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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

Communication No. 453/2011

Decision adopted by the Committee at its forty-eighth session, 7 May to 1 June 2012

Submitted by:	Oskartz Gallastegi Sodupe (represented by counsel, Mr. Julen Arzuaga and Ms. Iratxe Urizar)
Alleged victim:	The author
State party:	Spain
Date of complaint:	20 January 2011 (initial submission)
Date of decision:	23 May 2012
Subject matter:	Statement obtained under torture
Procedural issues:	None
Substantive issues:	Prompt and impartial investigation, prohibition of invoking statements obtained under torture as evidence, right to redress
Articles of the Convention:	12, 14 and 15.

Annex

Decision of the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (forty-eighth session)

concerning

Communication No. 453/2011

Submitted by:	Oskartz Gallastegi Sodupe
Alleged victim:	The author
State party:	Spain
Date of complaint:	20 January 2011 (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 23 May 2011,

Having concluded its consideration of complaint No. 453/2011, submitted to the Committee by Oskartz Gallastegi Sodupe 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 pursuant to article 22, paragraph 7, of the Convention:

Decision under article 7, paragraph 22, of the Convention against Torture

1. The complainant is Orkatz Gallastegi Sodupe, a Spanish national born on 7 June 1982. He claims to be the victim of a violation by Spain of articles 12, 14 and 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The complainant is represented by counsel, Ms. Iratxe Urizar and Mr. Julen Arzuaga.

The facts as submitted by the complainant

2.1 On 24 October 2002, when he was 20 years of age, Mr. Gallastegi Sodupe was arrested by the Ertzaintza (Basque autonomous police force) in Berango (Bizkaia) during a police operation in which five other youths were also arrested on charges connected with sabotage and damage to public property.

2.2 The complainant was arrested in a violent manner at 5 a.m. in his home by masked police. He was thrown to the ground and handcuffed, and his house was searched for three

hours.[1] He was then placed in a white van without police markings. With his hands handcuffed behind his back, he was taken by the police to Arkaute central police station.

2.3 It was determined at the police station that the charges against the complainant fell within the scope of anti-terrorism laws and that he should therefore be held incommunicado, thereby depriving the complainant of contact with family members, a lawyer or a doctor trusted by the detainee. The complainant asserts that the charges, although related only to the destruction of public property with home-made inflammable substances and, therefore, bearing no direct relation with the activities of armed groups, are deemed to fall within the scope of anti-terrorism laws because they are politically motivated, which in turn leads automatically to placement in incommunicado detention. Counsel for the complainant appearing before the judge requested the application of the so-called "Garzón Protocol", a series of measures designed to prevent ill-treatment or torture, such as by permitting access to a doctor trusted by the detainee, informing family members of the detainee's condition and whereabouts and allowing the detainee to confer with a lawyer in private. The complainant alleges that the request was denied.

2.4 The author was subjected to ill-treatment in Arkaute police station. He was obliged to remain in uncomfortable positions to the point of exhaustion. He was kept in a cell measuring 4 by 2 metres, with no windows and no furniture other than a cement bed. Whenever the police called at the door or entered the cell, they forced him to stand against the wall in uncomfortable positions and with his eyes closed. He received blows to all parts of his body and was kicked in the genitals. They would sit him down, cover his head with clothes and beat him senseless. He was prevented from sleeping by the loud music being played and lights being kept on constantly. Moreover, when he was taken to the interrogation room, he had to lower his head and keep his eyes shut; otherwise they would bang him against the corridor wall. The same kind of treatment was also meted out during questioning. Whenever he fell over or lost consciousness, he was forced to drink water, even when he resisted. He was also subjected to psychological torture, being threatened with death and told that his family would be harmed. He heard the cries of detainees in neighbouring cells and was told that his brother had also been detained and was receiving the same treatment because of him. All of this, in addition to being held incommunicado for three days, left him in a serious state of anxiety.[2]

2.5 On 25 October 2002, the day following his detention in Arkaute police station, the complainant was examined by a forensic doctor, to whom he reported the ill-treatment to which he was being subjected. The doctor merely made a written note of the information, without examining the complainant closely or showing concern for his condition. On 26 October 2002, the complainant again told the doctor that he was being tortured, but the doctor made no mention of it in his report.[3]

[1] The Committee notes that, according to a written statement submitted by the complainant to the Donostia-San Sebastián police court on 29 January 2003, a court registrar appeared during the police operation, showed him a warrant for his arrest and informed him that he would be charged with the offence of terrorism. Subsequently, the house search began.

