HUMAN RIGHTS COMMITTEE

Ruiz Agudo v. Spain

Communication No 864/1999

31 October 2002

CCPR/C/76/D/864/1999

VIEWS

Submitted by: Mr. Alfonso Ruiz Agudo (represented by Mr. Jos Luis Maz n Costa)

Alleged victim: The author

State party: Spain

Date of decision on admissibility: 15 March 2001

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

Meeting on 31 October 2002,

Having concluded its consideration of communication No. 864/1999 submitted by Mr. Alfonso Ruiz Agudo under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1. The author of the communication is Alfonso Ruiz Agudo, a Spanish citizen. In his communication of 12 March 1998, he claims that he was the victim of a violation by Spain of article 14 of the International Covenant on Civil and Political Rights. In his communication dated 27 August 1999, he also maintains that he was the victim of a violation of article 7 and article 10, paragraph 3, of the

Covenant. The author is represented by counsel.

The facts as submitted by the author 1/

2.1 From 1971 to 1983, Alfonso Ruiz Agudo held the post of Director of the Caja Rural Provincial in the small town of Ceheg□n (Murcia), where he was responsible for customer relations. In the period from 1981 to 1983, 75 fictitious loan policies, which duplicated an equal number of real loans, were transacted in the office of the Ceheg□n bank. In other words, there were bank customers who signed blank loan forms that were later completed in duplicate.

2.2 The Caja Rural Provincial was taken over by the Caja de Ahorros de Murcia, and both banks appeared in the criminal proceedings opened against Alfonso Ruiz Agudo and others as private complainant or injured party. Alfonso Ruiz Agudo's counsel immediately asked for the original files of the accounts, which the author kept at the Ceheg□n bank and where, according to the complainant, the money from the fictitious loans was deposited, to be produced at the proceedings. According to the author of the communication, these files would have shown that the money went not to Alfonso Ruiz Agudo but to other persons. The bank submitted a computerized version of the files.

2.3 Counsel maintains that, although proceedings were initiated against his client in 1983, no judgement was handed down until 1994. The judgement was eventually passed by the judge of the No. 1 Criminal Court of Murcia, sentencing the author to a custodial penalty of two years, four months and one day of ordinary imprisonment with a fine for an offence of fraud, and to a further identical penalty for the offence of falsifying a commercial document.

2.4 The author submitted an appeal against the sentence, on the grounds that there had been a serious error in the assessment of the evidence and that he had been convicted for acts that had in fact been committed by another person. He also complained that uncertified evidence (in the form of a computerized version of his accounts) had been used against him.

2.5 A ruling was issued on his appeal by the Third Division of the Court of Murcia in a judgement on 7 May 1996. According to counsel, this ruling contains arguments that are incompatible with the right to presumption of innocence, which implies that the burden of proof must always rest with the accusing party, when it states that:

> "(□□) it has been found that the accused, Mr. Alfonso Ruiz Agudo, channelled the defrauded sums through his own account and others to which he had access, even though the finding was based on computer data produced by the employees of the said Caja de Ahorros, a procedure that the defence experts themselves considered to be normal, while there is no doubt that it would have been preferable to have the originals of the accounting transactions concerned. On the other hand, data or facts to challenge the reliability of the computer files should have been produced."

2.6 According to counsel, the last sentence of this paragraph shows that the Appeals Court adopted an

attitude that is incompatible with the right to presumption of innocence, since it is assuming that the accused is guilty as long as he does not prove his innocence, and since completely uncertified evidence is considered sufficient to deprive his client of his right to be presumed innocent and to require prosecution evidence to offer guarantees of reliability.

2.7 A preventive amparo application was brought before the Constitutional Court against the ruling of the Provincial High Court of Murcia and was subsequently rejected by a decision of 18 September 1996. According to counsel, all domestic remedies were thereby exhausted.

