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Thirtieth session
28 April-16 May 2003

DECISION

Communication No. 219/2002

Submitted by: Ms. G. K. (represented by counsel)

Alleged victim: The complainant

State party: Switzerland

Date of complaint: 18 October 2002 (initial submission)

Date of decision: 7 May 2003

[ANNEX]

* Made public by decision of the Committee against Torture.

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Annex

DECISION OF THE COMMITTEE AGAINST TORTURE UNDER ARTICLE 22 OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Thirtieth session

concerning

Communication No. 219/2002

Submitted by: Ms. G. K. (represented by counsel)

Alleged victim: The complainant

State party: Switzerland

Date of complaint: 18 October 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 7 May 2003,

Having concluded its consideration of complaint No. 219/2002, submitted to the Committee against Torture by Ms. G. K. 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, his counsel and the State party,

Adopts the following:

Decision under article 22, paragraph 7, of the Convention

1.1 The complainant is G. K., a German national, born on 12 January 1956, at the time of the submission of the complaint held at the police detention centre at Flums (Switzerland), awaiting extradition to Spain. She claims that her extradition to Spain would constitute a violation by Switzerland of articles 3 and 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. She is represented by counsel.

1.2 On 22 October 2002, the Committee forwarded the complaint to the State party for comments and requested, under rule 108, paragraph 1, of the Committee's rules of procedure, not to extradite the complainant to Spain while her complaint was under consideration by the Committee. The Committee indicated, however, that this request could be reviewed in the light of new arguments presented by the State party or on the basis of guarantees and assurances from the Spanish authorities. The State party acceded to this request.

1.3 By note verbale of 8 November 2002, the State party submitted its observations on the admissibility and merits of the complaint; it also asked the Committee to withdraw its request for interim measures, pursuant to rule 108, paragraph 7, of the Committee's rules of procedure. In his comments, dated 9 December 2002, counsel asked the Committee to maintain its request for interim measures, pending a final decision on the complaint. On 6 January 2003, the Committee, through its Special Rapporteur, decided to withdraw its request for interim measures.

Facts

2.1 In 1993, the complainant worked as a language teacher in Barcelona, where she became involved with one Benjamin Ramos Vega, a Spanish national. During that time, the complainant and Mr. Ramos Vega both rented apartments in Barcelona, one at *calle Padilla*, rented on 21 April 1993 in Mr. Ramos Vega's name, and one at *calle Aragon*, rented on 11 August 1993 in the complainant's name and for the period of one year. According to counsel, the complainant had returned to Germany by October 1993.

2.2 On 28 April 1994, Felipe San Epifanio, a convicted member of the commando "Barcelona" of the Basque terrorist organization "Euskadi ta Askatasuna" (ETA), was arrested by Spanish police in Barcelona. The judgement of the *Audiencia Nacional*, dated 24 September 1997, sentencing him and other ETA members to prison terms, states that, upon his arrest, Mr. San Epifanio was thrown to the floor by several policemen after he had drawn a gun, thereby causing him minor injuries which reportedly healed within two weeks. Based on his testimony, the police searched the apartment at *calle Padilla*[1] on 28 April 1994, confiscating firearms and explosives stored by the commando. Subsequent to this search, Mr. Ramos Vega left Spain for Germany.

2.3 The *Juzgado Central de Instrucción No. 4 de Madrid* issued an arrest warrant, dated 23 May 1994, against both the complainant and Mr. Ramos Vega under suspicion of ETA collaboration as well as possession of firearms and explosives. A writ was issued on 6 February 1995 by the same examining judge indicting the complainant and Mr. Ramos Vega of the above offences for having rented "under their name, the apartments at the streets *Padilla* and *Aragon*, respectively, places which served as a refuge and for the hiding of arms and explosives, which the members of the commando had at their disposition for carrying out their actions".[2]

2.4 On 10 March 1995, the Berlin public prosecutor's office initiated criminal proceedings against the complainant, following a request by the Spanish Ministry of Justice. However, the German authorities decided to discontinue proceedings on 23 November 1998, in the absence of a reasonable suspicion of an offence punishable under German law. In a letter to the Spanish authorities, the Berlin public prosecutor's office stated that the apartment at *calle Padilla*, where the firearms and explosives had been found, had not been rented by the complainant but by Mr. Ramos Vega, while only a bottle filled with lead sulphide - which is not used for the production of explosives - had been found in the complainant's apartment at *calle Aragon*.