[2] The application for constitutional *amparo* submitted by the complainant to the Constitutional Court on 22 April 2004 states that he was also threatened with sexual assault.

[3] In his written statement of 29 January 2003 to the Donostia-San Sebastián police court, the complainant recounts: "I was twice taken to see the forensic doctor, the first time because of back pain and the second because of a knee injury [...]. They told me that they would take me to hospital but that did not happen. I was hoping that they would hurt me badly enough for me to be transferred to hospital and left in peace for a while. But they had everything worked out and knew just how, when and what to do at any given time. Even so, I realized on some occasions that they were worried about the state I was in. On the other hand, in a written statement submitted to the Second Examining

2.6 During the three days in which the complainant was held incommunicado, he was subjected to questioning designed to extract a statement confirming that he was guilty of the charges laid against him. One police officer told him to confess and he was forced to learn self-incriminating statements by heart. The complainant was forced to practise his testimony. In one practice run he was beaten and threatened because the police officers were not satisfied with his performance. They lifted him by his hair and forced him to read out the statement until he did so correctly. His statement was taken under duress on three occasions before the police investigator. The complainant was not properly defended because, although assigned counsel was present, counsel took no active part in the proceedings and the complainant was given no opportunity to confer with him in private and inform him of the circumstances under which his statement to the police was made.[4]

2.7 As a result of the torture, the complainant admitted that he was guilty of destroying public property and of association with and membership in a terrorist organization, in connection with the murder of a Bilbao Provincial High Court judge, José María Lidón Corbi, carried out by members of the Euskadi Ta Askatasuna (ETA) organization on 7 November 2001. The complainant stated that, at the request of an ETA member and childhood friend, he had kept various public officials, including Judge Lidón Corbi, under surveillance and passed information on to the organization.

2.8 On 28 October 2002, the complainant was brought before the Fourth Examining Magistrate's Court of the National High Court. In the course of the proceedings, the complainant recounted that, during his three days of detention in Arkaute police station, he had been forced to stand facing the wall and in uncomfortable positions, been beaten even when he fainted, been deprived of sleep, food and water, except when forced to drink, and been subjected to threats. He added that he had informed the forensic doctor of his ill-treatment. The complainant retracted all the statements he had made while in police custody and denied involvement in the acts of which he had been accused, namely the gathering of information for ETA with a view to murdering Mr. Lidón Corbi. He stated that he knew one member of ETA, but only "by sight", and that he had never passed any information on to him.

2.9 The complainant was held in pretrial detention in Soto del Real prison (in the Madrid region) for several months. He was later moved to the prisons of Alcalá Meco (Madrid region), Alicante and Valdemoro (Madrid region) and was being held in Castellón prison, 686 kilometres from his place of residence, at the time that his complaint was submitted to the Committee.

2.10 On 29 January 2003, he filed a complaint before the police court of Donostia-San Sebastián against the police officers who had been involved in his arrest, custody and questioning for the torture and ill-treatment to which he had been subjected. He requested that the reports made by doctors to whom he had been taken while in detention, in national

Magistrate's Court of Vitoria-Gasteiz on 10 February 2004, it is stated that: "Mr. Gallastegi did not tell the forensic doctor who examined him in Arkaute about the treatment he was receiving in the custody of the Ertzaintza. Only later, when he was out of their reach, did he dare to do so before the judge and forensic doctor of the National High Court." In the complaint submitted to the Committee, no reference is made to this last medical examination. According to the ruling of 4 December 2006 by the second criminal division of the Supreme Court, the complainant was examined for a third time by a forensic doctor of the First Central Examining Magistrate's Court of the National High Court on 28 October 2002. On that occasion, the complainant allegedly refused to undress and stated that nothing was wrong with him.

