



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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COMMITTEE AGAINST TORTURE
Thirty-fourth session
2-20 May 2005

DECISION

Communication No. 212/2002

Submitted by: Mr. Kepa Urrea Guridi (represented by counsel, Mr. Didier Rouget)
Alleged victim: The complainant
State party: Spain
Date of complaint: 8 February 2002
Date of decision: 17 May 2005

[ANNEX]

* Made public by decision of the Committee against Torture.

Annex

**DECISION OF THE COMMITTEE AGAINST TORTURE UNDER
ARTICLE 22 OF THE CONVENTION AGAINST TORTURE AND
OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT
OR PUNISHMENT**

Thirty-fourth session

concerning

Communication No. 212/2002

Submitted by: Mr. Kepa Urrea Guridi (represented by counsel, Mr. Didier Rouget)

Alleged victim: The complainant

State party: Spain

Date of complaint: 8 February 2002

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

Meeting on 17 May 2005,

Having concluded its consideration of communication No. 212/2002, submitted to the Committee against Torture by Mr. Kepa Urrea Guridi 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 complainant, his counsel and the State party,

Adopts the following:

Decision under article 22, paragraph 7, of the Convention

1. The author of the complaint, submitted on 8 February 2002, is Kepa Urrea Guridi, a Spanish national born in 1956. He alleges that he is a victim of a violation by Spain of articles 2, 4 and 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The complainant is represented by counsel, Mr. Didier Rouget.

The facts as submitted

2.1 On 22 January 1992, the Spanish Civil Guard launched a police operation in Vizcaya province to dismantle the so-called "Bizkaia combat unit" of the organization Euskadi Ta Askatasuna (ETA). In all, 43 people were arrested between then and 2 April 1992; many of them have reportedly been tortured and held incommunicado. The complainant was arrested on 22 January 1992 by Civil Guard officers as part of these operations.

2.2 The complainant alleges that, in the course of his transfer to the Civil Guard station, the officers took him to a piece of open ground where they subjected him to severe abuse. He was stripped, handcuffed, dragged along the ground and beaten. He states that after six hours of interrogation, he had to be taken to hospital because his pulse rate was very high, he could not speak, he was exhausted and unconscious, and was bleeding from his mouth and nose. The hospital doctors ascertained that he had injuries to his head, face, eyelids, nose, back, stomach, hip, arms and legs. He also had a neck injury which left him unable to move. The complainant maintains that this serious ill-treatment can be categorized as torture within the meaning of article 1 of the Convention.

2.3 The complainant filed suit with Vizcaya Provincial Court alleging that he had been tortured, and on 7 November 1997 the court found three civil guards guilty of torture. Each officer received a prison sentence of four years, two months and one day, was disqualified from serving in State security agencies and units for six years and one day, and suspended from duty for the duration of his prison sentence. Under the terms of the sentence, the civil guards were ordered to pay compensation of 500,000 pesetas to the complainant. The court held that the injuries sustained by the complainant had been caused by the civil guards in the area of open country where he was taken following his arrest.

2.4 The public prosecutor's office appealed the sentence to the Supreme Court, asking for the charges to be reviewed and the sentences reduced. In its judgement of 30 September 1998, the Supreme Court decided to reduce the civil guards' prison sentence to one year. In its judgement, the Supreme Court held that the civil guards had assaulted the complainant with a view to obtaining a confession about his activities and the identities of other individuals belonging to the Bizkaia combat unit. It took the view that "fact-finding" torture of a degree exceeding cruel or degrading treatment had been established, but held that the injuries suffered by the complainant had not required medical or surgical attention: the first aid the complainant had received was sufficient. The Court considered that a sentence of one year's imprisonment was in proportion to the gravity of the offence.

2.5 While the appeal was pending before the Supreme Court, one of the civil guards continued to work in French territory as an anti-terrorism coordinator with the French security forces, and with the authorization of the Ministry of the Interior embarked on studies with a view to promotion to the grade of Civil Guard commander.

2.6 The Ministry of Justice initiated proceedings to have the three convicted civil guards pardoned. The Council of Ministers, at its meeting of 16 July 1999, granted pardons to the three civil guards, suspending them from any form of public office for one month and one day. Notwithstanding this suspension, the Ministry of the Interior kept one of the civil guards on active duty in a senior post. The pardons were granted by the King in decrees published in Spain's Official Gazette.

2.7 The complainant alleges that he has exhausted all available domestic remedies and has not submitted the matter to any other procedure of international investigation.

The complaint

3.1 The complainant alleges that article 2 of the Convention has been violated because the various acts of the Spanish political and judicial authorities effectively legitimize the practice of torture, leading torturers to believe that they are virtually immune from prosecution, and demonstrating that the authorities condone serious ill-treatment that can be classified as torture.

3.2 The complainant alleges a violation of article 4 of the Convention. He argues that an example should be made of State officials found guilty of torture. According to him, both the reductions in prison terms and the pardons granted to the torturers violate the right of victims to obtain effective justice. He claims that the authorities of the State party, by taking decisions that effectively reduce the sentences and the actual punishment meted out to State officials convicted of torture, have violated article 4 of the Convention.

