

## HUMAN RIGHTS COMMITTEE

### Griffin v. Spain

Communication No. 493/1992

11 October 1993

CCPR/C/49/D/493/1992\*

### ADMISSIBILITY

*Submitted by: Gerald John Griffin*

*Alleged victim: The author*

*State party: Spain*

*Date of communication: 13 January 1992 (initial submission)*

*Documentation references: Prior decisions - Special Rapporteur's rule 91 decision, dated 22 June 1992 (not issued in document form)*

*Date of present decision: 11 October 1993*

The Human Rights Committee, acting through its Working Group pursuant to rule 87, paragraph 2, of the Committee's rules of procedure, adopts the following decision on admissibility.

### **Decision on admissibility**

1. The author of the communication is Gerald John Griffin, a Canadian citizen born in 1948. At the time of submitting the communication, he was detained at a penitentiary in Vitoria, Spain.<sup>1/</sup> He claims to be the victim of violations by Spain of articles 7, 9 paragraphs 1 and 2, 10, 14, 17, and 26 of the International Covenant on Civil and Political Rights.

The facts as submitted by the author:

2.1 In March 1991, the author and an acquaintance, R.L., started a pleasure journey through Europe. Upon arrival in Amsterdam, they rented a camper. R.L. suggested to pay the rent with the author's credit-card, as his own account was limited, and that he would reimburse the author. In Amsterdam, R.L. introduced the author to another Canadian, I.G., with whom he went off to bars

on several occasions, leaving the author behind. One day R.L. and I.G. returned with a different camper, claiming that the first one had broken down.

2.2 I.G. suggested to meet up again in Ketama, Morocco, where they could stay at a friend's place. The author and R.L. then drove to Morocco, where they spent five days; the camper was parked in a garage.

2.3 On 17 April 1991, on their return to Holland, the author and R.L. were arrested by the police of Melilla, Spain. It transpired that R.L., I.G. and his Moroccan friend had concealed 68 kilos of hashish in the camper. R.L. allegedly confessed his guilt and told the police that the author was innocent. It is submitted that, during the interrogation, the police did not seek the assistance of an interpreter, although the author and R.L. did not speak Spanish and the investigating officers did not speak English. The statements were taken down in Spanish.

2.4 On 18 April 1991, the author and R.L. were brought before an examining magistrate. Upon entering the court room, the interpreter allegedly told the author that R.L. had confessed and had said that the author was innocent. The examining magistrate allegedly stated that if the author had no criminal record over the past five years, he would be released within a few days. The author admitted that in 1971, he had been convicted for possession of 28 grams of hashish and sentenced to six months suspended imprisonment.

2.5 The author was imprisoned at Melilla. Through mediation of a prisoner who spoke a little English, the author obtained the services of a lawyer. He states that she asked large sums of money, promising on several occasions that she would return with all the documents pertaining to his case and with an interpreter, so as to prepare his defence in consultation with him. The author notes that she tricked him constantly, assuring him and his relatives that he would be released soon. In spite of her promises, she did not prepare his defence. In this context, the author adds that, two days before the start of the trial, she came to the prison, again without an interpreter. With the assistance of a prisoner who spoke broken English, she told the author to reply with "yes" or "no" to all questions posed during the trial.

2.6 On 28 October 1991, the author and R. L. were tried before the Audiencia Provincial (Sector de Malaga) in Melilla. The author states that the court interpreter only spoke a little English and translated into French, but that neither he nor R. L. had any substantial knowledge of French. The lawyer, however, did not raise any objections. During the trial, the judge asked the author whether he had always been accompanying R. L. when he drove the camper. Due to poor translation of the question, the author misunderstood it and answered in the affirmative.

2.7 The author was sentenced to eight years, nine months and one day imprisonment. He requested his lawyer to appeal on his behalf; she first refused, then again requested a large sum of money, upon which the author filed a complaint against her with the bar (Colegio de Abogados) of Melilla.