[4] In his written statement of 29 January 2003 to the police court in Donostia-San Sebastián, the complainant states that the assigned counsel "remained silent, even when I said that I had been tortured".

police stations in Vitoria-Gasteiz and Madrid, be made available, that the forensic doctors give evidence, that he be allowed to testify as the aggrieved party, and that the Directorate General of the Basque Police be ordered to reveal the identity of the officers who had carried out investigations or otherwise had contact with him during his period in detention. The case was subsequently referred to the Second Examining Magistrate's Court of Vitoria-Gasteiz, as the competent court to hear complaints in the location in which the alleged facts took place. On 3 October 2003, the Court ordered a stay of proceedings. It made the ruling after receiving the medical forensic reports and without conducting any further inquiries.

2.11 On 27 October 2003, the complainant filed an application for review with subsidiary appeal before the same Second Examining Magistrate's Court of Vitoria-Gasteiz. He requested that hitherto unheard evidence should be gathered, including taking testimony from the complainant and the police officers involved in his arrest, custody and inquiry proceedings that preceded his statement to the police. He claimed that the medical forensic reports did not comply with the medical protocol established by the Ministry of Justice for the examination of detainees and that they were therefore insufficient or inadequate. He stated that the Court's decision was not properly substantiated and that it failed to state clearly its reasons for ordering the stay of proceedings. On 3 February 2004, the Court dismissed the application for review but admitted the subsidiary appeal, requesting a formal submission from the complainant. In its ruling, the Court stated: "The complaint of alleged torture, which if substantiated should lead to the prosecution and punishment of those responsible, is one matter, and the results of investigations, in other words the forensic examinations, which suggest that no torture took place, are quite another. The presumption of innocence, which applies to the accused members of the security forces, must prevail over an accusation for which there is not the slightest evidence to justify any further investigation of the allegations."

2.12 On 10 February 2004, the complainant made a written submission in support of the appeal and requested that proceedings revert to the investigation stage, to permit the taking of evidence needed to establish the facts.

2.13 On 30 March 2004, the Provincial High Court of Álava dismissed the appeal without gathering any further evidence. The Court ruled that the stay of proceedings had been ordered after the necessary inquiries had been made to verify whether the victim's statements were confirmed by circumstantial evidence; that the forensic medical reports, even the one carried out in Madrid, had revealed no sign of ill-treatment or torture as alleged; and that the failure to comply with Ministry of Justice guidelines did not compromise their probative value. As a result, the Provincial High Court ruled that there was no need to request from the police the identity of the persons involved in the arrest and custody of the complainant, even more so given that the safety of the officers themselves could be compromised.

2.14 On 22 April 2004, the complainant filed an application for *amparo* before the Constitutional Court for violations of his rights to mental and physical integrity, effective legal protection, a fair trial and the use of pertinent evidence. He reiterated that the Second Examining Magistrate's Court of Vitoria-Gasteiz had ordered the case to be shelved on the basis of a single inquiry and receipt of the brief reports of forensic examinations made while he was in detention. The complainant questioned the probative value of those medical reports and stated that neither the Court nor the Provincial High Court had taken his testimony or had requested that the Arkaute police station identify the officers who had been involved in his arrest, custody and questioning so that they could be called upon to testify.

2.15 On 23 June 2005, the Constitutional Court declared the application inadmissible, pointing out that the complainant had not complied with its requirement, set forth on 28 April, 3 June and 19 July 2004, that his legal representative submit credentials establishing

his qualifications to represent the complainant in court, but had merely made written submissions requesting time extensions, without providing a credible explanation as to why he could not comply with the Court's requirement.

2.16 In November 2005, the complainant was brought before the National High Court to face criminal charges as an accessory to a murder carried out by terrorists. The complainant retracted the statements he had initially made to the police and claimed that they had been obtained as a result of psychological threats, pressure and physical ill-treatment. He claimed that, if he did not say what the police officers wanted, he was beaten and compelled to stand in uncomfortable positions, although they never left any marks on his body. They threatened to arrest his mother and brother and on no occasion allowed him access to a lawyer. When he could bear no more, the complainant said he would make whatever statement the police officers wanted, but even then the ill-treatment and threats continued. Moreover, the documents relating to his statements to the police contained affirmations that he had not made. He questioned the credibility of statements by the police officers who had interrogated him at the police station and who denied having committed acts of torture, given that they took part in trial proceedings under false identification numbers that did not correspond to their professional badge numbers and thereby prevented their identification as witnesses. That measure did not comply with witness protection regulations, under which the clerk of the court is supposed to establish the correlation between real and false identification numbers. The complainant points out that the report of 21 January 2005 by the information and analysis unit of the Basque autonomous police force, submitted by the Public Prosecution Service, linked the gathering of information to the murder of Mr. Lidón Corbi, although the ETA member who allegedly received the information denied having anything to do with the complainant.

