

## COMMITTEE AGAINST TORTURE

**J. A. G. V. v. Sweden**

**Communication No. 215/2002**

**11 November 2003**

**CAT/C/31/D/215/2002\***

### VIEWS

*Submitted by: Mr. J. A. G. V. (represented by counsel)*

*Alleged victim: Mr. J. A. G. V.*

*State party: Sweden*

*Date of communication: 22 July 2002*

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

Meeting on 11 November 2003,

Having concluded its consideration of communication No. 215/2002, submitted by Mr. J. A. G. V. 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 of the complaint, his counsel and the State party,

Adopts the following:

### **Decision under article 22, paragraph 7, of the Convention**

1.1 The complainant of the complaint is J. A. G. V., a Colombian citizen, born in 1962. In his complaint dated 22 July 2002 he claimed that his deportation to Colombia 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 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 forwarded the complaint to the State party on 23 July 2002 for comments and requested it, under rule 108, paragraph 1, of the Committee's rules of procedure, not to deport the complainant to Colombia while the complaint was under consideration by the Committee. The Committee indicated, however, that this request could be reviewed taking into account new arguments submitted by the State party or on the basis of guarantees and assurances furnished by the Colombian authorities. The complainant was deported to Colombia on 23 July 2002. In its written submission dated 30 October 2002, the State party reported that it had not been in a position to comply with the Committee's request, since the complainant's deportation was already taking place when the request for interim measures reached the Government.

#### The facts as submitted to the Committee

2.1 The complainant asserts that he was a member of the Fuerzas Armadas Revolucionarias de Colombia (Revolutionary Armed Forces of Colombia, FARC) and of the United Confederation of Workers (CUT). He maintains that he was arrested and tortured on several occasions during the 1990s<sup>1</sup> by officers of the Colombian police who, he alleges, beat him, applied electric shocks to his genitals until he lost consciousness and placed plastic bags filled with water on his head, covering his nose and mouth. He asserts that he escaped from prison several times.

2.2 The complainant says that he succeeded in leaving Colombia on a false passport, since he was wanted by the police, and arrived in Sweden under an identity other than his own on 25 March 1998.

2.3 On 26 May 1998, the complainant applied for a permanent residence permit in Sweden under the identity of Celimo Torres Romero. Subsequently, on 24 July 1998, he was arrested under that name as a suspect in a drug-trafficking case. His true identity was revealed during the police investigations.

2.4 On 24 September 1998, the Solletuna District Court sentenced the complainant to six years' imprisonment and expulsion from the territory of the State party, after finding him guilty of a drug-trafficking offence,<sup>2</sup> committed in Sweden. The complainant appealed to the Appeal Court of Svea which, in a decision of 26 February 1999, rejected his application. He entered prison that day and on 23 July 2002 was released on parole.

2.5 On 13 October 1998, the complainant applied for asylum under the identity of José Ángel Grueso Vargas. On 25 March 1999 the Swedish Migration Board rejected his application, on the grounds that he had applied for asylum only after being sentenced to deportation from Swedish territory. The complainant appealed to the Swedish Aliens Appeals Board, but his appeal was rejected in a decision of 20 November 2000.<sup>3</sup>

2.6 On 17 July 2002, the complainant lodged a complaint with the European Court of Human

Rights but withdrew it some days later.<sup>4</sup>

### The complaint

3.1 In his initial submission the complainant argues that his deportation to Colombia would constitute a violation by Sweden of article 3 of the Convention, since he faced the risk of being subjected to further torture in Colombia.

3.2 The complainant contends that the Swedish complainantities had no grounds for their decision to refuse him asylum, since note was merely taken of the fact that the Colombian Government had drawn up programmes which would protect Mr. Grueso Vargas, without taking into account the fact that the complainant had been tortured in Colombia. He further claims that the Swedish complainantities based their refusal on the lack of credibility that they attached to his assertions, although he submitted medical certificates as evidence of torture.

