

## COMMITTEE AGAINST TORTURE

### Parot v. Spain

Communication No. 6/1990

2 May 1995

CAT/C/14/D/6/1990

### VIEWS

*Submitted by: Ms. Irène Ursoa Parot*

*Alleged victim: Henri Unai Parot*

*State party concerned: Spain*

*Date of communication: 13 October 1990*

*Date of decision on admissibility: 26 April 1994*

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 2 May 1995,

Having concluded its consideration of communication No. 6/1990, submitted to the Committee against Torture on behalf of Mr. Henri Unai Parot 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 author of the communication and by the State party,

Adopts the following:

#### **Views under article 22, paragraph 7, of the Convention. 1/**

1. The author of the communication is Irène Ursoa Parot, a resident of France. She submits the communication on behalf of her brother, Henri Unai Parot, a French citizen born in

Algiers. Mr. Parot is a member of the Basque separatist organization ETA, and is serving a sentence of life imprisonment in Spain. She claims that her brother is a victim of a violation by Spain of the Convention against Torture, without however specifying the provisions of the Convention alleged to have been violated.

Facts as submitted by the author:

2.1 Henri Parot was arrested in Seville on 2 April 1990 after an exchange of gunfire with the Guardia Civil which had stopped his car. The Guardia Civil claimed that his car was carrying 300 kilograms of amonal, to be used to blow up the police headquarters of Seville. The **Audiencia Nacional** found him guilty of participation in terrorist acts, murder and attempted murder and, on different counts, sentenced him to consecutive terms of 30 years' imprisonment.

2.2 The author, in a submission dated 13 October 1990, states that she has learned the following from her brother: he was interrogated at the headquarters of the Guardia Civil in Seville until the early morning of 3 April 1990; in the course of the interrogation he was tortured. On 3 April 1990, he was transferred to Madrid, where the interrogation continued; allegedly, a special unit of the Guardia Civil normally stationed in Basque territory participated in this interrogation, with the purpose of administering "expert" torture. The interrogation continued for five entire days, during which he was not allowed to eat or sleep.

2.3 Among the tortures allegedly inflicted on her brother, the author mentions:

- placing of plastic bags over his head, so as to provoke a sensation of suffocation. This allegedly was repeated some 20 times;
- constant beatings, not administered too hard so as not to leave visible marks;
- injection of an unknown substance by means of a syringe;
- putting him into a straightjacket, followed by suspending him by his hair.

2.4 Henri Parot's family has been able to witness the physical results of the torture on him - loss of hair, loss of weight, permanent exhaustion - and the psychological sequelae, manifested by a state of profound depression. Furthermore, he is said to suffer from periodic bouts of amnesia, in particular in respect of the first five days of his detention.

2.5 On 7 April 1990, Mr. Parot was brought before the examining magistrate of the **Juzgado Central de Instrucción No. 4** of the **Audiencia Nacional** of Madrid. At the conclusion of his statement before the judge, he complained of torture he had suffered at the hands of the Guardia Civil. During the hearing he was assisted by a lawyer who had been retained by his family.

2.6 On 10 April 1990, Mr. Parot was transferred to the prison of Herrera de la Mancha. On 11 April, he was again brought before the **Audiencia Nacional** of Madrid to testify before

a French magistrate to whom he also complained about the ill treatment.

2.7 As to prison conditions, it is claimed that during his detention at the Carabanchal prison in Madrid from 7 to 10 April 1990, the prison guards prevented him from sleeping by refusing to switch off the light in his cell or by continuously banging against his cell door. At the prison of Herrera de la Mancha, he was kept incommunicado most of the time. The prison doctor made him sign a statement certifying that he had not suffered any form of torture or ill treatment. For 20 days, Mr. Parot was kept in a cell close to the office of the Guardia Civil, whose occupants sought to scare him by firing shots outside his cell and by threatening to kill him or members of his family. On 17 April, when taking a shower, he was allegedly severely beaten by a group of masked men, said to be members of the Guardia Civil. On 8 June 1990, Mr. Parot was transferred to the prison of Alcala-Meco in Madrid, so as to facilitate the hearings before the examining magistrate of the **Audiencia Nacional**.