2.17 On 12 December 2005, the complainant was found guilty and sentenced to 26 years in prison. He considers that the conviction was based on his self-incriminating statements and the testimony of the police officers who questioned him. He also points out that the authorities were eager to find a guilty party and could not afford to leave the crime unpunished, given its considerable impact in certain political and police circles, as well as on public opinion. The Court may also, without perverting the course of justice or compromising its independence, have ceded to a sense of collegial solidarity, given that the victim of this heinous crime was a judge.

2.18 The complainant lodged an application for cassation before the Supreme Court for, inter alia, a violation of his fundamental right to defence and a fair trial, given the wrongful application of the Organic Law No. 19/1994 on the protection of witnesses and experts in criminal cases. He also claimed that his right to presumption of innocence had been infringed, since the prosecution's evidence — his statement to the police and the police report submitted during the trial — had been obtained without due regard for constitutional guarantees.

2.19 On 4 December 2006, the Supreme Court dismissed the application and upheld the sentence of the National High Court. According to the complainant, the Supreme Court supported the conclusion of the National High Court that his self-incriminating statements, given when he was held incommunicado at the police station, constituted sufficient evidence.[5] In its decision, the Supreme Court underlines the validity of the self-incriminating statement, given that the courts had investigated the complainant's claim of

[5] It is stated in the decision that: "As is faithfully recorded in the appealed sentence, the accused retracted his statement before the examining magistrate […] claiming that, on arrest, he had been subjected to mental and physical violence, all of which he had reported to the forensic doctor […] at trial he also denied the facts confessed."

torture and ill-treatment and found that no crime had been committed and, moreover, that the complainant's self-incriminating statements were corroborated by evidence presented during the investigative stage of proceedings and before the National High Court itself, which included, in particular, testimony by: the police officers who took part in his questioning at the police station; the complainant's assigned counsel; the forensic doctor who examined him; the ETA member and co-defendant who had confirmed that he knew the complainant; and Judge Lidón Corbi's widow. The Court found no irregularity in the application of Organic Law No. 19/1994 and noted that the police witnesses had testified at the behest of the Public Prosecution Service with provisional identification numbers provided by the police for the purpose of the examination of the police report by the court and in line with the National High Court's assent to legal protection measures designed to safeguard their right to life. According to the decision, the complainant's defence counsel exercised the right to question witnesses in a normal fashion and recognized the validity of the report prepared by the Basque autonomous police, which showed that the complainant's statement was supported by circumstantial evidence.

2.20 Two members of the Supreme Court expressed dissenting opinions. The first questioned the acceptability as admissible evidence of self-incriminating statements contained in a police report and verified neither during court proceedings nor when evidence is heard. It pointed out that statements taken in police stations could not be submitted in court in the form of depositions by the police officers who had taken those statements, because that infringed the right of the accused not to testify against him or herself or to remain silent. It stated that police officers may not speak for the person who made the statement if that person is present in court. The opinion concluded that self-incriminating statements made legally in a police station by a person facing charges can and must be investigated and that the information obtained may be treated as a source of evidence, without being taken as probative of the facts being judged. The second dissenting opinion also concluded that statements made to the police by the accused may not be submitted in court as testimony by the police officers who took them. Such testimony must not be treated as incriminating evidence, but solely as evidence of information and facts witnessed by those officers, such as the fact that the confession took place and the circumstances in which the statement was made.

2.21 The complainant filed an application for *amparo* before the Constitutional Court contesting the decision of the Supreme Court. On 31 March 2008, the Constitutional Court ruled the application inadmissible because it manifestly lacked content that would justify a decision on the merits.