2.8 The author's counsel maintains that the defendant was the victim of a frame-up by the Caja Rural, subsequently taken over by the Caja de Ahorros de Murcia, in order to blame him for illegal acts that he had not committed, proof of which he had tried to demonstrate on the basis of his original bank files. Moreover, according to the author, the Caja de Ahorros submitted a falsified document blaming Alfonso Ruiz Agudo for having arranged a loan for a sum of 90 million pesetas, which he had not requested, using for the purpose a blank form that he had signed.

2.9 In a second communication, dated 27 August 1999, the author's counsel reported that the No. 1 Criminal Court of Murcia, in an order dated 25 September 1998, had informed the author that the Council of Ministers had rejected his application for pardon and that he had to go to prison. That decision was appealed before the judge and subsequently before the Provincial High Court on the grounds that the penalty imposed, considering the enormous interval of 16 years that had passed since the beginning of the proceedings, violated the right not to be subjected to cruel or degrading punishment and for the penalty to serve a rehabilitating purpose. The Criminal Court and the High Court both rejected the author's claims.

2.10 The author brought another amparo application before the Constitutional Court on 21 October 1998, after being informed of the decision by the judge of the Criminal Court ordering his entry into prison. On 19 December 1998, the author requested the Constitutional Court in writing to suspend consideration of his amparo application, as his appeals were being considered by the Criminal Court and the Provincial High Court. The Constitutional Court did not reply. In a request lodged on 17 February 1999, the author applied for an extension of the amparo application after his appeals before the Criminal Court and the High Court had been rejected. Eight days later, he was notified of the decision of the Constitutional Court rejecting his amparo appeal.

2.11 Two months after he had been admitted to prison, the prison authorities placed Alfonso Ruiz Agudo in open detention, which meant that he had to sleep at the prison during the week and that his movements were restricted whenever he left the prison.

The complaint

3.1 The author claims that there was a violation by Spain of article 14, paragraph 1, of the Covenant on the grounds that both the Criminal Court and the High Court had allowed a custodial sentence to rest on documentary evidence arbitrarily produced by the prosecutor; and that the arguments contained in

the legal explanation of the judgement handed down by the Provincial High Court against the accused were incompatible with the principle that the burden of proof rested with the accusing party, the very principle underlying the right to presumption of innocence.

3.2 The author also maintains that article 14, paragraph 3, of the Covenant was violated, since the criminal proceedings had lasted more than 15 years.

3.3 He also points out that there was no verbatim record of the statements of witnesses, experts, parties and counsel but only a summary drawn up by the clerk of the court, so that the proceedings, according to the author, lacked essential guarantees. Moreover, the accusing parties were at a clear advantage in the proceedings. He mentions article 790, paragraph 1, of the Criminal Procedure Act, maintaining that the rules of summary proceedings infringe the basic principle of equality of arms in judicial proceedings.

3.4 In a second communication, dated 27 August 1999, the author alleges the violation of article 7 of the Covenant, since an untimely sentence imposed after 16 years had elapsed between the events and effective punishment amounted to cruel, inhuman or degrading punishment. According to counsel, the sentence imposed on Alfonso Ruiz Agudo, after the statutory time limit had passed, was inhuman and incompatible with article 7 of the Covenant.

3.5 The author further maintains that there was a violation of article 10, paragraph 3, of the Covenant, which guarantees the right to a penitentiary system, the essential aim of which is the reformation and social rehabilitation of prisoners. He states that he is a model citizen, as shown in a report of the Guardia Civil of his home town. The sentence was intended instead to undermine his civic pride and to denigrate the accused personally, this being contrary to article 10, paragraph 3, of the Covenant.

The State party's observations on admissibility

4.1 In its communication dated 18 June 1999, the State party requests that the complaint relating to article 14, paragraph 1, of the Covenant be declared inadmissible, since on no occasion had the alleged victim complained before the domestic courts or Constitutional Court that his rights as guaranteed under article 14, paragraph 1, of the Covenant had been violated; nor had he complained of any lack of equality before the courts, a lack of publicly held proceedings or the lack of a competent, independent and impartial tribunal.