2.5 Subsequent to Mr. Ramos Vega's extradition to Spain in 1996, the *Audiencia Nacional*, by judgement of 24 September 1997, convicted him of collaboration with an armed group and falsification of licence plates in relation with terrorist activities ("*con aggravate de relation con activities terrorists*"), sentencing him to two terms of imprisonment, one of seven years and the

second of four years and three months. However, the *Audiencia Nacional* acquitted him of the charges in relation to the storage of firearms and to the possession of explosives due to lack of proof that he had known about the existence of these materials, noting that he had rented the apartment at *calle Padilla* at the request and for the use of a friend, Dolores Lopez Resin ("Lola"). The judgement states that, immediately following the search of that apartment, the convict assisted the escape of several members of the commando "Barcelona" by renting, and changing the licence plates of, a car which he, together with these members, used to leave Barcelona.

2.6 The complainant was arrested by Swiss police when crossing the Austrian-Swiss border at St. Margrethen on 14 March 2002, on the basis of a Spanish search warrant, dated 3 June 1994. She was provisionally detained, pending a final decision on her extradition to Spain. During a hearing on 20 March 2002, she refused to consent to a simplified extradition procedure. By diplomatic note of 22 April 2002, Spain submitted an extradition request to the State party, based on an international arrest warrant dated 1 April 2002, issued by the *Juzgado Central de Instrucción No. 4* at the *Audiencia Nacional*. This warrant is based on the same charges as the original arrest warrant and the writ of indictment against both the complainant and Mr. Ramos Vega.

2.7 By letter of 7 June 2002, the complainant, through counsel, asked the Federal Office of Justice to reject the extradition request of the Spanish Government, claiming that by referring the criminal proceedings to the German authorities, Spain had lost the competence to prosecute the complainant, thus precluding the complainant's extradition to that country.[3] Moreover, the fact that the Spanish authorities, in their extradition request to the State party, had deliberately not revealed who actually rented the apartment at *calle Padilla*, indicated that the complainant was to be tried for political rather than juridical reasons. Since political offences were not extraditable,[4] counsel argued that, contrary to the general rule that decisions on extraditions were purely a formal matter, the State party was obliged to examine whether a reasonable suspicion of an offence existed with respect to the complainant, in the absence of any link with the firearms and explosives found in the *calle Padilla* apartment, or with the escape vehicle. In counsel's opinion, the complainant's extradition is also precluded by the fact that the Spanish arrest warrant was based on testimony which had allegedly been extracted from Mr. San Epifanio by torture.

2.8 By decision of 8 August 2002, the Federal Office of Justice granted the Spanish extradition request, subject to the condition that the complainant was not to be tried for political motivations to commit the alleged offences and that the severity of punishment was not to be increased on the basis of such a motivation. This decision was based on the following considerations: (1) that the examination of reciprocal criminal liability was based on the facts set out in the extradition request, the evaluation of facts and evidence and matters of innocence or guilt being reserved to the Spanish courts; (2) that no issue of *ne bis in idem* arose since the German authorities, for lack of territorial competence, had not exhaustively dealt with these questions; (3) that the charges brought against the complainant were not of a purely political nature; (4) that the complainant was not at direct and personal risk of being tortured during

incommunicado detention following her extradition to Spain, because she could already engage the services of a lawyer in Spain prior to her extradition and because she enjoyed diplomatic protection by Germany; and (5) that even if Mr. San Epifanio's testimony had been extracted by torture, this was not the only evidence on which the charges against the complainant had been based.