The complaint

3.1 The complainant alleges that the State party violated article 12, read in conjunction with article 16, of the Convention. The reaction of the courts to his claim of having been subjected to torture and ill-treatment was unsatisfactory. A prompt, independent and impartial investigation was not carried out. The competent courts failed utterly to act on his repeated claims of having been subjected to ill-treatment and torture while held incommunicado, thereby making it impossible to shed light on the reported incidents, and dismissed his complaint without investigation. Similarly, the examining magistrate of the National High Court failed to order an investigation into his allegations of having been subjected to ill-treatment and torture while he was held incommunicado. The regime of incommunicado detention for five days, extendable by a further eight days, permitted under the law of the State party has been criticized repeatedly by the Committee against Torture,[6]

[6] The complainant refers to the Committee's concluding observations on the fourth and fifth periodic

the Human Rights Committee and other international bodies that have recommended its abolition. The State party has not taken the necessary steps to effectively prevent acts of torture throughout the territory under its jurisdiction, thereby failing to comply with its obligations under article 16 of the Convention.[7]

3.2 Notwithstanding the complainant's allegations of torture and ill-treatment and his repeated requests to the courts that they conduct inquiries, they ignored their duty to investigate, failing to take any action or rejecting his requests. As a result, there was a violation of article 14 of the Convention, given that the State party should have redressed the wrong he had suffered as a victim of torture and taken steps to ensure that such acts did not happen again. According to the complainant, remedial measures cover all the damages suffered by the victim, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition, as well as prevention, investigation, and punishment of the persons responsible.

3.3 With regard to article 15 of the Convention, the complainant asserts that the trial leading to his conviction was unfair. His self-incriminating statements, obtained under torture in a police station, were used as proof leading to his conviction for the crime of terrorist murder. He maintains that his trial and conviction were based on those self-incriminating statements, submitted to the court by the authorities in the form of testimony by the police officers who had taken part in the investigation. His confession in the police station could at most be considered an element of circumstantial evidence. He concludes that direct or circumstantial evidence obtained in violation of fundamental rights may not be used in criminal proceedings.

3.4 The complainant alleges that his right to effective legal protection has been infringed, given that the application for cassation he filed before the Supreme Court does not constitute a second hearing because it does not entail a full review of the evidence and proven facts. Moreover, the complainant alleges violations of articles 7, 9 (para. 3) and 14 (paras. 1 and 2) of the International Covenant on Civil and Political Rights.

3.5 The complainant requests that the State party: provide redress for all damages, including financial compensation of €30,000; conduct a prompt and impartial investigation of his claims of torture and ill-treatment; review his conviction, which was based on a confession obtained under torture; and guarantee that no statement obtained under torture may be invoked as evidence in any legal proceedings.

3.6 With regard to the exhaustion of domestic remedies, the complainant maintains that he applied for all the remedies available before the domestic courts under Spanish law, including two applications for constitutional *amparo*, the first of which he filed with a view to settling his torture claim, and the second in order to challenge his conviction of the crime of terrorist murder.

State party's observations

4.1 In a note verbale of 5 September 2011, the State party submitted its observations.

4.2 With regard to the complainant's claim of having been subjected to torture and the ensuing proceedings before domestic courts, it states that his application for *amparo* to the Constitutional Court was dismissed on 23 June 2005 because the complainant failed to appear with a legal representative, in spite of the court's repeated requests. It states that the complainant did not have recourse to any international body or the Committee against

reports of Spain (CAT/C/CR/29/3 and CAT/C/ESP/CO/5, respectively).

[7] The complainant refers to the Human Rights Committee's concluding observations on the fourth and fifth periodic reports of Spain (CCPR/C/79/Add.61 and CCPR/C/ESP/CO/5, respectively).

Torture thereafter, and did so only once the Constitutional Court dismissed his application for *amparo* against his criminal conviction. It also considers references by the complainant to the International Covenant on Civil and Political Rights to be irrelevant.

