



**International covenant
on civil and political
rights**

Distr.
RESTRICTED*

CCPR/C/87/D/1441/2005
14 August 2006

Original: ENGLISH

HUMAN RIGHTS COMMITTEE
Eighty-seventh session
10-28 July 2006

DECISION

Communication No. 1441/2005

<u>Submitted by:</u>	Apolonio García González (represented by counsel, Mr. José Luis Mazón Costa)
<u>Alleged victim:</u>	The author
<u>State party:</u>	Spain
<u>Date of initial communication:</u>	11 November 2005 (initial submission)
<u>Date of adoption of decision:</u>	25 July 2006

* Made public by decision of the Human Rights Committee.

Subject matter: Evaluation of evidence and extent of review of criminal case against complainant on appeal by Spanish courts

Procedural issue: Failure to substantiate claims

Substantive issue: 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**

Eighty-seventh session

concerning

Communication No. 1441/2005*

Submitted by: Apolonio García González (represented by
counsel, Mr. José Luis Mazón Costa)

Alleged victim: the author

State party: Spain

Date of initial communication: 11 November 2005 (initial submission)

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

Meeting on 25 July 2006

Adopts the following:

DECISION ON ADMISSIBILITY

1. The author of the communication, dated 11 November 2005, is Apolonio García González, a Spanish citizen of Venezuelan origin born in 1954. He claims to be a victim of a violation by Spain of article 14, paragraph 5, of the Covenant. The Optional Protocol entered into force for Spain on 25 April 1985. He is represented by counsel, Mr. José Luis Mazón Costa.

Factual background

2.1 In August 1997, the author participated, together with eight other persons, in a drug trafficking operation consisting in transporting cocaine from Venezuela to Spain. This operation was dismantled by the Spanish Police at the harbour of Fuerteventura (Canary Islands), where 60 kgs of cocaine intended for delivery in Las Palmas de Gran Canaria were confiscated.

* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Maurice Glèlè Ahanhanzo, Mr. Edwin Johnson, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Ms. Elisabeth Palm, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Ivan Shearer and Mr. Hipólito Solari-Yrigoyen.

2.2 On 25 July 2001, the Spanish National High Court of Justice (*Audiencia Nacional*) indicted the author for aggravated offences against public health and sentenced him to 16 years and 10 months' imprisonment and payment of a fine of 200 million PTA (1,202,000€).

2.3 The author appealed to the Spanish Supreme Court, alleging a violation of the right to judicial remedy and the right of defence, based on alleged irregularities in the proceedings regarding the non-admittance of some evidence presented by the author, on the alleged basis that the crime was provoked artificially and on the allegedly discretionary appreciation by the Court of the aggravated nature of the crime. On 23 January 2003, the Supreme Court dismissed both grounds of appeal.

2.4 The author acknowledges that he has not submitted an application for *amparo* to the Constitutional Court. He contends that this remedy would have no prospect of success, given that the Spanish Constitutional Court has repeatedly rejected applications for *amparo* against conviction and sentence.

2.5 The author acknowledges that in December 2003 he had sent a letter to the European Court of Human Rights stating his intention to submit his case, although his complaint was never formally filed and therefore his case has not been examined by the European Court.

The complaint

3. The author claims to be a victim of a violation of article 14, paragraph 5, of the Covenant, because he could not obtain a proper re-evaluation of the evidence presented in his case given the limited nature of the Spanish remedy of *cassation*.

Issues and proceedings before the Committee

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

4.2 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. It notes that the author's case was never formally filed to the European Court of Human Rights and that, therefore, this Court never examined it.

4.3 The Committee takes note of the author's allegations that he did not obtain a proper re-evaluation of his case on appeal. However, the Committee also notes that it transpires from the text of the judgment of the Supreme Court that the Court did deal extensively with the assessment of the evidence by the court of instance. In particular, the Supreme Court examined the issue of admissibility of the evidence presented by the author in light of the jurisprudential principles of pertinence and relevance and concluded that the court of instance correctly rejected the evidence on the basis that it did not relate to the object of the case. 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.

4.4 The Human Rights Committee therefore decides:

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

[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.]