2.8 By letter of 10 May 1993, Mr. Parot confirms that he wishes the Committee against Torture to examine his allegations of torture and ill treatment was presented in the communication prepared by his sister.

2.9 In a further submission, dated 20 August 1993, the author provides precise information about the complaints of torture and ill treatment made by or on behalf of Mr. Parot. This includes a complaint made by the author during the hearing before the investigating magistrate of the **Juzgado Central de Instruccion No. 4** of the **Audiencia Nacional** in April 1990, and 25 complaints made during the trial before the **Audiencia Nacional**, the first on 4 December 1990 and the last complaint on 4 June 1993. She states that her brother received a visit on 28 May 1991, at the prison of Alcala-Meco, by an investigating magistrate of Alcalá-de-Henares, who asked him formally whether he wished to maintain his complaints; Mr. Parot replied in the affirmative.

#### Prior decisions taken by the Committee:

3.1 The Committee against Torture initially examined communication No. 6/1990 during its seventh session in November 1991. It considered that, since the author had conceded that an investigation into Mr. Parot's allegations had been opened by an investigating magistrate of Alcalá-de-Henares, domestic remedies had not been exhausted. On 12 November 1991, the Committee therefore declared the communication inadmissible. 2/

3.2 During its ninth session, in 1993, the Committee had before it a request from the author to reopen the consideration of the communication, because no investigation had yet been conducted by the Spanish authorities. The Committee decided to appoint one of its members as Special Rapporteur to examine the request. The Special Rapporteur approached the State party for its comments, which were placed before the Committee at its tenth session. The Committee subsequently decided to ask Mr. Parot himself whether he wished the Committee to examine his case and to request more precise information about the complaints filed with the Spanish authorities regarding his torture (see paras. 2.8 and 2.9 above). On the basis of the information received, the Committee, acting pursuant to rule 109 of its rules of procedure, decided, on 18 November 1993, to set aside its prior decision of 12 November

1991 and to reopen its consideration of the case. It further decided to request the State party to provide information relevant to the question of admissibility of the communication.

Information submitted by the State party and the author's comments thereon:

4.1 By a submission of 11 February 1994, the State party claims that the communication is inadmissible. It submits that, notwithstanding the author's statement, inquiries made of the seven tribunals of first instance in Alcalá-de-Henares give no indication of any complaint of torture lodged by Mr. Parot.

4.2 The State party denies that any ill treatment of Mr. Parot has taken place. It states that Mr. Parot received regular visits from medical doctors during his detention by the Guardia Civil in Seville and Madrid and later in prison and that no reference to ill treatment or torture is to be found in the medical reports. Similarly, the investigating magistrates before whom Mr. Parot appeared did not report any visible signs of ill treatment or torture. Although Mr. Parot mentioned at the end of the hearing before the investigating judge of the Fourth Tribunal of the **Audiencia Nacional** on 7 April 1990, that he had been subjected to torture, the investigating judge did not find sufficient reason to order an investigation into the allegations, taking the medical information into account and seeing that Mr. Parot did not show any signs of having been subjected to torture or ill treatment. The State party states extensive examination of all the relevant records shows that Mr. Parot subsequently did not formally request an investigation of the alleged ill treatment during the first days of his detention.

4.3 The State party claims that the information provided by the author about the complaints made by or on behalf of her brother was excessively vague. It contends that it is the policy of ETA members, their family and their lawyers to submit complaints at random to all kinds of international organizations. It submits that Mr. Parot has filed numerous complaints with the authorities in charge of the prison system (**Juzgados de Vigilancia Penitenciara**) about alleged deficiencies in prison services, showing that he knows how to use the available complaint procedures, but that he has never submitted a complaint about torture or ill treatment.