4.3 The complaint is based on an imprecise presentation of the facts. Force was used during the complainant's arrest to the degree needed to subdue him, following normal arrest procedure. There was a warrant for his arrest and he remained under the supervision of court officials throughout proceedings. The regime of incommunicado detention applied in line with the State party's law restricted only his right to choose a lawyer to assist him initially at the police station and the right to inform persons of his choice that he had been arrested. Family members, however, were in fact aware of his arrest. He was held incommunicado for only a short period of time, from 24 to 28 October 2002, after which he was handed over to the judicial authorities. The complainant's allegations that the criminal proceedings and his conviction had been motivated by the interest shown in his case in political circles and by the public, and the judges' sense of collegial solidarity, were baseless, given that at no time did he object to the participation of any of the judges responsible for trying him.

4.4 With regard to the alleged violation of article 15 of the Convention, the complainant has failed to provide even circumstantial evidence that his statement was made under torture, but simply alleged that the State party did not duly investigate his claim of having been tortured.

4.5 The criminal division of the National High Court did look into whether the complainant's statement to the Basque police was obtained under torture. It noted that the complainant retracted his statement in court. It concluded that a judicial investigation of the facts had been conducted and confirmed that there was nothing to indicate that such a crime had been committed. Five police officers testified separately that the complainant had been represented by a lawyer and informed of his rights, including the right to draft or dictate his statement or some of his replies. He did not complain of being ill-treated or tortured in between statements, which were read by the detainee and lawyer without comment. It was also established that the police officers testified during the trial proceedings under "precautionary numbers", as provided for in article 4.1 of Organic Law No. 19/1994 on the protection of witnesses and experts in criminal cases. The lawyer who assisted the complainant at the police station on 26 and 27 October indicated in three statements that he had not witnessed any irregularities, and that otherwise he would have reported them; that the detainee had replied freely and spontaneously to questions; that the complainant had provided detailed replies in his third statement on information gathered about the routine movements of Judge Lidón Corbi; and, lastly, that both had read and signed the statement. The medical report of 25 October 2002 referred to the complainant's claim that, at the time of his arrest, he had been thrown to the ground, kicked in the head several times and kept in uncomfortable positions that had made him feel nauseous. However, according to that report, no signs had been found of kicks to the back of the neck or of any other blows to the body. Nor did the forensic medical report of 26 October reveal any symptoms of ill-treatment or injuries. Indeed, during an examination on 28 October 2002, after his release from police custody, by the forensic doctor of the First Central Examining Magistrate's Court of the National High Court, the complainant refused to undress to be examined and, appearing calm and clear-headed, stated that there was nothing wrong with him. The complainant's defence counsel participated fully throughout the proceedings in the National High Court.

4.6 The two dissenting opinions in respect of the Supreme Court decision of 4 December 2006 on the complainant's application for cassation do not maintain that the complainant's statement was obtained under torture. Rather, the judges discuss in their opinions whether, in general, statements made in police stations that are subsequently

retracted in court can be considered as sufficiently conclusive evidence to convict a defendant.

4.7 With regard to the alleged violations of article 12, read in conjunction with article 15, of the Convention, the domestic courts carried out the necessary investigations and examined the medical reports from the defendant's time in custody. However, they did not find sufficient evidence that the alleged crime had been committed. When it tried the complainant, the National High Court again looked at the circumstances in which he had been questioned. The complainant's lawyer, chosen by him, was present during questioning but submitted no evidence to support the complainant's allegations. It was noteworthy that the complainant filed his claim of having been tortured three months after his arrest and that he did not have recourse to any international body until after his conviction for the offence of terrorism.

4.8 The complainant does not explain how article 14 of the Convention has been violated. He has never demanded redress or compensation from the authorities of the State party, despite the fact that, under the law, the shelving of criminal proceedings does not preclude civil or administrative actions to claim compensation. Moreover, it is within the Committee's powers to award compensation to the complainant, even if it were to find a violation of the Convention.

Complainant's comments on the State party's observations

5.1 On 29 November 2011, the complainant submitted comments on the State party's observations.

5.2 The violations of articles 12 and 15 of the Convention should be taken as a whole. The failure to investigate the torture claim is neither a mere matter of procedure nor incidental. Articles 12 and 15 were infringed in succession.