3.3 He further claims that there has been a violation of article 14 of the Convention, since the pardoning of the civil guards is tantamount to denying the fact of the complainant's torture and suffering. According to the complainant, the State party should have redressed the wrong he had suffered as a victim of torture and taken steps to ensure that such acts did not happen again. He adds that the pardon accorded to the torturers encourages the practice of torture within the Civil Guard. According to the complainant, remedial measures cover all the damages suffered by the victim, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition, as well as prevention, investigation, and punishment of the persons responsible. In this regard, he cites the studies carried out by the United Nations Commission on Human Rights on the impunity of perpetrators of violations of human rights and on the right to restitution, compensation and rehabilitation for victims of grave violations of human rights, as well as the judgement of the Inter-American Court of Human Rights in the case of *Velásquez Rodríguez v. Honduras*.

3.4 The complainant believes that systematic practice in the State party, exemplified by failure to investigate cases of torture promptly and impartially, protracted investigations, the imposition of minimum sentences, the retention in the security bodies of persons accused of torture and the promotion, decoration and pardoning of persons accused of torture, allows torture to go unpunished. He refers to the conclusions and recommendations of the Committee with reference to the second, third and fourth periodic reports submitted by the State party, in which it expressed concern at the lenient sentences imposed on persons accused of torture and recommended that the State party impose appropriate punishments.

State party's observations on the admissibility and merits of the complaint

4.1 The State party considers the complaint inadmissible because it says that the complainant has failed to exhaust domestic remedies. It argues that the complainant should have appealed against the royal decrees of 1999 that granted the pardons. It states that both the Supreme Court and the Court of Jurisdictional Disputes have held that a pardon may be subject to judicial review. It adds that the Convention against Torture has been incorporated into domestic law and may be invoked directly before the courts and, if the complainant maintains that granting pardons violates the Convention, he should have put this argument to the Spanish courts.

4.2 As to the merits, the State party maintains that the victim of a crime has no right to block a pardon, the granting of which is a prerogative of the King acting in accordance with the

Constitution. It claims that, according to the position adopted by the human rights treaty bodies, victims have no right to ask for anyone to be convicted, and accordingly it would be a contradiction to grant them the right to block a pardon. When a crime is investigated ex officio, the granting of a pardon does not provide for the victim's involvement and, therefore, the interests of the victim of the crime are unaffected. The State party adds that it was the civil guards themselves who requested the pardon.

4.3 The State party claims that the complainant received the full compensation awarded to him by the court.

4.4 The State party indicates that, until such time as a guilty verdict was handed down in the complainant's case, the accused went about their business as normal, which included one of them taking a course of studies with a view to promotion, as anyone is legally entitled to do in the absence of measures affecting their rights. Upon conviction, the civil guards lodged an application for pardon with the Vizcaya provincial court, with the request that the sentence should not be carried out until a decision had been reached on their request for a pardon. Although the court did not manage to order execution of the sentence, the complainant could have asked it to. Once the pardon had been granted, the civil guards were suspended from duty for one month and one day.

Complainant's comments on the State party's observations regarding the admissibility and merits of the complaint

5.1 On the admissibility of the complaint, the complainant indicates that, in the circumstances of his case, there were no domestic remedies against the granting of a pardon. He adds that neither the 1870 statute on pardons nor the position adopted by the Constitutional Court permits a private individual to object to a pardon. He cites the Constitutional Court judgement of 5 October 1990, which says that pardons "as a gesture of grace, shall be decided upon by the executive and granted by the King. Such decisions shall not be examined on their merits by the courts, including this Constitutional Court". The complainant maintains that the most recent judgements of the Constitutional Court, those handed down between January and March 2001, did not introduce a means of appealing against pardons but merely gave the sentencing court a certain degree of procedural control. The victim is not informed that a pardon has been granted and is thus denied the opportunity to appeal. The complainant states that the pardons procedure specifies that the victim of the pardoned crime should be given a hearing. He objected to the pardons when consulted, but his views were not binding.

5.2 On the merits, the complainant maintains that the pardon granted by the authorities to civil guards convicted of torture is incompatible with the purpose and object of the Convention, inasmuch as it calls into question the absolute nature of the prohibition of torture and other cruel, inhuman or degrading treatment. Granting pardons creates a climate of impunity that encourages State officials to commit further acts of torture. When the pardon was granted, the accused's

sense of impunity was validated by the Spanish authorities' common practice of pardoning individuals accused of torture. The State party should have redressed the wrongs suffered by the complainant and taken steps to ensure that such torture would not happen again. The complainant insists that the pardon granted to the civil guards denies the very existence of the torture and ill-treatment of which he was the victim.

Issues and proceedings before the Committee

6.1 Before examining the merits of a communication, the Committee against Torture must determine whether it is admissible under article 22 of the Convention.