2.8 On 26 November 1991, riots broke out in the prison of Melilla. Prisoners set fire to the patio and climbed onto the roof. The author explains that as he has a lame leg, he could not climb up and because the guards had locked the door to the main building, he was nearly caught in the fire. He

states, that, only because he helped to carry a man who appeared to suffer from heart attack, he was allowed by the guards to leave the patio. After the police intervened with teargas and rubber bullets, and the prison authorities promised improvements in the conditions of detention, the situation calmed down. On 28 November 1991, the author was transferred to a prison in Sevilla.

2.9 On 10 January 1992, the author was informed that a legal aid lawyer had been assigned to him and that an appeal was being filed on his behalf. He states that he made numerous unsuccessful attempts to obtain information on the identity of the lawyer and the date of the hearing of the appeal. On 7 March 1992, he started a hunger strike to enforce his right to a fair trial. He was subsequently transferred to the infirmary of a prison in Malaga. At the end of June 1992, he learned from another lawyer that the Supreme Court had dismissed the appeal on 15 June 1992. According to the author, the Supreme Court did not give reasons for its decision.

2.10 The author states that his health is poor and that he suffers from extreme depressions because of his unfair treatment by the Spanish authorities. He lost 21 kilos because of his hunger strike and developed pneumonia. In September 1992, he returned to eating food, as his hunger strike did not have any effect upon the Spanish authorities.

2.11 Finally, the author submits that he has exhausted all available domestic remedies. In this context, he states that he has written letters to several instances in Spain, including the Constitutional Court, the Ombudsman (Defensor del Pueblo), the judge and public prosecutor of Vigilancia and the Prosecutor General (Fiscal General del Estado). The Constitutional Court reportedly replied that it was unable to assist him, but that his case would be passed on to the Prosecutor General. The latter never replied to the author's letter. The Ombudsman reportedly replied that he could not be of any assistance to him because he was awaiting trial. The author questions the effectiveness of this remedy, as the Ombudsman replied to an inmate of the prison, that he was unable to assist because he (the inmate) had already been sentenced. By letter of 3 March 1992, the prosecutor of Vigilancia informed the author that he would look into the claim of absence of a competent interpreter, but he never received any reply.

#### The complaint:

3.1 The author claims that he has been subjected to cruel, inhuman and degrading treatment and punishment during his incarceration at the prison of Melilla. The living conditions in this prison are said to be "worse than those depicted in the film 'Midnight Express'; a 500 year-old prison, virtually unchanged, infested with rats, lice, cockroaches and diseases; 30 persons per cell among whom old men, women, adolescents and an eight month-old baby; no windows, but only steel bars open to the cold and the wind; high incidence of suicide, self-mutilation, violent fights and beatings; human feces all over the floor as the toilet, a hole in the ground, was flowing over; sea-water for showers and often for drink as well; urine-soaked blankets and mattresses to sleep on in spite of the fact that the supply rooms were full of new bed linen, clothes etc. He added that he has learned that the prison has been "cleaned up" after the riots, but that he can provide the Committee with a list of witnesses and with a more detailed account of conditions and events in said prison.

3.2 Concerning article 9, paragraphs 1 and 2, of the Covenant, the author claims that he was arbitrarily arrested and detained since there was no evidence against him. He submits that some

people he met in prison and who were charged with a similar offence were either released or acquitted, whereas he was detained in spite of R.L.'s confession and the promise of the examining magistrate to release him if he had no criminal record. He further contends that as there was no interpreter present at the time of their arrest, he was not properly informed of the reasons for his arrest and of the charges against him.

3.3 The author claims that while awaiting trial, he was detained in a cell together with persons convicted for murder, rape, drug traffic, armed robbery, etc. According to him, there is no distinction between convicted and unconvicted prisoners in Spain. Furthermore, he claims that the Spanish penitentiary system does not provide facilities for reformation and social rehabilitation. In this context, he submits that he, together with an inmate at the Melilla prison, tried to teach reading and writing to some prisoners, but that the prison director did not allow them to do so. Moreover, the prison authorities have ignored all his requests for Spanish grammar books and a dictionary. All this is said to constitute a violation of article 10.