4.2 With regard to the violation of article 14, paragraph 3 (c), of the Covenant, the State party points out that the right to be tried without undue delay is a fundamental right under Spanish law. The State party explains in its communication that a violation due to the excessive length of proceedings may give rise to redress in substance and/or by compensation. In the case of the right to proceedings within a reasonable time, once the delay ends, redress in substance is no longer possible.

4.3 The State party explains that compensatory redress may be demanded in accordance with the procedure laid down in articles 292 et seq. of the Organization of Justice Act, consisting in a complaint

against the abnormal functioning of justice brought before the Ministry of Justice; in the event of disagreement, application may be made for judicial review.

4.4 In this respect, the State party refers to a ruling of the Constitutional Court dated 29 October 1990, according to which "from a constitutional point of view, undue delays give rise to only one form of redress, namely the ending of the delays. Appealing on those grounds under the ordinary procedure and lodging an amparo application once they have ceased is pointless □ □ Recognition that such delays have occurred □ □, be it for any other purpose than causing the delays to cease, should be sought by the person concerned through the appropriate administrative and judicial procedures" (Prieto Rodr□guez case).

4.5 The State party maintains that it assumes responsibility for the rendering of justice within a reasonable time, regardless of whether any delay has been protested or not. It also points out that the criteria applied in domestic Spanish law to determine when the duration of a proceeding is unreasonable are those set forth by the European Court of Human Rights, whose jurisprudence is directly applicable in domestic Spanish law, as provided by article 10, paragraph 2, of the Constitution.

4.6 The State party points out that, when a complaint for unreasonable delay is lodged before the Strasbourg institutions in relation to proceedings that have already ended, that is to say, when there is no longer a possibility of redress in substance but only by way of compensation, the European Commission of Human Rights, by its ruling of 6 July 1993, has declared such complaints absolutely inadmissible in all cases on the grounds that domestic remedies have not been exhausted, since the remedy under the Organization of Justice Act has not been used.

4.7 In the case in question, undue delay has been alleged after the end of proceedings, when redress in substance no longer applies, but only redress through compensation. According to the State party, Alfonso Ruiz Agudo did not seek any compensatory redress for the alleged undue delay, but only the non-execution of the criminal proceedings.

4.8 With regard to the lack of verbatim minutes of the proceedings, as pointed out by counsel, the State maintains that there is no article of the Covenant requiring that court records be verbatim, nor does it see in what manner Ruiz Agudo was adversely affected by the fact that the record was not verbatim. Since on no occasion was that violation alleged in the course of domestic proceedings, it is not reasonable to object ex novo, five years after the trial, that the record of the proceedings was not verbatim.

4.9 The alleged victim maintains that the summary proceedings rules infringe the essential principle of equality of arms in judicial proceedings. According to the State party, it is unreasonable to complain about a "legal rule" without referring to which specific rights of the alleged victim guaranteed under the Covenant have been affected, and without ever having made the complaint earlier in domestic proceedings.

4.10 As far as the alleged violation of the presumption of innocence is concerned, the State party

maintains that, in the actual documentation brought forward, there is ample incriminating evidence on which to found his conviction.

The author's comments on the State party's observations on admissibility

5.1 In his communication of 27 August 1999, the representative of the author maintains that, despite the State's contention that the author did not lodge a complaint for violation of the rights guaranteed under article 14, paragraph 1, of the Covenant in domestic proceedings, the application for amparo before the Constitutional Court demonstrates that there was a complaint of violation of his rights protected by article 24 of the Spanish Constitution, which recognizes the right to a fair trial and to the presumption of innocence. The State party's observation is therefore groundless.