5.3 As far as violations of article 12 of the Convention are concerned, he contends that he exhausted all the legal options available in the State party to have his claims investigated and to have those responsible for acts of torture punished. That the State party should conclude that sufficient evidence that acts of torture had been committed was lacking can be explained only by the failure of the courts to investigate his claims. It was only at the complainant's request that the Second Examining Magistrate's Court of Vitoria-Gasteiz admitted forensic reports as evidence. However, the Court turned down his plea to allow him to testify and to identify the police officers involved in the matter and to have them testify, and subsequently closed the case. The presence of legal counsel assigned by the State party while he made his statement to the police was a mere formality. He was unable to choose a lawyer he trusted at the time of his arrest because antiterrorism laws did not allow it. The Provincial High Court of Álava stated that the complainant's torture claims needed to be corroborated by supporting evidence. However, at no time did it suggest that the Second Examining Magistrate's Court of Vitoria-Gasteiz gather such evidence or look into evidence that might bear out the complainant's claims.[8]

5.4 With regard to the alleged violations of article 15 of the Convention, it is true that the judges who expressed dissenting opinions in respect of the Supreme Court decision do

[8] The Provincial High Court of Álava indicated that the victim's statements could be considered as evidence for the prosecution, but that his claims needed to be backed up by supporting evidence, which in the case in question not only was lacking, but had been ruled out in the forensic medical reports. As a result, it was unnecessary to request that the Ertzaintza identify the persons involved in the questioning of the complainant, especially given the potential threat to the safety of those officers, whose well-being the courts also had a duty to safeguard.

not conclude that the self-incriminating statement was the result of the torture to which the complainant had been subjected, but nor do they rule it out. They note that his conviction was based on no evidence other than his self-incriminating statement, that the statement could be a source of evidence but not proof that the offences in question had been committed, and that it could not be submitted in court as testimony by the police officers who took it or heard it while it was being given. Under the case law of the Supreme Court, statements made in police stations do not in themselves constitute sufficient evidence. It was also incongruous that the Supreme Court should find that the complainant's statements and alleged links with the ETA member to whom he had supposedly passed on information about the movements of Judge Lidón Corbi were insufficient as evidence to convict that person.

5.5 The complainant requests the Committee to rule that he is entitled to fair redress, including compensation, in conformity with article 14 of the Convention.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering an allegation in a communication, the Committee against Torture must decide whether or not the communication 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.

6.2 In accordance with article 22, paragraph 5 (b), of the Convention, the Committee does not consider any complaint unless it has ascertained that the complainant has exhausted all available domestic remedies. In the present case, the Committee takes note of the complaint of torture lodged by the author on 29 January 2003, the decision to stay the proceedings, the subsequent appeals against that decision and the decision of 30 March 2004 by the Provincial High Court of Álava to dismiss his subsidiary appeal. The Committee also takes note of the application for *amparo* for violations, inter alia, of his right to mental and physical integrity, filed by the complainant on 22 April 2004. This application was ruled inadmissible by the Constitutional Court on 23 June 2005, because the complainant's legal representative had failed to comply with the requirement that he submit his credentials as the complainant's legal representative. The complainant gives no explanation for the non-compliance with that requirement.

6.3 With regard to the criminal proceedings against the complainant, the Committee takes note of the conviction handed down by the National High Court on 12 December 2005 and of the Supreme Court's ruling of 4 December 2006 on his application for cassation, which indicate that the complainant claimed at his trial by the Fourth Examining Magistrate of the National High Court and in his application for cassation to the Supreme Court that he had incriminated himself as a result of being tortured by the police. On 31 March 2008, the Constitutional Court rejected the application for *amparo* filed in response to the Supreme Court decision.

6.4 The Committee notes that the complainant did not exhaust domestic remedies in respect of his claim of having been tortured, because he did not comply with the legal requirements for the application for *amparo* to Constitutional Court. Nevertheless, the Committee notes that the complainant informed the competent courts during criminal proceedings against him that he had been tortured. Given that torture is an offence that must be prosecuted ex officio, in conformity with article 12 of the Convention, the Committee considers that there is no impediment under article 22, paragraph 5 (b), of the Convention to the admissibility of the communication. Given that the other admissibility requirements

have been met, the Committee finds the communication admissible and proceeds to consideration of its merits.