4.4 The State party submits that the only complaints filed on behalf of Mr. Parot are two identical complaints filed by Mr. Parot's wife in April and May 1991 and relating to rumours that prison personnel had tried to hire a prisoner to kill ETA members in prison. Similar complaints were filed by other family members of ETA prisoners. An investigation was opened, following which the judge of Tribunal No. 7 of Alcalá-de-Henares, on 9 March 1993, ordered the suspension of the proceedings, for lack of evidence.

4.5 The State party concludes that the communication is inadmissible, because it is not based on true facts, because it is not related to the Convention against Torture, and because the domestic remedies have not been exhausted.

5.1 In her comments (dated 24 March 1994) on the State party's submission, the author submits that she has difficulty in finding precise information regarding the investigation

ordered by an examining magistrate of the Tribunal of Alcalá-de-Henares and that the State party is in a better position to provide this information. She states that early in the afternoon of 28 May 1991, her brother was visited in the prison of Alcalá-de-Henares by a female examining magistrate (**juez de guardia**) of the Tribunal. According to the author, the magistrate refused to give her name and asked Mr. Parot whether he wished to maintain his complaints of torture. After he replied affirmatively, his complaint was written down that same afternoon and read to Mr. Parot, who then signed it, in the presence of a lawyer appointed by the magistrate. No copy of the written complaint was furnished to Mr. Parot. This is said to be in violation of Spanish law.

5.2 As to the State party's contention that the medical reports did not show that Mr. Parot had been ill treated or tortured, the author replies that the torture inflicted upon her brother was not "medieval torture", but torture not leaving obvious traces on the body. She affirms that her brother did not denounce the ill treatment to the medical doctors who came to visit him, out of fear of retaliation by the Guardia Civil.

#### The Committee's admissibility decision:

6.1 During its twelfth session, the Committee considered the admissibility of the communication. It ascertained that the same matter had not been and was not being examined under another procedure of international investigation. It noted that the assertion that on 7 April 1990 Mr. Parot had complained about ill treatment and torture before the investigating magistrate had not been challenged. The Committee considered that, even if these attempts to engage available domestic remedies may not have complied with procedural formalities prescribed by law, they left no doubt as to Mr. Parot's wish to have the allegations investigated. The Committee concluded that, in the circumstances, it was not barred from considering the communication.

6.2 Accordingly, the Committee decided on 26 April 1994, that the communication might raise issues under the Convention, especially with regard to the lack of investigation by the State party of Mr. Parot's allegations.

#### The State party's observations on the merits and author's comments:

7.1 By a communication of 29 November 1994, the State party submits that the case of Mr. Parot was brought to the attention of the Special Rapporteur on Torture of the United Nations Commission on Human Rights, who addressed a request for information to the State party. The State party indicates that, after it had provided information, the case was closed and no reference to the case was made by the Special Rapporteur in his report to the Commission on Human Rights.

7.2 The State party further contends that the communication submitted to the Committee on behalf of Mr. Parot is extremely vague. It notes that no details are provided about the alleged complaint before the judge in Alcalá-de-Henares, and it expresses its perplexity that the Committee, in those circumstances, has declared the communication admissible. In this context, it recalls that Mr. Parot is "one of the greatest criminals of the century", that he was

the leader of a commando of the ETA, and that his false allegations have received disproportionate attention, to the benefit of the ETA and in discrimination of other citizens.

7.3 As to the merits of the communication, the State party indicates that Mr. Parot has shown to be very familiar with the justice system in Spain, since he has filed numerous complaints about prison conditions, all of which have been dealt with, but that he never filed a formal complaint about ill treatment or torture. The State party maintains that the members of the ETA are under instruction systematically to claim that they have been subjected to torture and ill treatment. The State party adds that the judge at the preliminary inquiry did not observe any injuries requiring investigation. The State party claims that, if the allegations would have been true, Parot's lawyer would certainly have requested the judge to have this evidence referred to the competent judge for investigation. In this context, the State party points out that Parot's lawyers never submitted any complaint of maltreatment in detention. Moreover, the State party adds that one of Parot's lawyers, on 22 June 1990, did file a complaint about Parot having been insulted and beaten during transport within Madrid. The State party argues that it is inconsistent, if the allegations were true, to file an official complaint of one incident and not to file a complaint of torture and maltreatment upon arrest.