5.2 With regard to the State party's argument that domestic remedies had not been exhausted, the author reiterates that the defendant sought recognition of his right to judicial proceedings without undue delay before the Constitutional Court, which in a ruling on 18 September 1996 said that, "with regard to recognition of the right to judicial proceedings without undue delays, constitutional jurisprudence has from the start required that a prior complaint should have been made regarding the delay, with explicit reference to the constitutional principle, and that the proceedings before the court should be under way (□ □), a condition that does not appear to have been met. Moreover, since a firm sentence has been pronounced, prior remedy must be sought through the appropriate channel". According to counsel, the author had not asked the Constitutional Court for compensation for the violation of his right to proceedings without undue delay. He had requested that the Court should recognize that the violation had taken place, thereby calling the State's attention to the infringement of a fundamental right. The requirement that a new judicial action should be initiated to seek "redress" is not consistent with the request brought before the Constitutional Court by the author. Furthermore, in accordance with article 5, paragraph 2, of the Optional Protocol, the rule regarding the exhaustion of domestic remedies does not hold when the application of the remedies is unreasonably prolonged.

5.3 With regard to the jurisprudence of the European Commission of Human Rights concerning the admissibility of cases relating to undue delays in judicial proceedings, counsel considers that it is in no way binding on the Committee. The author has exhausted the legal remedies in his country by appealing to the Constitutional Court and by being denied recognition as the victim of a violation of those rights on the grounds that he should have appealed as soon as the violation of the right to proceedings without undue delay had become apparent. The Committee notes that, in its fourth periodic report, Spain stated as follows: "Spanish law does not require a party to protest during the proceedings about their excessive duration. Consequently, irrespective of whether or not the party concerned has protested about the delay, the State has a responsibility to render justice within a reasonable time. And, as a consequence of that duty and responsibility, the State must compensate the party for the moral injury deriving from the non-performance of a State obligation and, as appropriate, the resulting material injury. For the purposes of such compensation, if there has been no declaration by a court or by the Constitutional Court concerning the excessive duration of proceedings, the General Council of the Judiciary shall report on the existence of such excessive duration and the Administration shall set the amount of compensation to be awarded to the victim."

5.4 As to the argument regarding the inadmissibility of the complaint concerning the lack of verbatim minutes, counsel maintains that the right of appeal is neither real nor effective if there are no verbatim minutes of the statements of witnesses and experts, since a second court cannot properly review what was decided by a court of first instance if it does not have a verbatim account before it. In his appeal, the accused requested that the value of the evidence should be reviewed on grounds of error. The lack of verbatim minutes meant that significant details of the statements made by witnesses and experts might have been omitted.

5.5 According to counsel, the author was placed at a disadvantage in the proceedings on account of the infringement of the right to equality of arms, owing to the fact that the criminal procedure was biased by law against him and in favour of the prosecutor and the accusing parties. The author's counsel points out that the accused had to forego the opportunities offered by article 790, paragraph 1, of the Criminal Procedure Act and was unable to present further evidence by, for example, again requesting that the original files of his accounts be produced, with which he could have demonstrated that he had not kept the money that he had been accused of misappropriating.

5.6 With regard to the State's observations concerning the complaint that the presumption of innocence had not been respected, counsel points out that the author was deprived of decisive evidence to prove his innocence, namely the original files of his bank accounts at the Caja Rural Provincial in possession of the private accusing party. One of the effects of the right to presumption of innocence is that the burden of proof should fall on the accusing party and that the accused should enjoy the benefit of the doubt. The ruling of the Provincial High Court recognizes that the burden of proving his innocence was placed on the accused when it said that "while there is no doubt that it would have been preferable to have the originals of the accounting transactions concerned, it would otherwise have been necessary to produce data or facts to challenge the reliability of the computer files". And yet the accused could only demonstrate his innocence by referring to his original accounting documents.

Decision on admissibility

6.1 At its seventy-first session, held in March and April 2001, the Committee considered the question of admissibility of the communication and ascertained, as it is required by article 5, paragraph 2 (a), of the Optional Protocol, that the same matter was not being examined under another procedure of international investigation or settlement.