3.4 The author claims that his rights under article 14 of the Covenant have been violated. With regard to unfair trial, he submits that the trial lasted only ten minutes, that neither he nor R. L. understood anything of what was going on, and that he was not allowed to give evidence or to defend himself. He points out that neither the judge nor the lawyer objected to the incompetence of the interpreter, and that his conviction might be based on the discrepancy between his original statement to the examining magistrate (namely, that he was often left behind by R. L. and the other Canadian and that they once returned with a different camper) and his reply at the trial (his affirmation that he was always accompanying R. L. when the latter drove the camper). The author reiterates that there is no evidence against him. In support of his allegations, he encloses two affidavits of R. L., dated 28 January 1992, concerning the author's innocence and the inadequacy of the interpreter. The author further claims that he has been sentenced to a longer term of imprisonment than Spanish nationals normally are in similar cases.

3.5 As to the preparation of his defence, the author affirms that to date he has not received a single document pertaining to his case. He notes that R. L. had admitted that he owned the camper, that in Canada he had prepared its roof to conceal the drugs, that it was then shipped to the Netherlands where he and I. G. forged the papers and licence plates with the help of those of the rental camper, and that he had invited the author to join him on the trip merely to make it appear less conspicuous. The author contends that the lawyer did not make any efforts to obtain evidence about the veracity of R. L.'s confession, and that she never interviewed them in the presence of an interpreter.

3.6 With regard to the appeal, the author submits that the lawyer assigned to him never sought to contact him to discuss the case. It was not until September 1992, three months after the dismissal of the appeal, that he learned the name of the representative. Furthermore, the author submits that he was denied the opportunity to defend himself on appeal, as the hearing was held in his absence.

3.7 The author further contends that the Spanish authorities have interfered with his mail, in violation of article 17. He submits that on several occasions, letters addressed to him by friends, family and his lawyer in Canada were either returned to the sender or simply disappeared.

3.8 Finally, the author claims that he is discriminated against by the Spanish authorities. In this

context, he submits that he has not been treated in the same manner before the courts as Spanish nationals are treated, e.g. with regard to facilities to prepare the defence or length of term of imprisonment. He further submits that the prison authorities have refused to provide him with work (which makes it possible to have the sentence reduced by one day for every day of work), whereas Spanish prisoners are able to obtain work upon request.

The State party's information and observations and the author's comments thereon:

4.1 In its submissions dated 28 October 1992 and 22 March 1993, the State party argues that the communication is inadmissible under article 5, paragraph 2(b), of the Optional Protocol, as the author has failed to apply for amparo before the Constitutional Court of Spain.

4.2 With regard to the claims of ill-treatment in prison, the State party refers to the Ombudsman's 1991 report on ill-treatment in Spanish prisons. It highlights the efforts made by the Director of Penitentiary Affairs, as well as by the prison officials, to eliminate instances of ill-treatment in prison. The Ombudsman points out that his conclusions are based not only on complaints received or periodic visits to the penitentiaries, but also on the results of investigations into such complaints. He reports that in 1991, his office received only a few sufficiently substantiated complaints about ill-treatment; two of them were immediately investigated by the penitentiary administration. He concludes that the Director of Penitentiary Affairs has thoroughly cooperated in the investigation of complaints transmitted to his office by the Ombudsman, and that the penitentiary administration has always performed its duty rapidly and efficiently, by investigating the events complained of, adopting adequate remedies wherever the allegations could be proven, and adopting protective measures for disciplinary proceedings. The State party submits that the Ombudsman received several letters from the author, that each letter was examined by the Ombudsman, and that on each occasion the author was informed about the Ombudsman's findings.

4.3 The State party notes that, on 31 March 1992, the author was transferred to a prison in Malaga, where he received the necessary medical attention, and where he had numerous interviews with the sociologist and legal adviser, who informed him on the possibilities of his hunger strike but limited himself to selective nutrition, as a result of which he lost 7 kilos, and that no serious complications arose. Finally, the State party points out that the author did not initiate any proceedings with regard to the alleged inhuman conditions of detention.