7.4 The State party further states that Mr. Parot was examined by a medical doctor on a number of occasions during his detention. It is submitted that the first medical examination took place at a quarter past midnight on 3 April 1990, and that only two minor bruises were found, and that Mr. Parot stated that he had not been subjected to ill treatment. The second examination took place also on 3 April 1990, after his arrival in Madrid, and again on 5, 6 and 7 April 1990. The State party transmits copies of the medical reports and concludes that no signs of ill treatment were recorded.

7.5 The State party points out that, during this period, Mr. Parot never complained about torture or maltreatment in any of the statements he made. The State party points out that, while making these statements, Mr. Parot was at all times in the presence of his State-appointed lawyer. The State party encloses a declaration made by a lawyer who represented Parot during the first days of his detention, stating that he was not aware of any ill treatment or torture having been inflicted on Parot and that, on the contrary, Parot appeared to be in good health and made his statements freely.

7.6 With regard to the appearance before the investigating judge on 7 April 1990, the State party submits that the judge stated on 7 November 1994 that during the hearing Mr. Parot showed no sign of being nervous, tired or exhausted, and that no complaint was made by the lawyer who represented him. The State party further refers to the judgement by the **Audiencia Nacional**, dated 18 December 1990, in which the allegation of maltreatment made by Parot during the hearing on 7 April 1990 is found to be without merit. The judge considered that none of the five State-appointed lawyers, who were alternating to assist Parot during the interrogations, observed any irregularity, that the medical reports refer only to bruises caused at the time of Parot's arrest (the judge recalled that Parot was arrested after having fired 15 shots at the policemen present and that they had to use force to arrest him), that Parot himself had declared to the medical doctor who examined him that he was not ill treated which declaration had not been denied, that he only made the allegation at the

hearing at the end of his statement, after a specific question from his lawyer, and, finally, that the allegations conflict with the observations of the judge at the hearing.

7.7 With regard to the claim that Mr. Parot was visited by a female examining magistrate in the prison of Alcalá-de-Henares who asked him whether he wished to maintain his complaint about ill treatment, the State party submits that a (male) investigating magistrate visited Parot in prison on 18 May 1991, for the purpose of notifying him of the order initiating criminal proceedings against him and hearing his answer to the charge, and that Parot, having waited for his lawyer to arrive, stated that his statements had been obtained through torture. The State party emphasizes that this claim cannot be seen as a formal complaint of maltreatment, and that a similar claim had already been ruled on by the **Audiencia Nacional** in the same preliminary investigation on 18 December 1990 (see above).

7.8 Finally, the State party points out that the written conclusions of counsel for Mr. Parot, regarding the preliminary proceedings on 20 January 1992 make no reference to ill treatment. In its judgement of 18 June 1993, the **Juzgado Central de Instrucción** finds that Mr. Parot does not appear to have been subjected to ill treatment.

8.1 In her comments, dated 27 January 1995, the author contests the State party's claim that she is an instrument of the ETA, and maintains that she addressed a communication to the Committee only out of concern for the well-being of her brother. She states that those persons who claim to have seen her brother during the first days of his detention and who maintain that they did not observe any sign of ill treatment are actually accomplices in the torture. She denounces as propaganda the State party's statement that ETA members are under instruction to make allegations of torture.

8.2. The author further states that any vagueness in her statements is due to the fact that she lives in France, which makes contact with her brother and his lawyers difficult.

8.3 With regard to the visit to the prison on 28 May 1991, the author states that she never denied that a male investigating magistrate visited her brother in prison on that day, but adds that on the same day another visit was made by a judge of the **Juzgado No. 3 de Alcalá-de-Henares**, Mrs. Isabel Fernandez, upon request by the tribunal of first instance (**Juzgado de instrucción**) No. 2 of Manzares, to whom Parot officially complained of torture.

