some parts of his statement and not the whole. He further argues that the procedure was not objective since it took place in Swedish with only sporadic assistance from untrained interpreters, which prevented him from understanding and responding to the decisions taken concerning him in his own language.

The State party's observations on admissibility and the merits:

4.1 In a written submission dated 15 October 2002, the State party set out its observations on the admissibility and the merits of the complaint. On admissibility, and with reference to the requirement set out in article 22, paragraph 5 (a), of the Convention, the State party expresses its confidence that the Committee will ascertain whether the complaint has not been and is not being examined under another procedure of international investigation or settlement.

4.2 On the admissibility requirement set out in article 22, paragraph 5 (b), of the Convention, the State party acknowledges that all domestic remedies have been exhausted in this case. The Swedish Migration Board held a first interview with the complainant on the day after his arrival in Sweden; the second interview took place on 26 July 2000. On 26 September 2000, the Migration Board rejected the complainant's application for asylum and ordered that he should be deported to his country of origin. The complainant appealed, but the Aliens Appeals Board rejected the appeal on 19 February 2002.

4.3 The State party contends, however, that the complaint should be declared inadmissible in accordance with article 22, paragraph 2, of the Convention, since it lacks the minimum substantiation that would render it compatible with article 22 of the Convention. As an example, the State party cites the case of *Y. v. Switzerland*.¹

4.4 Should the Committee declare the complaint to be admissible, the State party asserts that, as regards the merits of the complaint, returning the complainant to Costa Rica would not constitute a violation of article 3 of the Convention. It points out that, in accordance with the Committee's jurisprudence, application of article 3 of the Convention must take account of (a) the general human rights situation in the country, and (b) the danger personally faced by the complainant of being subjected to torture in the country to which he is returned.

4.5 On the general human rights situation in Costa Rica, the State party asserts that there is no consistent pattern of gross, flagrant or mass violations of human rights. It bases its assertion on reports on the human rights situation in the country, on the Committee's concluding observations on Costa Rica's initial report of 2001, on the fact that consensual homosexual relationships between adults are legal in that country and on the fact that Costa Rica has ratified various human rights instruments, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The State party asserts that the torture alleged by the complainant took place some time ago and that the human rights situation in Costa Rica has considerably improved since.

4.6 As to whether the complainant is personally in danger of being subjected to torture, the State party asserts that the circumstances he invokes are not sufficient evidence that he runs a foreseeable, real and personal risk of being tortured in Costa Rica. The State party refers in this connection to the Committee's jurisprudence on the interpretation of article 3 of the Convention².

4.7 The State party adds that the complainant's credibility is of vital importance in taking a decision on the application for asylum, and that the national authorities conducting the interviews are naturally

in an excellent position to assess that credibility. The State stresses that the complainant's statements contain various discrepancies and grey areas which diminish the credibility of his complaint.

4.8 First, the State party contends that the complainant's statements to the Swedish Migration Board and the Swedish Aliens Appeals Board and the complaint submitted to the Committee referring to the dates on which he was arrested and tortured while living in Costa Rica are not consistent. The complainant declared to the Swedish Migration Board and to the Canadian authorities that an organization called Acaina had filed suit against him 33 times, while he told the Swedish Aliens Appeals Board and reported in his complaint to the Committee that he had been arrested more than 30 times. Lastly, as to the circumstances of his being shot in 1995, he declared to the Swedish Migration Board and to the Canadian authorities that an individual had threatened to shoot P. A. M. but that he himself had intervened and been hit as a result. Before the Swedish Aliens Appeals Board, however, and in the complaint to the Committee, he stated that an individual had attempted to murder him and that it was then that he had been shot.

4.9 On the reasons why the complainant contends that he is in danger of being tortured if he is returned to Costa Rica, the State party points out that his participation in peasant disputes over land took place quite some time ago. It quotes human rights reports which show that the situation has improved since 1999.

4.10 The State party further argues that, according to the complainant himself, the most serious incident, namely, when he was shot, took place in 1995. The State party points out, however, that the complainant left Costa Rica only in May 1997. He left the country legally, and apparently without difficulty. This would suggest that he had no need of urgent protection even in 1997.

4.11 The State party asserts that the complainant has not demonstrated the risk of persecution by the Costa Rican authorities, and that in any case, if it were considered that the complainant risks persecution today, it would be from organizations with which he has been in conflict for various reasons. The State party asserts, however, that persecution of this nature does not fall within the purview of the Convention³. It adds that there is nothing to indicate that Costa Rica is unable to furnish adequate protection to the complainant should he be the object of such persecution. Costa Rica has furthermore ratified the Convention and made the declaration under article 22; the complainant would therefore be able to enjoy the protection provided by the Convention in his country of origin.

Comments by the complainant concerning the State party's arguments:

5.1 In a written submission dated 25 November 2002, the complainant commented on the State party's observations, referring to facts not appearing in the initial complaint, and putting forward new allegations which similarly did not appear in his initial submission. On the issue of the general situation of human rights in Costa Rica, the complainant quotes a press release issued by the Popular Vanguard Party of Costa Rica on 18 October 2002 denouncing acts of political persecution of its leaders by agents of the State. He also quotes a document written by himself, which can be found on his web site, about the human rights situation in Costa Rica.

5.2 The complainant quotes the opinion of the Centro de Investigación y Promoción para América Central de Derechos Humanos (CIPAC/DDHH) (Human Rights Research and Promotion Centre for Central America), on the discrimination to which homosexuals in Costa Rica are subject, the violence against them and the fact that they cannot contract same-sex marriages.