4.4 With regard to the author's remaining complaints, the State party submits copies of the relevant documents and argues that:

- There was sufficient evidence against the accused for the police to arrest and detain them. In this context, the State party refers to the documents and photographs relating to the amount of the drugs found, their value and to the camper.
- Neither the author, nor R. L. made any statements to the police. When arrested, they were informed of the charges against them and of their rights, under article 520 of the Code of Criminal Procedure. Although a lawyer was assigned to them, the author and R. L. indicated that they did not want to make any statements in the absence of an interpreter.

- While represented by a lawyer and assisted by an interpreter, the author made the following deposition during the preliminary hearing: “that he had no knowledge of the drugs which were hidden in the camper, that he was travelling with his friend, that they made a stop in Ketama where they stayed for five days, that the camper was parked in a garage near to the house, the camper from the other Canadian whom they had met in Amsterdam”.
- R. L.’s deposition reads as follows: “that he went to Morocco with the intention to pick up the hashish and to transport it to Canada, that a third person had contacted him for this purpose, that he did not know this person’s name, [...], that Gerald John Griffin did not know of the hashish, that he only accompanied him for the purpose of tourism, that they spent seven days in Ketama, doing sight-seeing during these seven days, that they were lodged at the house of an Moroccan friend, who was a friend of his Canadian friend (I.G.), [...]” 2/
- Upon enquiry, the examining magistrate was informed by Interpol in Canada that the author had a prior criminal record for holding and distributing narcotics, for which he had been sentenced to six months’ imprisonment.
- Likewise, a letter, dated 9 October 1991, from the Solicitor General of Canada, addressed to author’s counsel in Canada, belonged to the documents bearing on the case; in this letter, counsel was informed that the author had been granted a pardon under the provisions of the Criminal Records Act.
- According to forensic experts in Melilla, drug traffickers generally claim that one of them is innocent. In evaluating the evidence in drug trafficking offences, the courts do not only consider the statements made by the accused, but also the amount of drugs involved and the hiding place.
- The alleged inadequate preparation and conduct of the author’s defence at the trial cannot be attributed to the State party, as counsel was privately retained.

Besides, the State party submits, counsel’s professional skills are reflected in her letter of 22 November 1991, addressed to the Colegio de Abogados of Melila. In this letter, counsel states that, on 30 October 1991, she informed the author of his sentence, and of the possibility to appeal to the Supreme Court by way of request for cassation, either with the assistance of a solicitor and barrister assigned to him by the judicial authorities, or by retaining them privately. The author instructed her to prepare and file a petition for leave to appeal, which she set out to do on 2 November 1991. However, on 8 November 1991, the author informed her of his decision to retain another lawyer for the purpose of the appeal. By registered letter of 11 November 1991, she pointed out to the author that he had to grant power of attorney to any lawyer retained by him. She further informed him that she would forward all documents in his case to his representatives, once he had provided her with their names and addresses, and once he had paid the outstanding fees. On 21 November 1991, she was notified that the Audiencia de Malaga considered that the appeal had been prepared and that it summoned the defence to appear before the Supreme Court in fifteen days. She then immediately called the author and again pointed out to him the urgency of empowering the solicitor and barrister who would represent him. Upon contacting the barrister who,

according to the author, had agreed to represent him, she was told that he was not in charge of the appeal.

The State party points out that subsequently, counsel, concerned about the expiration of the statute of limitations and about the fact that the author did not take any measures to secure legal representation, requested the Colegio to intervene.

She further requested the Supreme Court, on 29 November 1991, to assign legal assistance to the author and to stay the proceedings in the intervening period. The State party submits that it was only after counsel intervened that the author himself requested legal aid.

- Both accused made statements during the trial, while assisted by an interpreter and lawyer. No complaints were ever received about the competence of the court interpreter who is assigned to the tribunals of Melilla.
- It is noted that the judge asked R. L. and *not* the author whether he was always accompanied by the latter, whereupon R. L. answered “that the author accompanied him during the whole trip”. According to the State party, the judges concerned never directed any question to the author.
- On 15 June 1992, the Supreme Court dismissed the author’s appeal; the written judgment was issued on 3 July 1992. The State party submits that the author was adequately represented on appeal; in this context, it refers to the grounds of appeal. It further submits that the barrister who was assigned to the author and who filed the grounds of appeal, received a telephone call from another lawyer, who requested permission, on behalf of the Canadian Embassy, to conduct the author’s defence before the Supreme Court. By letter of 15 June 1992, the barrister granted permission.