6.2 The State party is of the view that the communication is inadmissible because domestic remedies have not been exhausted. It claims that, if the complainant considers that his rights under the Convention have been violated by the pardoning of the three civil guards, he ought to have put this argument to the Spanish courts. The complainant maintains that there were no available and effective means to challenge the granting of a pardon.

6.3 The Committee observes that the State party confined itself to asserting that recent decisions by the courts permit the judicial review of pardons, and that the Convention against Torture can be invoked before the domestic courts; it did not indicate what specific remedies were available to the complainant, nor what degree of judicial review pardons would be subject to. The Committee notes that, although the injured party may not be a party to pardon proceedings in a material sense, he or she can be heard if he or she opposes the pardon, and that, according to the State party, the injured party has no right as such to request that no pardon be allowed. The Committee recalls that it is necessary to exhaust only those remedies that have a reasonable chance of success, and is of the view that, in the present case, the complainant did not have such remedies available. Accordingly, the Committee considers the communication admissible under article 22, paragraph 5 (b), of the Convention.

6.4 The Committee notes that the complainant has alleged violations of articles 2 and 4 of the Convention, maintaining that the State party has failed in its obligations to prevent and punish torture. These provisions apply to the extent that the acts of which the complainant was a victim are considered to be torture within the meaning of article 1 of the Convention. The Committee takes note of the complainant's allegation that his treatment constituted torture within the meaning of the Convention. In the Committee's view, however, it is unnecessary to rule on whether the treatment meted out to the complainant was consistent with the concept of torture within the meaning of article 1 of the Convention, since the State party has not contradicted the complainant's allegation that he was tortured. The Committee notes that the courts that tried the complainant's case concluded that he had indeed been tortured. The Committee must, however, rule on the State party's argument that the complainant does not have a right to object to the granting of the pardon, and that the complainant therefore does not qualify as a victim in the meaning of article 22, paragraph 1, of the Convention. The Committee points out that the State party has not denied that the complainant was tortured, allowing criminal proceedings to be brought against the civil guards who injured the complainant and accepting that the treatment suffered by the complainant was described during the trial as torture, and that three people were in principle found guilty.

6.5 The Committee accordingly considers that the complaint raises issues of importance in connection with article 2, paragraph 1, article 4, paragraph 2, and article 14, paragraph 1, of the Convention, which should be examined on their merits.

6.6 As to the alleged violation of article 2 of the Convention, the Committee notes the complainant's argument that the obligation to take effective measures to prevent torture has not been honoured because the pardons granted to the civil guards have the practical effect of allowing torture to go unpunished and encouraging its repetition. The Committee is of the view that, in the circumstances of the present case, the measures taken by the State party are contrary to the obligation established in article 2 of the Convention, according to which the State party must take effective measures to prevent acts of torture. Consequently, the Committee concludes that such acts constitute a violation of article 2, paragraph 1, of the Convention. The Committee also concludes that the absence of appropriate punishment is incompatible with the duty to prevent acts of torture.

6.7 With regard to the alleged violation of article 4, the Committee recalls its previous jurisprudence to the effect that one of the purposes of the Convention is to avoid allowing persons who have committed acts of torture to escape unpunished. The Committee also recalls that article 4 sets out a duty for States parties to impose appropriate penalties against those held responsible for committing acts of torture, taking into account the grave nature of those acts. The Committee considers that, in the circumstances of the present case, the imposition of lighter penalties and the granting of pardons to the civil guards are incompatible with the duty to impose appropriate punishment. The Committee further notes that the civil guards were not subject to disciplinary proceedings while criminal proceedings were in progress, though the seriousness of the charges against them merited a disciplinary investigation. Consequently, the Committee considers that there has been a violation of article 4, paragraph 2, of the Convention.

6.8 As to the alleged violation of article 14, the State party indicates that the complainant received the full amount of compensation ordered by the trial court and claims that the Convention has therefore not been violated. However, article 14 of the Convention not only recognizes the right to fair and adequate compensation but also imposes on States the duty to guarantee compensation for the victim of an act of torture. The Committee considers that compensation should cover all the damages suffered by the victim, which includes, among other measures, restitution, compensation, and rehabilitation of the victim, as well as measures to guarantee the non-repetition of the violations, always bearing in mind the circumstances of each case. The Committee concludes that there has been a violation of article 14, paragraph 1, of the Convention.

7. The Committee against Torture, acting under article 22, paragraph 7, of the Convention, decides that the facts before it constitute a violation of articles 2, 4 and 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

8. In pursuance of rule 112, paragraph 5, of its rules of procedure, the Committee urges the State party to ensure in practice that persons responsible for acts of torture are appropriately punished, to ensure that the author receives full redress and to inform it, within 90 days from the date of the transmittal of this decision, of all steps taken in response to the views expressed above.

[Adopted in English, French, Spanish and Russian, the Spanish text being the original version. Subsequently to be issued also in Arabic and Chinese as part of the Committee's annual report to the General Assembly.]