5.3 Referring to the personal risk of torture he would incur if he were returned to Costa Rica, the complainant bases his fears on the alleged lack of effective means of protection on the part of government institutions. Those same institutions did not protect him before or after the torture to which he was subjected, and his complaints to the courts about members of the police force were not examined.

5.4 On the issue of the circumstances in which the complainant was shot in 1995, he repeats that it was an attempted murder, without commenting on the contradiction alleged by the State party.

5.5 On the issue of the circumstances under which he left Costa Rica, the complainant says that he remained in the country until 1997 in order to exhaust all domestic remedies. He reiterates that he was in danger at the time and for that purpose had installed a metal stockade in his house and that he moved from region to region within the country in order to protect himself.

5.6 As regards the asylum procedure engaged in Sweden, the complainant contends that at the hearing of 26 July 2000 he was not allowed to hand over the documents he wished to submit since they were in Spanish, that the immigration official and the defence lawyer assigned to him treated him in a rude and hostile way, that the hearing was "a put-up job and manipulated from beginning to end", and that the transcript of his statement by the official was inaccurate and omitted certain facts of which he had informed her. He further claims that in the course of one year and eight months he had access to his lawyer for just two hours and 15 minutes. He also contends that the State's refusal to consider his case adequately is an act of discrimination.

5.7 The complainant says that he is currently continuing his political activities from abroad, since he has a web site on which he records complaints; for this reason his safety is still at risk.

Additional submission by the complainant:

6. On 23 September 2003, the complainant made an additional submission, containing, *inter alia*, a psychiatric report dated 14 September 1998 and issued by D. E. P., a Toronto-based psychiatrist, who confirms that the complainant suffers from post-traumatic stress disorder.

Issues and proceedings before the Committee:

7.1 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 State party acknowledges that domestic remedies have been exhausted.

7.2 As regards the complainant's additional submission of 23 September 2003, the Committee notes that this submission was lodged after the end of the six-week deadline, stipulated in the Committee's letter of 21 October 2001, in accordance with rule 91, paragraph 6, of the Committee's rules of procedure, in which the complainant was invited to submit his comments on the State party's observations on admissibility and merits of the complaint by 29 November 2002. The Committee thus considers that the fresh arguments raised in the complainant's additional submission of 23 September 2003 were lodged out of time and cannot therefore be considered by the Committee.

7.3 The Committee sees no further obstacles to the admissibility of the complaint and therefore proceeds to a consideration of the merits.

8.1 The Committee has considered the complaint in the light of all information made available to it by the parties, in accordance with article 22, paragraph 4, of the Convention.

8.2 The Committee must decide whether the deportation of the complainant to Costa Rica would violate the State party's obligation under article 3 of the Convention not to expel or return an individual to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

8.3 The Committee must assess whether there are grounds to believe that the complainant would be personally in danger of being subjected to torture on returning to Costa Rica. In weighing up this risk the Committee must take into account 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 Committee recalls, however, that the aim is to determine whether the individual concerned would personally risk torture in the country to which he or she would return. It follows that the existence of a consistent matter of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient grounds for determining whether the particular person would be in danger of being subjected to torture upon his return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Conversely, the absence of a consistent pattern of gross violations of human rights does not mean that a person may not be considered to be in danger of being subjected to torture in his or her specific circumstances.

8.4 In the present case, the Committee takes note of the State party's observations on the general situation of human rights in Costa Rica and of the fact that Costa Rica has made a declaration under article 22 of the Convention. It further takes note of reports which indicate an improvement in the situation of peasants involved in land disputes. The Committee observes that the information contributed by the complainant to rebut this opinion comes mainly from his own writings.

8.5 The Committee takes note of the discrepancies and grey areas in the complainant's account, as indicated by the State party, which were not clarified by the complainant. It further observes that the complainant has not provided sufficient evidence to corroborate his assertions of having been subjected to torture in Costa Rica.

8.6 The Committee also notes the observations of the State party to the effect that the most serious

incident alleged by the complainant took place in 1995, but that the complainant nevertheless did not leave Costa Rica until May 1997. It observes that the complainant's reply is vague in this regard, and that while he contends that the government institutions in Costa Rica have not protected him in the past, he has not provided evidence to corroborate his assertion.

8.7 On the issue of the complainant's alleged difficulties in Costa Rica on account of his bisexuality, the Committee observes that the danger of being subjected to torture in Costa Rica in future is not based on grounds that go beyond mere theory or suspicion. In the Committee's opinion, the reports submitted by the complainant do not demonstrate substantial grounds for believing that he is personally and currently in danger of being tortured if returned to Costa Rica. In the light of the foregoing, the Committee considers that the information furnished by the complainant does not provide substantial grounds for believing that he would personally be in danger of being tortured if returned to Costa Rica.

9. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, considers that the complainant has not substantiated his claim that he would be subjected to torture upon his return to Costa Rica, and therefore concludes that the complainant's removal to that country would not constitute a breach by the State party of article 3 of the Convention.

[Done in English, French, Russian and Spanish, the Spanish text being the original version. Subsequently to be issued also in Arabic and Chinese as part of the Committee's annual report to the General Assembly.]

Notes

1. Y. v. Switzerland, Complaint No. 18/1994, Decision of the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted on 17 November 1994, paragraph 4.2.

2. S.M.R. and M.M.R. v. Sweden, Complaint No. 103/1998, Decision of the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted on 5 May 1999, paragraphs 9.7 and 9.4; S.L. v. Sweden, Complaint No. 150/1999, Decision of the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted on 11 May 2001, paragraph 6.4.

3. G.R.B. v. Sweden, Complaint No. 83/1997, Decision of the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted on 15 May 1998, paragraph 6.5.