### State party's observations on admissibility and the merits

4.1 In its observations of 30 October 2002, the State party asserts that the same matter should be considered as having been submitted to another procedure of international settlement, since the complainant submitted his complaint to the European Court of Human Rights. It adds that the complainant decided to withdraw his case because no interim measures were adopted, even though the complaint had not yet been formally registered.

4.2 The State party acknowledges that all domestic remedies have been exhausted; it nevertheless maintains that the complaint should be declared inadmissible on the basis of article 22, paragraph 5 (b), of the Convention, since the complaint is not sufficiently substantiated.

4.3 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 Colombia would not constitute a violation of article 3 of the Convention. It points out that, according to 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.

4.4 The State party points out that it is aware of the general human rights situation in Colombia, and considers that it is unnecessary to expand on it; the State party therefore restricts itself to considering the complainant's personal risk of being subjected to torture upon return to Colombia. It affirms that the circumstances invoked by the complainant are not sufficient evidence that he runs a foreseeable, real and personal risk of being tortured in Colombia, and refers in this connection to the Committee's jurisprudence on the interpretation of article 3 of the Convention.<sup>5</sup>

4.5 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 party contends that the common feature of the complainant's declarations to the Migration Board and to the Aliens Appeals Board lies in the doubts they raised as to his credibility. It stresses that the complainant applied for

asylum several days after the Sollotuna District Court had handed down a judgement against him ordering his expulsion from Swedish territory, for having committed a drug-trafficking offence. It adds that the complainant moreover did not give his true identity, which was revealed later in the judicial investigations; and that the result of all of this was that the migration authorities attached no credibility to the complainant's assertions that he risked being tortured if he were deported to Colombia.

4.6 In the State party's view, it is not logical for someone applying for protection to put his relations with the new country at risk by committing an offence; moreover, the offence was committed within three months of his arrival in Sweden. The State party adds that the complainant was found guilty by the judicial authorities, that according to the police investigations he purchased the cocaine in Colombia before leaving the country, and that his brother-in-law carried the drug to Sweden. In the view of the State party, the foregoing does not reflect the behaviour of a genuine asylum-seeker.

4.7 The State party contends that the complainant has provided no evidence of his alleged political activities in Colombia. According to the information furnished to it, the complainant was prosecuted for theft in Colombia, while at no time did he give details to the Swedish migration authorities concerning the alleged acts of torture to which he was subjected, nor the times and places of his arrests. The State party asserts that the medical reports were the only evidence he submitted, but that they only mentioned the possibility that the complainant had been the victim of torture.

4.8 In another written submission dated 8 July 2003, the State party informs the Committee that it had received reports from the Colombian authorities informing it that on his return the complainant was briefly detained for the offence of "escaping from prison," and that he was also cited as a suspect in the commission of several other offences of a non-political nature.

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

5.1 In a written submission of 17 April 2003, the complainant's counsel commented on the State party's observations. He asserts that he was unable to obtain pertinent evidence of the complainant's political activities or of the acts of torture to which he was subjected in Colombia.<sup>6</sup>

5.2 The complainant asserts that his wife, Mrs. Karin Berg, visited him after he had been deported and imprisoned in Colombia. He also submits a copy of a written statement to a Colombian judicial authority by Hector Mosquera, who declared in 1994 that he had been subjected to torture. His counsel asserts that this is the same person as the complainant.<sup>7</sup>

5.3 The complainant says that he was deprived of his freedom on arrival at Bogota Airport, and that on 30 July 1999, while he was in Sweden, he was sentenced by the Third Criminal Circuit Court of Cartago to eight months' imprisonment for the offence of "escaping from prison," this being evidence that he was persecuted. He adds that he had travelled under another identity because he was afraid of being arrested by the Colombian authorities, and that he did not commit the offence for which he was tried and sentenced in Sweden.