4.5 The State party reiterates that the author has not applied for amparo before the Constitutional Court, although it was adequately explained to him how to proceed.

5.1 In his comments, the author addresses primarily matters of substance. He reiterates that he has exhausted domestic remedies and encloses letters addressed to him by the Ombudsman, and the Registrars of the Supreme Court and of the Constitutional Court. The Ombudsman, by letters of 11 December 1991 and 7 April 1992, informed the author of his right to legal representation and that it could not be of any assistance to him while the judicial proceedings were still pending in his case. By letter of 5 February 1992, the Registrar of the Constitutional Court informed the author about the requirements for the recourse of amparo, among which:

- enclosure of a copy of the decision from which leave to appeal is sought;
- exhaustion of all remedies available concerning the protection of the constitutional rights invoked;
- the request for amparo should be made within twenty days following the notification of the decision which allows no further appeal;

- representation by a solicitor and barrister; a request for legal aid should be accompanied by a detailed report of the facts on which the recourse of amparo is based.

The author was further informed that his letter would be sent to the Prosecutor General who would take action in his case if deemed necessary.

#### Issues and proceedings before the Committee:

6.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

6.2 The Committee has taken note of the State party's contention that the communication is inadmissible because the author has failed to apply for amparo before the Constitutional Court, and of the procedural requirements that must be met if one wants to avail himself of this remedy. It notes the author's allegation, which remains uncontested, that, after two years of imprisonment, he had not received any of the court documents in his case, which are a requisite for an appeal to the Constitutional Court. The Committee further observes that the Supreme Court dismissed the author's appeal on 15 June 1992, that he was informally notified of this decision at the end of June 1992, and that the lawyer who had been appointed to him did not contact him to date. In the circumstances of the case, the Committee does not consider that a petition for amparao before the Constitutional Court was a remedy available to the author. Furthermore, taking into account that the statutory limits for filing a petition for amparo have expired this remedy is no longer available. It is not apparent that the responsibility for this situation is attributable to the author. Therefore, the Committee does not find itself precluded from considering the communication under article 5, paragraph 2(b), of the Optional Protocol.

6.3 The Committee considers that the author has failed to substantiate, for purposes of admissibility, his claims under articles 9, paragraph 1, 17, and 26 of the Covenant. Accordingly, this part of the communication is inadmissible under article 2 of the Optional Protocol.

6.4 The Committee notes that the author has invoked article 7 in respect of his allegations concerning the events and conditions of the prison in Melilla. It finds, however, that the facts as described by the author fall within the scope of article 10 of the Covenant. It concludes that the author's claims may raise issues under articles 9, paragraph 2, 10 and 14 of the Covenant, which should be considered on their merits.

7. The Human Rights Committee therefore decides:

(a) that the communication is admissible in as much as it appears to raise issues under articles 9, paragraph 2, 10 and 14 of the Covenant;

(b) that in accordance with article 4, paragraph 2, of the Optional Protocol, the State party shall be requested to submit to the Committee, within six months of the date of transmittal to it of this decision, written explanations or statements clarifying the matter and the measures, if any, that may have been taken by it;

(c) that any observations or statements from the State party shall be transmitted pursuant to rule 93, paragraph 3, of the Committee's rules of procedure to the author, with the request that any comments he may wish to submit thereon should reach the Committee, care of the Centre for Human Rights, United Nations Office in Geneva, within six weeks of the date of the transmittal;

(d) that this decision shall be transmitted to the State party and to the author.

[done in English, French and Spanish, the English text being the original version.]

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\*/ All persons handling this document are requested to respect and observe its confidential nature.

1/ By letter of 19 May 1993 the author's daughter informed the Secretariat that her father had been transferred to a prison in Ontario, Canada

2/ Secretariat's translation