2.9 On 8 September 2002, counsel lodged an administrative court action with the Federal Tribunal against the decision of the Federal Office of Justice to extradite the complainant. In addition to the reasons stated in his motion of 7 June 2002, he criticized that the Spanish extradition request lacked the necessary precision required by article 14, paragraph 2, of the European Convention of Mutual Legal Assistance in Criminal Matters (1959)[5] since it was essentially based on the arrest warrant of 1994 and failed to take into account the results of the subsequent criminal proceedings in Germany as well as in Spain. In particular, it did not clarify that the apartment at *calle Padilla* was rented by Mr. Ramos Vega exclusively, that the latter had been acquitted of the charges relating to the storage of firearms and possession of explosives by the *Audiencia Nacional*, and that the powder found in the apartment at *calle Aragon* was lead sulphide which could not be used for the production of explosives. The facts established in the extradition request were, therefore, to be disregarded; the request itself was abusive and had to be rejected. With respect to article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, counsel submitted that, although in theory the complainant enjoyed diplomatic protection by Germany and could already engage the services of a lawyer of her choice in Spain prior to her extradition, these rights could in practice only be exercised after incommunicado detention had ended. Regarding article 15 of the Convention, counsel criticized that the Spanish extradition request failed to indicate on which additional evidence the charges against the complainant had been based. Insofar as the evidence was found indirectly through Mr. San Epifanio's testimony, counsel claims that the theory of the "tainted fruits of the poisonous tree" precludes the use of such evidence by the Swiss courts.

2.10 By letter of 20 September 2002, the Federal Office of Justice asked the Federal Tribunal to dismiss the complainant's legal action. Counsel responded to this motion by letter, dated 15 October 2002, in which he maintained and further explained his arguments.

2.11 The Swiss section of Amnesty International sent an *amicus curiae* brief, dated 2 October 2002, on behalf of the complainant to the Federal Tribunal, stating that Spanish legislation provided for the possibility of keeping suspects of terrorist offences in incommunicado detention for a period of up to five days during which they could only be visited by a legal aid lawyer, and that such detention increased the risk of torture and maltreatment. Although torture was not systematically inflicted by the *Policía Nacional* or the *Guardia Civil*, instances of massive maltreatment of ETA suspects still occurred, including sexual assaults, rape, blows to the head, putting plastic bags over the head ("la bolsa"), deprivation of sleep, electric shocks, threats of execution, etc. Amnesty International considered it indispensable for the State party to make the complainant's extradition to Spain subject to the following assurances: (1) that under no circumstances the complainant should be handed over to the *Guardia Civil* or the *Policía Nacional*, but that she be placed directly under the authority of the *Audiencia Nacional* in Madrid; (2) that the complainant be granted direct and unlimited access to a lawyer of her choice; and (3) that she be brought before a judge as soon as possible following her extradition to Spain.

2.12 By judgement of 21 October 2002, the Federal Tribunal dismissed the complainant's action, upholding the decision of the Federal Office of Justice to grant the Spanish extradition request. The Tribunal based itself on the facts set out in the extradition request and concluded that the complainant was punishable under Swiss law (either as a participant in or as a supporter of a terrorist organization pursuing the objective to commit politically motivated crimes of violence) as well as under Spanish law. The Tribunal did not pronounce itself on the complainant's challenges as to the facts contained in the extradition request, ruling that questions of facts and evidence were for the Spanish courts to decide. Moreover, since ETA was not merely a group struggling for political power by employing legitimate means, the Tribunal did not consider the complainant's participation in or, respectively, her support of ETA a political offence within the meaning of article 3 of the European Convention on Extradition. The fact that criminal proceedings against the complainant had been closed by the Berlin public prosecutor's office for lack of a reasonable suspicion of an offence did not, in the Tribunal's opinion, bar the Swiss authorities from extraditing her to Spain because the decision to close proceedings was not based on material grounds and had been taken by a third State.[6] With respect to the alleged risk of torture following the complainant's extradition to Spain, the Tribunal held that Spain, being a democratic State and a member of the pertinent regional and universal human rights conventions, could not be presumed to systematically practise torture. Moreover, the Tribunal rejected the claim that the charges against the complainant were primarily based on testimony extracted by torture, in the absence of any supporting evidence.[7]

2.13 According to counsel's information, the complainant was extradited to Spain after the Committee, on 6 January 2003, decided to withdraw its request for interim measures.

