

COMMITTEE AGAINST TORTURE

J. E. and E. B. v. Spain

Communication No. 10/1993

14 November 1994

CAT/C/13/D/10/1993

ADMISSIBILITY

Submitted by: A. E. M. and C. B. L. (parents of the alleged victims)

Alleged victims: J. E. and E. B.

State party: Spain

Date of communication: 2 February 1993

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 1994,

Adopts the following:

Decision on admissibility

1. The authors of the initial communication are A. E. M. and C. B. L., citizens of Spain residing in Santurce in the Basque province, writing on behalf of their son J. E. and his wife E. B., who are currently detained at the Spanish prisons of Orense and Albacete, respectively. By power of attorney of 31 December 1993, Mr. E. authorized his parents to act on his behalf and on behalf of his wife.

The facts as submitted by the authors:

2.1 The authors, who reside in the same apartment complex as did the alleged victims, claim that on 29 January 1992, at six in the morning, members of the Spanish police blew up the door of J. E.'s apartment and arrested him and his wife in their bedroom. J. E. was taken to the Guardia Civil in Bilbao and later Madrid and kept incommunicado for five days, during

which he was allegedly subjected to torture and ill treatment, including beatings to the head, electrical shocks to the head, testicles and other parts of the body. His head was allegedly put into a plastic bag until he had almost been asphyxiated. His wife remained in the apartment while the police officers carried out a search, which lasted until approximately 9.30 in the morning, at which time she too was taken into custody. Upon arrival at the police station, she was allegedly hooded and left in a room for a long period of time, she was undressed by force and handcuffed. On 30 January she and her husband were driven to Madrid, where beatings and electric shocks allegedly continued during 96 hours of intermittent interrogation. As a consequence of the maltreatment her menstrual period commenced two weeks ahead of time, but she was not allowed to clean herself. Meanwhile Mr. E. was allegedly hung upside down from a lamp, until he lost consciousness, and a Guardia Civil officer forced a revolver barrel into his mouth and shot, without a bullet. Psychotropic drugs were allegedly administered to him with his food, with the result that he started to hallucinate.

2.2 With regard to the exhaustion of domestic remedies, it is stated that the alleged victims made reference to the alleged tortures when they were brought before Judge I. M. C. It is reported that once J. E. removed his shoe in front of the judge in order to show the black points left by the instruments utilized when administering electric shocks. The authors appeal to the Committee against Torture with the specific complaint that the competent judicial authorities in Spain, in particular the judges and forensic experts, have failed to investigate the alleged violations, thus permitting the torturers to operate with impunity.

2.3 During the period of detention of the alleged victims and of 14 other persons in Bilbao, an official of the World Organization against Torture wanted to visit them, but permission was reportedly denied.

2.4 On 12 November 1993 Mr. E. was allegedly subjected to ill treatment at Orense prison. An official investigation is in progress.

State party's observations:

3.1 By submissions of 1 September, 17 December 1993, 24 January and 19 April 1994, the State party argues that the communication is inadmissible under article 22, paragraph 5 (b), of the Convention, because the authors have not exhausted domestic remedies. The State party states that the authors have seven lawyers and that they did not file any complaint with the Spanish authorities, as provided for under Spanish law. However, the State party submits that Spanish courts started **ex officio** investigations, even if the alleged victims did not do so. An **ex officio** investigation into the possible ill treatment of Mrs. E. was conducted under case No. 205/92, including through the examination of contemporary medical reports. The **Juzgado de Instrucción No. 44** invited Mrs. E. to participate in this judicial investigation, but she declined. The investigation failed to reveal any misconduct on the part of the Guardia Civil and was closed in January 1993.

3.2 With regard to the alleged ill treatment of Mr. E. on 12 November 1993, the State party submits that Mr. E. filed a complaint with the **Juzgado de Guardia de Leon** on 27

November 1993, 15 days after the alleged events. The matter is currently under judicial investigation under No. 865/93. The State party forwards copies of the relevant documents.

3.3 As a further ground for inadmissibility, the State party refers to the authors' submission to the effect that the same complaint had been forwarded to the European Commission of Human Rights and to the European Committee for the Prevention of Torture, both in Strasbourg. Examination by these bodies would render the communication inadmissible under article 22, paragraph 5 (a), of the Convention.

3.4 The State party denies the allegations that Mr. and Mrs. E. were subjected to torture or ill treatment upon their arrest in January 1992 or subsequently during their detention. It submits copies of the reports of the medical doctors who examined them every day during the first five days of detention, as well as subsequent reports.

Author's comments:

4.1 With regard to the simultaneous submission of the same matter to two European instances of investigation or settlement, the authors claim not to know whether those bodies are currently investigating the cases of Mr. and Mrs. E.

4.2 With regard to the exhaustion of domestic remedies, the authors refer to the cases No. 205/92 concerning Mrs. E., before the **Juzgado de Instrucción No. 44** of Madrid and No. 113/92 concerning Mr. E., before the **Juzgado de Instrucción** of Alcalá de Henares, and Nos. 482/92 and 211/94, before the **Juzgado de Instrucción No. 40** of Madrid. The authors claim that the investigations are not being conducted with due diligence. With regard to the closing of the investigation in case No. 205/92, Mrs. E. is endeavouring to obtain a formal notification with a view to reopening the case.

Issues and proceedings before the Committee:

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

5.2 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.

5.3 Article 22, paragraph 5 (b), of the Convention precludes the Committee from considering any communication unless it has ascertained that all available domestic remedies have been exhausted. The authors concede that two matters are currently under judicial investigation in Spain. Accordingly, the Committee finds that the requirements of article 2, paragraph 5 (b), of the Convention have not been met.

6. 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 written request by or on behalf of the alleged victims 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.]