5.4 The complainant says that in accordance with Swedish legislation, if an international

organization makes a request for interim measures, the execution of the measure of expulsion must be halted. He adds that his counsel alerted the State party's authorities to the interim measures he had requested from the Committee, and that the expulsion procedure is only concluded when the alien is accepted by the authorities of the country to which he is sent; consequently, the expulsion could have been suspended when he stopped over in Madrid.

5.5 The complainant contends that when he was deported he was exposed to a real and personal risk of torture in Colombia, and the fact that this did not take place is due to the circumstances of the case, such as the considerable assistance he received and the measures taken internationally to draw the State party's attention to the case;<sup>8</sup> as a result he was released within a relatively brief period, but the risk still exists and the possibility that he may still be prosecuted should not be ruled out. He maintains that he currently fears that paramilitary groups could capture and torture or murder him.

#### Issues and proceedings before the Committee

6.1 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 notes the State party's assertion that the complainant's complaint should be declared inadmissible, since it has already been submitted to the European Court of Human Rights. The Committee notes here that the complaint was withdrawn before it was examined by that body. Consequently, the Committee considers that article 22, paragraph 5 (a), of the Convention is not an obstacle to examination of the complaint.

6.2 The Committee also observes that the State party acknowledges that domestic remedies have been exhausted; consequently, it sees no further obstacles to the admissibility of the complaint. It therefore declares the complaint admissible and proceeds to consideration of the merits.

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

7.2 The Committee must decide whether the deportation of the complainant to Colombia constituted a violation of 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 would be in danger of being subjected to torture.

7.3 The Committee must assess whether there are grounds to believe that the complainant of the complaint would be in personal danger of being subjected to torture on returning to Colombia. In order to reach this conclusion, 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 pattern 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.

7.4 In the present case, the Committee notes the observations of the State party to the effect that the complainant did not produce evidence of having been involved in political activities in Colombia, and that he did not run a real and personal risk of being subjected to torture, since it had also received information from the Colombian authorities reporting that the complainant had been briefly detained, and notes that there is no evidence that he was tortured subsequent to his return to Colombia. The Committee further observes that his counsel reports that the complainant is currently on parole.

7.5 The Committee moreover notes the circumstances which gave rise to doubts on the part of the State party's authorities concerning the need to grant the complainant protection. It is aware that the complainant has not adduced sufficient evidence to prove that he was subjected to torture in Colombia.<sup>9</sup> Bearing in mind the foregoing, the Committee considers that the information provided by the complainant does not provide substantial grounds for believing that he was personally in danger of being tortured when returned to Colombia.

8. 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 of the complaint has not substantiated his claim that he would be subjected to torture upon his return to Colombia, and therefore concludes that the complainant's removal to that country did 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.]

\* Made public by decision of the Committee against Torture

#### Notes

1. The complainant does not indicate in his initial communication or in his subsequent comments when or where these acts of torture allegedly took place.
2. The offence involved smuggling a kilo of cocaine from Colombia to Sweden with the intention of selling it in the territory of the State party.
3. The Swedish Aliens Appeals Board further considered that the complainant had entered Swedish territory under a false identity, and that under that identity he had applied in 1998 for a work permit, claiming that he was involved with a Swedish woman, although he was married and had a family in Colombia. In the Board's opinion, all of this seriously undermined his credibility when it came to requiring the protection of the State party.

4. No date is specified.

5. *S.M.R. and M.M.R. v. Sweden*, Communication 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, paras. 9.7 and 9.4; *S.L. v. Sweden*, Communication 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, para. 6.4.

6. The complainant's counsel suggests at the end of his submission that the complaint could be supplemented by further information, but has sent no more material since that date.

7. [The complainant has submitted a copy of a "wanted" announcement issued by the authorities of a prison in Colombia, but the secretariat has doubts as to its veracity.]

8. On 24 July 2002, the Special Rapporteur on torture urgently called the complainant's case to the attention of the Colombian Government.

9. [Note: medical certificates only.]