Consideration of the merits

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

7.2 The complainant claims to have been the victim of a violation of article 12 of the Convention because the allegations he made to the courts of having been subjected to torture and ill-treatment while being held incommunicado did not lead to a prompt, independent and impartial investigation. The State party indicates that the courts carried out the necessary inquiries and examined the medical reports from his time in detention, but did not find sufficient evidence that torture had taken place. The Committee notes that the complainant lodged a complaint of torture and ill-treatment, which was examined by the Second Examining Magistrate's Court of Vitoria-Gasteiz. On the basis of forensic medical reports, which did not support the complainant's allegations, the Court ordered a stay of proceedings. The Provincial High Court of Álava subsequently dismissed the complainant's appeal, also on the basis of the forensic medical reports. The Committee also notes that the complainant requested that further evidence be taken, but that his request was turned down by the courts, which considered this unnecessary. The Committee further notes that, during committal proceedings against the complainant by the Fourth Examining Magistrate's Court of the National High Court and the subsequent trial in that court, the complainant stated that he had incriminated himself as a result of the torture and ill-treatment to which he had been subjected. Neither the information contained in the file before the Committee nor the State party's observations indicate that the courts took measures to investigate the complainant's allegations. The National High Court, in particular, merely examined the evidence before it, including the self-incriminating statement, in order to establish the complainant's responsibility. The Supreme Court also failed to act on the claim of torture made by the complainant as part of his application for cassation.

7.3 The Committee considers that the points outlined in the previous paragraph indicate a failure to investigate on the part of the authorities mentioned therein that is incompatible with the obligation on the State, under article 12 of the Convention, to ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed. The Committee can find nothing in the file before it to justify the failure of the courts to take other evidence aside from the forensic medical reports. The Committee considers that such additional evidence was relevant, given that, although forensic medical reports are generally important for determining whether acts of torture have taken place, they are often insufficient and need to be compared with other sources of information.[9] The Committee therefore concludes that the facts before it reveal a violation by the State party of article 12 of the Convention.

7.4 The complainant claims to be the victim of a violation of article 15 of the Convention, in that self-incriminating statements made by him under torture in the police station were used as evidence leading to his conviction. The Committee notes that, under that provision, the State party must ensure that any statement which is established to have

[9] See communication No. 59/1996, *Blanco Abad v. Spain*, decision of 14 May 1998, para. 8.8. See also general comment No. 32 (2007) of the Human Rights Committee, on the right to equality before courts and tribunals and to a fair trial (art. 14 of the Covenant) (*Official Records of the General Assembly, Sixty-second Session, Supplement No. 40*, vol. I [A/62/40 (vol. I)], annex VI), para. 41.

been made as a result of torture shall not be invoked as evidence in any proceedings. In the view of the Committee, the rulings by the National High Court and Supreme Court show that the complainant's self-incriminating statement was lent substantial weight in proceedings against him. Nevertheless, the Committee considers that the complainant has not provided information, such as additional medical certificates issued on the basis of examinations requested by him or statements by witnesses, that would allow it to conclude that his self-incriminating statement was in all probability a result of torture.[10] The Committee therefore concludes that the information before it does not reveal a violation of article 15 of the Convention.

7.5 The complainant claims to be a victim of a violation of article 14, in that the State party should have acted to ensure that he received redress for the harm suffered as a victim of torture. With regard to this claim, the Committee also considers that the information provided by the complainant, as stated in the previous paragraph, is not sufficient to allow it to conclude that his self-incriminating statement was in all probability a result of torture. The Committee therefore concludes that the information before it does not reveal the existence of a violation of article 14 of the Convention.

8. The Committee against Torture, acting under article 22, paragraph 7, of the Convention, is of the view that the facts before it reveal a violation of article 12 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

9. Pursuant to article 12 of the Convention, the Committee considers that the State party is under an obligation to provide the complainant with an effective remedy, including a full and thorough investigation of his claims. The State party is also under an obligation to prevent similar violations in the future.

10. Pursuant to article 118, paragraph 5, of its rules of procedure, the Committee requests the State party to inform it, within 90 days of notification of this decision, of the action taken in response.

[Adopted in English, French, Spanish and Russian, 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.]

[10] Communication No. 219/2002, *G.K. v. Switzerland*, decision of 7 May 2003, para. 6.11.