The complaint

3.1 Counsel claims that following an extradition to Spain, the complainant would be at risk of being tortured during a maximum of five days of incommunicado detention and that Switzerland would, therefore, be violating article 3 of the Convention if she were extradited to Spain. In substantiation of this claim, counsel refers to several reports[8] on instances of torture inflicted on suspected members or supporters of ETA as well as to the Committee's views on Communication No. 63/1997 (*Josu Arkauz Arana v. France*)[9] concerning the extradition of an ETA suspect from France to Spain, where the Committee stated that "notwithstanding the legal guarantees as to the conditions under which it could be imposed, there were cases of prolonged detention incommunicado, when the detainee could not receive the assistance of a lawyer of his choice, which seemed to facilitate the practice of torture".[10] Counsel also submits that, in the absence of guarantees from the Spanish authorities, the author could not, in practice, obtain access to a lawyer of her choice and to diplomatic protection by Germany until after incommunicado detention had ended. Furthermore, counsel argues that the numerous reports on cases of torture and maltreatment in Spanish prisons indicated a consistent pattern of gross, flagrant or mass violations of human rights, a finding which was reinforced by the fact that ETA suspects had been killed in the past by death squads (*Grupos Antiterroristas de Liberación/GAL*) linked to the former Spanish Government. In counsel's view, the complainant's personal risk of being tortured was increased by the fact that the Spanish extradition request had been based on false charges, which indicated that Spain was unwilling to grant the complainant a fair trial. In the absence of any clear evidence against the complainant, it was not excluded that Spanish police would try to extract a confession by torture.

3.2 Counsel claims that by granting the Spanish extradition request which exclusively relied on Felipe San Epifanio's testimony, extracted by torture, and on the evidence found on the basis of this testimony in the apartment at *calle Padilla*, the State party violated article 15 of the Convention. Counsel argues that the use in extradition proceedings of evidence obtained as a result of torture runs counter to the spirit of the Convention since it provides the authorities of the requesting State with an incentive to disregard the prohibition of torture. By granting the Spanish extradition request, the Federal Office of Justice de facto accepted the evidence obtained through torture.

The State party's observations on admissibility and merits

4.1 On 8 November 2002, the State party submitted its observations on the admissibility and merits of the complaint. It does not contest the admissibility of the complaint.

4.2 The State party reiterates that questions of facts and evidence as well as of innocence or guilt cannot be examined in an extradition procedure, these matters being reserved to the trial courts. Since the complainant was free to invoke her arguments before the Spanish courts, an extradition to Spain was possibly even in her own interest because it provided her with an opportunity to be released from prison following an acquittal.

4.3 With regard to the complainant's claim under article 3, the State party submits that isolated cases of maltreatment in Spanish prisons fall short of attesting to a systematic practice of torture in that country. Moreover, the complainant had failed to establish that she was at a concrete and personal risk of being tortured if extradited to Spain. In particular, the case of Josu Arkauz Arana, who had been extradited to Spain on the basis of a purely administrative procedure, which had subsequently been found illegal by the Administrative Court of Pau, in the absence of any intervention of a judicial authority and of the possibility for the author to contact his family or lawyer, was not comparable to the complainant's situation. While the particular circumstances of Josu Arkauz Arana's extradition to Spain had placed him in a situation where he had been particularly vulnerable to possible abuse, the complainant had enjoyed the benefits of a judicial extradition procedure ensuring respect for her human rights and fundamental freedoms. According to the State party, the same guarantees applied in Spain which, being a member to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as well as to the Optional Protocol to the International Covenant on Civil and Political Rights and the European Convention, was subject to the scrutiny of the supervising bodies of these instruments, which provided the complainant with a preventive guarantee not to be tortured. Moreover, the complainant enjoyed diplomatic protection by Germany and could avail herself of the services of a lawyer of her choice already hired from Switzerland. The State party could also mandate its own Embassy in Spain to monitor the complainant's conditions of detention. The international attention drawn to the case provided a further guarantee against any risk of torture.

