



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE
Ninety-second session
17 March-4 April 2008

DECISION

Communication No. 1375/2005

Submitted by: José Luis Subero Beisti (represented by counsel,
Mr. Marino Turiel Gómez)

Alleged victim: The author

State party: Spain

Date of communication: 7 January 2003 (initial submission)

Document references: Special Rapporteur's rule 97 decision, transmitted to the
State party on 7 April 2005 (not issued in document form)

Date of decision: 1 April 2008

Subject matter: Evaluation of evidence and scope of the review of criminal
cases on appeal by Spanish courts

Procedural issues: Failure to substantiate claims

* Made public by decision of the Human Rights Committee.

Substantive issues: Right to have the sentence and conviction reviewed by a higher tribunal according to law

Article of the Covenant: 14, paragraph 5

Article of the Optional Protocol: 2

[ANNEX]

Annex

**DECISION OF THE HUMAN RIGHTS COMMITTEE UNDER THE
OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT
ON CIVIL AND POLITICAL RIGHTS**

Ninety-second session

concerning

Communication No. 1375/2005*

Submitted by: José Luis Subero Beisti (represented by counsel,
Mr. Marino Turiel Gómez)

Alleged victim: The author

State party: Spain

Date of communication: 7 January 2003 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 1 April 2008,

Adopts the following:

Decision on admissibility

1. The author of the communication, which is dated 7 January 2003, is José Luis Subero Beisti, a Spanish national, born in 1964 and currently in prison. He alleges violation by Spain of article 14, paragraph 5, of the Covenant. The Optional Protocol entered into force for Spain on 25 April 1985. The author is represented by counsel, Mr. Marino Turiel Gómez.

The facts as presented by the author

2.1 On 13 April 2000, the Logroño Provincial Court sentenced the author to nine years' imprisonment for sexual assault with oral penetration, and unlawful detention. According to the evidence given by the victim of the assault, in the early hours of 5 April 1997, the author had insulted him in the bar where they were. When the victim left the bar the author followed him,

* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine Chanet, Mr. Yuji Iwasawa, Mr. Edwin Johnson, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Ms. Elisabeth Palm, Mr. Rafael Rivas Posada, Sir Nigel Rodley and Mr. Ivan Shearer.

detained him for some time, hit him in the face several times and dragged him to a park where he forced him to perform fellatio on him. The victim managed to get away and asked a workman for help. At the trial the author admitted that he had had an altercation with the victim but denied sexually assaulting him. The author believes he was convicted in the absence of sufficient evidence against him.

2.2 The author lodged an appeal in cassation with the Criminal Division of the Supreme Court, alleging violation of his right to the presumption of innocence and errors in the appraisal of evidence. The author maintained that the victim's statement was not sufficient evidence against him, that the Court's assessment of the evidence had been arbitrary, and that it had erred in its evaluation of an expert report that had found that there were no traces of blood or saliva on the underclothes the author had been wearing on the day in question.

2.3 In a ruling dated 6 July 2001 the Criminal Division of the Supreme Court denied the appeal in cassation. On the alleged violation of the presumption of innocence, the Court ruled that, in accordance with its settled case law, the scope of review by the court of cassation in respect of the right to presumption of innocence covers only the existence of evidence for the prosecution, i.e., the factual aspects of the alleged offence and the accused's involvement therein, and excludes the assessment of that evidence by the sentencing court. The Criminal Division found that evidence of guilt existed and that it was sufficient to set aside the right to presumption of innocence. As to the alleged error in the evaluation of the evidence, the Court ruled that, in accordance with its settled case law, an error of fact must be substantiated by a document providing evidence of the error and which is of sufficient probative value in itself, is not contradicted by other evidence and contains significant information that affects one or more of the points in the judgement. In the view of the Criminal Division these criteria were not met in the author's case.