6.2 With regard to the allegation of undue delay, the Committee took note of the State party's reply to the communication, in which the State party claimed that domestic remedies had not been exhausted. The State party pointed out that, in July 1993, the European Court of Human Rights had declared all complaints of undue delay inadmissible on the grounds that domestic remedies had not been exhausted, if the remedy available under articles 292 et seq. of the Organization of Justice Act had not been used. However, the Committee took into account the fact that, in the case in question, proceedings had begun in 1983 and no judgement had been handed down until 1994, and that the State party did not substantiate the reason for the delay in its submission. The Committee concluded that, in the circumstances, the domestic remedies had been unreasonably prolonged under the terms of article 5,

paragraph 2 (b), of the Optional Protocol and, consequently, that provision did not prevent it from examining the merits of the present communication.

6.3 With respect to the arguments put forward by the author of the communication that article 7 and article 10, paragraph 3, of the Covenant had been violated, the Committee considered that those claims had not been duly substantiated for the purposes of admissibility.

6.4 Consequently, on 15 March 2001, the Human Rights Committee declared the communication admissible insofar as it might raise questions related to article 14 of the Covenant.

The State party's observations on the merits of the communication

7.1 In its observations of 12 November 2001, the State party confirms that the proceedings against Alfonso Ruiz Agudo had been "excessively" long and that, in domestic legal proceedings, the Criminal Court had made a statement to that effect in its judgement of 21 December 1994. The State party therefore considers that, if the Committee were to state in its comments that there had been a violation of the right to be tried without undue delay, it would be repeating something that had been confirmed domestically.

7.2 With regard to the consequences of the delay, the author had entered an appeal to be given a minimum sentence of the shortest duration. According to the State party, his appeal had been heard by the Criminal Court, which had reduced the sentence to intermediate punishment of the shortest duration.

7.3 On the other hand, the State party notes that the author did not request the Constitutional Court to acknowledge the violation of the right to be tried without undue delay, as his counsel contends, but that the author requested the non-enforcement of the sentence. The State party argues that there was no legal basis for that petition, since neither Spanish law nor the Covenant provides for the non-enforcement of sentences in cases where the trial has been excessively long.

7.4 The State party reaffirms that, in this case, only financial compensation is possible. However, such compensation was never claimed by the author, and hence the State party does not understand why the Committee states that domestic remedies had been unreasonably prolonged in the terms of article 5, paragraph 2 (b), of the Optional Protocol. In this regard, the State party considers that, if the author had filed a claim for financial compensation in 1996 through the appropriate channel, of which he had been informed by the Constitutional Court, he would already have received such compensation.

7.5 With regard to the alleged violation of the presumption of innocence, the State party puts forward three counter-arguments.

7.6 First, the State party points out that Alfonso Ruiz Agudo was not convicted on the basis of computerized data alone, and this is borne out by the judgement handed down by the Criminal Court.

7.7 Secondly, the State party considers that the defence strategy of Alfonso Ruiz Agudo, in which he

claimed that an office employee, one Alfonso de Gea Robles, was responsible for the offence, and yet did not ask to be acquitted but only to be given a minimum sentence of the shortest duration, constitutes an acknowledgement of criminal conduct on the part of the author.

7.8 Thirdly, with regard to the computerized record, the State party explains that bank operations are reflected in computerized records that cover all the daily transactions of the cash deposit machine and the cashier's department; those records were brought to the oral proceedings for examination. The State party emphasizes that the defence's own experts stated in the oral proceedings that they did not question the computerized transcription of the accounts.

7.9 In the light of that information, the State party points out that the judgement handed down by the Provincial High Court does not reverse the burden of proof. What it says is that the author is objecting to a legitimate piece of evidence that he did not challenge at the proper time, and that he should have contested it, adducing evidence in his favour against the incriminating evidence.