4.4 With respect to the complainant's claim under article 15 of the Convention, the State party submits that nothing establishes that Felipe San Epifanio's testimony had been extracted by torture. The complainant herself had stated that the criminal proceedings initiated by Mr. San Epifanio had been closed. Again, it was for the criminal courts in Spain and not for the Swiss extradition authorities to pronounce themselves on the admissibility of evidence.

Complainant's comments on the State party's submissions

5.1 In his response to the State party's submission, counsel maintains that the complainant would be at personal risk of being tortured if extradited to Spain. Such a risk was indicated by several precedents, in particular the cases of Felipe San Epifanio and Agurtzane Ezkerra Pérez de Nanclares, another convicted member of the commando "Barcelona" who had allegedly been tortured during incommunicado detention. Counsel submits a letter, dated 4 May 1994, addressed to the *Juzgado de Instrucción No. 4 (Bilbao)*, in which Felipe San Epifanio brought criminal charges against the police, stating that the police arrested him by immobilizing him on the ground, where he received blows and kicks on his entire body, including blows to his head with a gun. Although the wounds had been stitched at hospital, no thorough medical examination had been carried out. Instead, the police allegedly had continued to maltreat him during incommunicado detention, beating him repeatedly. The following days, Mr. San Epifanio had been questioned on his links with ETA and individual members of that organization without the assistance of a lawyer. During the four days of incommunicado detention, he had allegedly been denied sleep and had not received any solid food but only large amounts of water. Counsel argues that the examining judge's decision to close criminal proceedings initiated by Mr. San Epifanio reflects the extent of impunity enjoyed by alleged torturers of ETA suspects.[11]

5.2 Counsel reiterates that numerous human rights reports provide evidence of the existence of a consistent pattern of gross, flagrant or mass violations of human rights in Spain. In particular, he cites the Committee's most recent concluding observations relating to Spain[12] in which it expressed its concern about the dichotomy between Spanish official statements denying the occurrence of torture or maltreatment except in isolated cases, and the information received from non-governmental sources indicating the persistence of cases of torture and maltreatment by Spanish security forces. Moreover, the Committee noted that Spain maintained its legislation providing for incommunicado detention for up to a maximum of five days during which the detainee neither had access to a lawyer or a medical doctor of his choice, nor to his family. Counsel submits that diplomatic protection is inaccessible during that period.

5.3 With respect to the admissibility of Mr. San Epifanio's testimony, counsel submits that the prohibition in article 15 of the Convention applies not only to criminal proceedings in Spain but also to the complainant's extradition proceedings in Switzerland. This follows from the wording of article 15 which obliges the State party to "ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings". Counsel challenges the State party's argument that it had not been established that Mr. San Epifanio's testimony had been extracted by torture, arguing that the requirements as to the evidence for this torture claim should not be overly strict.[13]

Issues and proceedings before the Committee

6.1 Before considering any claim contained in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do 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. In the present case, the Committee also notes that all domestic remedies have been exhausted and that the State party has not objected to the admissibility of the communication. It therefore considers that the communication is admissible and proceeds to the examination of the merits of the case.