2.4 On 20 May 2002 the Constitutional Court rejected the author's application for *amparo*. In its view the Supreme Court ruling examined and answered all the alleged grounds for cassation and found no irregularities. The Constitutional Court also considered that there was sufficient evidence against the author.

The complaint

3. The author claims that he was deprived of his right to have his conviction and sentence reviewed by a higher court. In his view the right contained in article 14, paragraph 5, of the Covenant includes a re-evaluation of the evidence produced at trial, and that was not done by the Supreme Court. The author refers to the position taken by the Supreme Court plenary in response to the Committee's Views in *Gómez Vázquez*,¹ finding that the Spanish remedy of cassation does not constitute an effective remedy within the meaning of article 14, paragraph 5, of the Covenant.

¹ Communication No. 701/1996, *Gómez Vázquez v. Spain*, Views of 20 July 2000.

State party's observations on admissibility

4.1 In a note dated 7 June 2005 the State party submitted its comments on the admissibility of the communication. It argued that the domestic courts had evaluated the facts in a legitimate manner and with due care and diligence. The Supreme Court ruling testifies to a thorough and careful review of the evidence. As to the lack of evidence of guilt, the State party points out, citing the Court's ruling, that there was sufficient evidence apart from the victim's testimony. In the State party's view, therefore, the communication is unfounded and constitutes an abuse of the right to submit communications.

4.2 Furthermore, the author has failed to exhaust domestic remedies, since he has not brought any complaint alleging lack of remedy before the Supreme Court or the Constitutional Court, notwithstanding the doctrine of the Constitutional Court requiring that the remedy of cassation should have sufficient scope to meet the criteria of article 14, paragraph 5, of the Covenant.

Author's comments

5. On 29 July 2005 the author contested the State party's observations. He states that it is not true to say that the Supreme Court reviewed the evidence, for, as the Committee's case law shows, the remedy of cassation does not permit it to do so. He restates his view that the evidence was not assessed logically or rationally and that the Supreme Court failed to give due weight to the evidence for the defence. As to the exhaustion of domestic remedies, the author maintains that he exhausted them with his application for *amparo* in the Constitutional Court.

Considerations of admissibility

6.1 Pursuant to rule 93 of its rules of procedure, before considering any claim contained in a communication, the Human Rights Committee must determine whether it is admissible under the Optional Protocol to the Covenant on Civil and Political Rights.

6.2 The Committee has ascertained, as required under article 5, paragraph 2 (a), of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

6.3 The Committee notes the State party's observation that the author failed to exhaust domestic remedies, since he has not brought any complaint alleging lack of remedy before the Supreme Court or the Constitutional Court. The Committee observes, however, that the State party does not provide sufficient information on the kinds of remedies it is referring to, or on their effectiveness. Consequently and in the light of its jurisprudence, nothing prevents the Committee from finding that domestic remedies have been exhausted.

6.4 With regard to the alleged violation of article 14, paragraph 5, it transpires from the text of the Supreme Court judgement that the Court dealt extensively with the assessment of all the evidence by the court of first instance. In this regard, the Supreme Court considered that the evidence presented against the author was sufficient to outweigh the presumption of innocence, according to the test established by jurisprudence to ascertain the existence of sufficient evidence for the prosecution in certain types of crime such as sexual assault. The claim regarding article 14, paragraph 5, therefore, is insufficiently substantiated for purposes of admissibility.

The Committee concludes that this claim is inadmissible under article 2 of the Optional Protocol.² In the light of this conclusion, the Committee believes that it is not necessary to refer to the State party's argument that the communication constitutes an abuse of the right to submit communications.

6.5 The Human Rights Committee therefore decides:

- (a) That the communication is inadmissible under article 2;
- (b) That this decision be transmitted to the State party and to the author.

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

² See communications Nos. 1399/2005, *Cuartero Casado v. Spain*, decision of 25 July 2005, para. 4.4; and 1059/2002, *Carvallo Villar v. Spain*, decision of 28 October 2005, para. 9.5.