7.10 With regard to the records of the trial, the State party reiterates that no article of the Covenant requires the records of a trial to be verbatim. It also maintains that the author signed the records, together with his counsel, in full conformity with the procedure and that no complaint was ever made using domestic remedies.

7.11 Moreover, the State party maintains that no domestic complaint was made concerning the summary proceedings rules and the principle of the equality of arms, and the Covenant does not admit abstract reviews of the law.

The author's comments on the State party's observations on the merits of the communication

8.1 In his comments of 21 January 2002, the author's representative maintains that the right to be tried without undue delay is a duty of all the States which have signed the Covenant, and that the effective exercise of that right does not require a prior complaint from the accused. He therefore considers that the Constitutional Court's decision reflects a bureaucratic spirit in its explicit refusal to acknowledge the existence of a violation, on the pretext that the author had not previously complained to the intervening legal authorities.

8.2 Counsel argues that the double system of redress for undue delays referred to in the State party's submission is not effectively implemented. Redress for, and acknowledgement of, the violation must, because of their very nature, be made during the trial proceeding itself and not in a new administrative proceeding, which could last up to nine years - two years in a court of first instance and seven years with an application for judicial review. In view of the foregoing, the author's representative maintains that "legislation to prevent undue delays" should have been established that would, as a minimum, allow the judge in the same proceeding to draw up, having regard to the duration of the proceeding, an inventory of compensatory measures. Such measures should include: reduction of the sentence; exemption from serving the sentence; suspension of the prison sentence; or the right to directly quantifiable financial compensation, without needing to have recourse to another procedure.

8.3 Counsel points out that the Government refused to pardon Alfonso Ruiz Agudo in spite of a specific petition to that end from the author and the order for reparation under article 4, paragraph 4, of the Criminal Code. He further contends that the Constitutional Court should have acknowledged that a fundamental right had been violated and, consequently, suggested that the Government consider pardon as a means of providing satisfaction.

8.4 Concerning the reduction of the sentence granted by the Criminal Court, counsel explains that the author did not have a criminal record, and the judge could have imposed the minimum sentence. However, the judge imposed intermediate punishment of the shortest duration, so that the reduction of the sentence was purely illusory.

8.5 As regards the presumption of innocence, counsel reiterates that the decisive evidence for demonstrating the author's innocence was not an original document but an arbitrary reconstruction produced by the complainant. This evidence was later challenged by the author, who requested the original documents, which were not supplied by the bank. It is also pointed out that the Caja Rural de Ceheg□n did not have a computerized information system in 1983 and that the procedure for recording credits and debits was mechanical.

8.6 With regard to the personal testimony mentioned by the State party as other forms of proof, counsel affirms that such evidence pertains to other elements of the accusation, inconclusive points, such as the existence of multiple loans, which did not prove the author's guilt.

8.7 Counsel points out that the record of the trial states that Alfonso Ruiz Agudo never admitted to being guilty as charged. The record also shows that the experts acknowledged that they could not provide more information without having other pieces of evidence, such as Mr. Ruiz Agudo's accounts.

8.8 As to the equality of arms, counsel maintains that, while the State party pointed out that the author had not complained of this inequality in domestic remedies, it nevertheless concealed the existence of the judgement handed down by the Constitutional Court on 15 November 1990, in which the question of the unconstitutionality of this matter is rejected.

8.9 With regard to the record of the trial, the author's representative considers that the right of appeal requires, as a basic guarantee, that the court of higher instance have a verbatim record in which it can consult the details of the outcome of the trial and the evidence adduced. If there is only a summary record, no real appeal can be made on the basis of the facts of the case.

8.10 In his comments on 3 July 2002, the author's representative refers to a judgement handed down by the Criminal Division of the Court on 26 December 2000, which states that "the jurisprudence of this Division has clearly established that the ruling on the credibility of the statements that were made during the trial is a matter extraneous to the application for judicial review, since a determination can be made only by a court that directly heard such statements, that is, with its own senses and immediately". In this regard, according to counsel the court itself acknowledges that, without a verbatim record of all the statements made, there can be no real review in a higher court.