6.2 With regard to the complainant's claim under article 3, paragraph 1, of the Convention, the Committee must determine whether the author's deportation to Spain violated the State party's obligation, under that article, not to expel or return a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. In doing so, the Committee must take into account all relevant considerations with a view to determining whether the person concerned is in personal danger, including the existence, in the State concerned, of a consistent pattern of gross, flagrant or mass violations of human rights.

6.3 The Committee recalls that during the consideration of the fourth periodic report submitted by Spain under article 19 of the Convention, it noted with concern the dichotomy between the assertion of the Spanish Government that, isolated cases apart, torture and ill-treatment do not occur in Spain and the information received from non-governmental sources which is said to reveal instances of torture and ill-treatment by the State security and police forces.[14] It also expressed concern about the fact that incommunicado detention up to a maximum of five days has been maintained for specific categories of particularly serious offences, given that during this period, the detainee has no access to a lawyer or to a doctor of his choice, nor is he able to contact his family.[15] The Committee considered that the incommunicado regime facilitates the commission of acts of torture and ill-treatment.[16]

6.4 Notwithstanding the above, the Committee reiterates that its primary task 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 that 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 cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

6.5 As to the complainant's personal risk of being subjected to torture following extradition to Spain, the Committee has noted the complainant's arguments that the Spanish extradition request was based on false accusations, that, as an ETA suspect, she was at a personal risk of being tortured during incommunicado detention, in the absence of access to a lawyer of her choice during that time, that other persons had been subjected to torture in circumstances that she considers to be similar to her case, and that diplomatic protection by Germany as well as the prior designation of a lawyer constituted protection against possible abuse during incommunicado detention in theory only. It has equally noted the State party's submission that, in addition to the above-mentioned protection, the international attention drawn to the complainant's case, as well as the possibility for her to challenge torture or ill-treatment by the Spanish authorities before the Committee and other international instances, constitute further guarantees preventing Spanish police from subjecting her to such treatment.

6.6 Having regard to the complainant's reference to the Committee's views in the case of Josu Arkauz Arana, the Committee observes that the specific circumstances of that case, which led to the finding of a violation of article 3 of the Convention, differ markedly from the circumstances in the present case. The deportation of Josu Arkauz Arana "was effected under an administrative procedure, which the Administrative Court of Pau had later found to be illegal, entailing a direct handover from police to police, without the intervention of a judicial authority and without any possibility for the author to contact his family or his lawyer".[17] By contrast, the complainant's extradition to Spain was preceded by a judicial review, by the Swiss Federal Tribunal, of the decision of the Federal Office of Justice to grant the Spanish extradition request. The Committee notes that the judgement of the Federal Court, as well as the decision of the Federal Office, both contain an assessment of the risk of torture that the complainant would be exposed to following an extradition to Spain. The Committee, therefore, considers that, unlike in the case of Josu Arkauz Arana, the legal guarantees were sufficient, in the complainant's case, to avoid placing her in a situation where she was particularly vulnerable to possible abuse by the Spanish authorities.

6.7 The Committee observes that possible inconsistencies in the facts on which the Spanish extradition request was based, cannot as such be construed as indicating any hypothetical intention of the Spanish authorities to inflict torture or ill-treatment on the complainant, once the extradition request was granted and executed. Insofar as the complainant claims that the State party's decision to extradite her violated articles 3 and 9 of the European Convention on Extradition of 1957, the Committee observes that it is not competent *ratione materiae* to pronounce itself on the interpretation or application of that Convention.

6.8 Lastly, the Committee notes that, subsequent to the complainant's extradition to Spain, it has received no information on torture or ill-treatment suffered by the complainant during incommunicado detention. In the light of the foregoing, the Committee finds that the complainant's extradition to Spain did not constitute a violation by the State party of article 3 of the Convention.

6.9 With regard to the alleged violation of article 15 of the Convention, the Committee has noted the complainant's arguments that, in granting the Spanish extradition request, which was, at least indirectly, based on testimony extracted by torture from Felipe San Epifanio, the State party itself had relied on this evidence, and that article 15 of the Convention applied not only to criminal proceedings against her in Spain, but also to the extradition proceedings before the Swiss Federal Office of Justice as well as the Federal Court. Similarly, the Committee has noted the State party's submission that the admissibility of the relevant evidence was a matter to be decided by the Spanish courts.