8.4 She explains that research in Manzares has shown that a complaint was made on 21 and 28 April 1990 on behalf of Parot to the tribunal of first instance No. 1 of Manzares about Parot's detention incommunicado and about an incident during which Parot was beaten while on his way to the shower. On 16 May 1990, Parot made a statement in prison, confirming the complaints made on his behalf. A medical certificate stated that Parot showed bruises on the right arm and leg. Furthermore, on 11 May 1990, an investigation was opened by the tribunal of first instance No. 2 of Manzares, following detailed charges made by Parot before a judicial commission that he was tortured upon his arrest. On 10 January 1991, the two investigations were joined. On 21 May 1991, the **Juzgado No. 3** of Alcalá-de-Henares received a request to hear Parot on the matter, and the magistrate interviewed Parot in prison on 28 May 1991. The author claims that in the end the investigating magistrate of tribunal

No. 2 of Manzares decided to file the case, and to decide only on the complaint related to the shower incident and stating that Parot's declarations did not show any criminal liability of known persons.

8.5 The author states that her brother was never informed of the outcome of the investigation and has not received copies of the relevant documents. She contends that this has made it difficult for her to verify the facts in the case.

8.6 The author expresses surprise at the statement made by one of the State-appointed lawyers who were present during her brother's interrogations. The author contests the truthfulness of the State lawyer's statement and explains that Spanish law allows detention incommunicado for up to five days of persons suspected of terrorism, excluding assistance of a freely chosen lawyer and requiring the presence of a State-appointed lawyer during the making of statements. According to the author, the law also precludes contact in private between the detainee and the lawyer. She therefore concludes that it is questionable that Parot met with the lawyer, only to tell him that he had been well treated. In this context, she affirms that her brother denies having had a private meeting with a lawyer during his detention.

#### Consideration of the merits:

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

10.1 By its decision of 26 April 1994, the Committee held that the communication was formally admissible, as it raised the question of possible responsibility of the State party under article 13 of the Convention, which provides as follows:

"Each State party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities ..."

10.2 In the case under consideration the author of the communication states that, on 7 April 1990, on concluding his statement before **Juzgado Central de Instrucción No. 4** of the **Audiencia Nacional** of Madrid, her brother Henri Parot complained that he had been tortured by the Guardia Civil on the days immediately following his arrest, and that this complaint was never considered by the authorities of the State party.

10.3 The State party has denied that the alleged ill treatment took place and has stated that Mr. Parot's allegations were investigated by the prison and court authorities with negative results.

10.4 The Committee notes that, in principle, article 13 of the Convention does not require the formal submission of a complaint of torture. It is sufficient for torture only to have been alleged by the victim for the state to be under an obligation promptly and impartially to examine the allegation.



10.5 It is the Committee's view that the State party considered and rejected the allegation of torture made by Mr. Parot in the above-mentioned statement of 7 April 1990. The judgement of the **Audiencia Nacional** of 18 December 1990 dealt expressly with the said complaint and rejected it on the basis of the five medical examinations that were carried out at the time of the alleged torture and the statements made by Parot himself to the Seville medical examiner, which statements were never denied (see paras. 7.5 and 7.6 above).

10.6 The Committee considers that where complaints of torture are made during court proceedings it is desirable that they be elucidated by means of independent proceedings. Whether or not such action is taken will depend on the internal legislation of the State party concerned and the circumstances of the specific case.

10.7 There are no grounds for Mr. Parot or the author of the communication to challenge the procedure followed in this case by the State party, since not only did Mr. Parot have the benefit of full assistance by counsel during the trial but he also made frequent exercise of his right to make other charges and complaints, which were also considered by the authorities of the State.

11. The Committee against Torture therefore concludes that the State party did not violate the rule laid down in article 13 of the Convention and it considers that, in the light of the information submitted to it, no finding of violation of any other provision of the Convention could be made.

[Done in Spanish, French, English and Russian, the Spanish version being the original.]

#### Notes

1/ In accordance with rule 104 of the Committee's rules of procedure, Mr. Hugo Lorenzo did not take part in the consideration of this communication or in the decision concerning it.

2/ CAT/C/7/D/6/1990, decision on admissibility dated 12 November 1991.