Consideration as to the merits

9.1 The Human Rights Committee has considered the present communication in the light of all written information made available to it by the parties, in accordance with article 5, paragraph 1, of the Optional Protocol. The Committee notes that the State party has expressly confirmed that the trial of Alfonso Ruiz Agudo was excessively long, and that this was stated in the domestic legal remedies; however, the State party has given no explanation to justify such a delay. The Committee recalls its position as reflected in its General Comment on article 14, which provides that all stages of judicial proceedings must take place without undue delay and that, to make this right effective, a procedure must be available to ensure that this applies in all instances. The Committee considers that, in the present case, a delay of 11 years in the judicial process at first instance and of more than 13 years until the rejection of the appeal violates the author's right under article 14, paragraph 3 (c), of the Covenant, to be tried without undue delay. 2/ The Committee further considers that the mere possibility of obtaining compensation after, and independently of, a trial that was unduly prolonged does not constitute an effective remedy.

9.2 The Committee has taken note of the arguments presented by the parties concerning the evaluation of the documented incriminating evidence. The Committee refers to its jurisprudence and reiterates that, while article 14 guarantees the right to a fair trial, it is not for the Committee but for the domestic courts to consider the facts and evidence in a particular case, unless it can be ascertained that the evaluation was clearly biased, arbitrary or amounted to a denial of justice. 3/ In the present case, the documents before the Committee do not demonstrate that the trial suffered from any such defect. The Committee also takes note of the State party's observations where it is argued that the author never maintained before the domestic courts that the evidence of the computerized records was unlawful, and notes that, according to the judgement handed down by the Criminal Court, several forms of evidence were taken into consideration with a view to establishing the facts. Consequently, the Committee concludes that there was no violation of article 14, paragraph 1, of the Covenant.

9.3 With regard to the absence of a verbatim record of the trial, the Committee finds that the author has not demonstrated in what way he was caused harm by the absence of such a document. Consequently, the Committee considers that there was no violation either of article 14, paragraph 1, or of the right of appeal provided for in article 14, paragraph 5.

9.4 Finally, the Committee takes note of the author's contention that the summary proceeding, in particular article 790 of the Criminal Procedure Act, infringes the principle of equality of arms. The Committee finds that the author, on the basis of the information and documentation submitted, has not substantiated his complaint for the purposes of determining that there was a violation of article 14, paragraph 1, in this respect.

10. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it constitute violations by Spain of article 14, paragraph 3 (c), of the Covenant.

11. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party has the obligation to provide an effective remedy, including compensation for the excessive length of the trial. The State party should adopt effective measures to prevent proceedings from being unduly prolonged and to ensure that individuals are not obliged to initiate a new judicial action to claim compensation.

12. Considering that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy in case a violation has been established, the Committee wishes to receive from the State party, within 90 days, information about the measures taken to give effect to the Committee's Views. It also requests the State party to publish these Views.

[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.]

* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine Chanet, Mr. Maurice Gl□le Ahanhanzo, Mr. Louis Henkin, Mr. Ahmed Tawfik Khalil, Mr. Eckart Klein, Mr. David Kretzmer, Mr. Rajsoomer Lallah, Ms. Cecilia Medina Quiroga, Mr. Rafael Rivas Posada, Mr. Martin Scheinin, Mr. Ivan Shearer, Mr. Hip□lito Solari Yrigoyen and Mr. Maxwell Yalden.

Notes

1/ Communications dated 12 March 1998 and 27 August 1999.

2/ See, for example, communications No. 614/1995, Samuel Thomas v. Jamaica: No. 676/1996, Yasseen and Thomas v. Republic of Guyana; and No. 526/1993, Hill and Hill v. Spain.

3/ See, for example, communications No. 634/1995, Desmond Amore v. Jamaica, and No. 679/1996, Mohamed Refaat Darwish v. Austria.