6.10 The Committee observes that the broad scope of the prohibition in article 15, proscribing the invocation of any statement which is established to have been made as a result of torture as evidence "in any proceedings", is a function of the absolute nature of the prohibition of torture and implies, consequently, an obligation for each State party to ascertain whether or not statements admitted as evidence in any proceedings for which it has jurisdiction, including extradition proceedings, have been made as a result of torture.[18]

6.11 At the same time, the Committee notes that, for the prohibition in article 15 to apply, it is required that the statement invoked as evidence "is established to have been made as a result of torture". As the complainant herself stated, criminal proceedings initiated by Felipe San Epifanio against his alleged torturers were discontinued by the Spanish authorities. Considering that it is for the complainant to demonstrate that her allegations are well-founded, the Committee concludes that, on the basis of the facts before it, it has not been established that the statement of Mr. San Epifanio, made before Spanish police on 28 April 1994, was obtained by torture.

6.12 The Committee reiterates that it is for the courts of the States parties to the Convention, and not for the Committee, to evaluate the facts and evidence in a particular case, unless it can be ascertained that the manner in which such facts and evidence were evaluated was clearly arbitrary or amounted to a denial of justice. The Committee considers that the State party's decision to grant the Spanish extradition request does not disclose a violation by the State party of article 15 of the Convention.

7. Consequently, 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 extradition of the complainant to Spain did not constitute a breach of either article 3 or 15 of the Convention.

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

Notes

[1] Apparently, the apartment was rented but not inhabited by Mr. Ramos Vega.

[2] Translation by the Secretariat.

[3] Pursuant to article 9 of the European Convention on Extradition to which Germany, Switzerland and Spain are parties, "[e]xtradition may be refused if the competent authorities of the requested party have decided either not to institute or to terminate proceedings in respect of the same offence or offences".

[4] See article 3 (1) of the European Convention on Extradition.

[5] See also ibid., article 12 (2) (b).

[6] Cf. article 9 of the European Convention on Extradition.

[7] In that regard, the Federal Tribunal argues that, according to the complainant herself, the criminal proceedings initiated by Mr. San Epifanio against the police had been closed by the Spanish authorities.

[8] Human Rights Committee, Concluding observations on the second periodic report of Spain; European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Reports on visits to Spain in 1997, 1998 and 2000; Amnesty International, Annual Report 2001.

[9] Views adopted on 9 November 1999, United Nations document CAT/C/23/C/63/1997, 5 June 2000.

[10] Ibid., para. 11.4.

[11] In the complaint, dated 18 October 2002, counsel stated that the examining judge had considered that the facts submitted by Mr. San Epifanio fell short of constituting a criminal offence, despite the fact that a medical examiner had found several haematoma and open wounds on his body after his detention incommunicado had ended.

[12] See Committee against Torture, twenty-ninth session (11-22 November 2002), Conclusions and recommendations of the Committee against Torture: Spain, United Nations document CAT/C/CR/29/3, 23 December 2002.

[13] This argument is contained in the complaint, dated 18 October 2002.

[14] CAT, twenty-eighth session (11-22 November 2002), Conclusions and recommendations of the Committee against Torture: Spain, United Nations document CAT/C/CR/29/3, 23 December 2002, para. 8.

[15] Idem, para. 10.

[16] Idem.

[17] Communication No. 63/1997, *Josu Arkauz Arana v. France*, Views adopted on 9 November 1999, United Nations document CAT/C/23/D/63/1997, 5 June 2000, para. 11.5.

[18] See Communication No. 193/2001, *P.E. v. France*, Views adopted on 21 November 2002, United Nations document CAT/C/29/D/193/2001, 19 December 2002, para. 6.3.
