

COMMITTEE AGAINST TORTURE

L. M. V. R. G. and M. A. B. C. v. Sweden

Communication No 64/1997

19 November 1997

CAT/C/19/D/64/1997

ADMISSIBILITY

Submitted by: L. M. V. R. G. and M. A. B. C. (represented by counsel)

Alleged victim: The authors

State party: Sweden

Date of communication: 14 October 1996

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

Meeting on 19 November 1997,

Adopts the following:

Decision on admissibility

1. The authors of the communication are L. M. V. R. G. and M. A. B. C., Peruvian citizens currently living in Sweden. They claim that their forced return to Peru would violate article 3 of the Convention. They are represented by counsel.

2.1 The authors claim to have been politically active in Peru both in the labour movement and in the political opposition. Both state that they have been arrested, detained and tortured in Peru and that they fear to be tortured again if they return.

2.2 The authors arrived in Sweden on 19 July 1990 and 17 December 1991, respectively. R. G.'s application for refugee status was rejected by the National Immigration Board on 30 November 1992, and her appeal was rejected on 21 July 1994. B. C.'s application for refugee status was rejected on 22 March 1992 and his appeal was denied on 21 July 1994.

2.3 The author's daughter was born on 19 December 1993, and their son on 26 November 1995. Medical evidence in the file shows that R. G. suffers from post-traumatic stress disorder and that this strongly affects the life of the family.

3.1 The authors' communication was transmitted to the State party on 5 February 1997. The State party was requested not to expel the authors while their communication was under examination by the Committee.

3.2 In its submission of 27 June 1997, the State party has indicated that the authors have submitted a new application to the Aliens Appeals Board and have requested a residence permit for humanitarian reasons, based on R. G.'s present health condition and the family's situation in general. Counsel for the authors has not contested that this application is still pending.

4.1 Before considering any claim in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention.

4.2 Article 22, paragraph 5 (b), of the Convention precludes the Committee from considering any communication unless it has been ascertained that all available domestic remedies have been exhausted; this rule does not apply if it is established that the application of domestic remedies has been or would be unreasonably prolonged or would be unlikely to bring effective relief. The Committee considers that, even if the authors' new application is not based on fear of torture but on humanitarian grounds, it is an effective remedy, since the Aliens Appeals Board has the competence to grant the authors a residence permit. In this context, the Committee notes that it is not for the Committee to review the grounds on the basis of which a person is allowed to stay in a country, as long as the State party fulfils its obligations under article 3 of the Convention.

5. The Committee therefore decides:

(a) That the communication is inadmissible;

(b) That this decision may be reviewed under rule 109 of the Committee's rules of procedure upon receipt of a request by or on behalf of the authors containing information to the effect that the reasons for inadmissibility no longer apply;

(c) That this decision shall be communicated to the authors and to the State party.

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