

HUMAN RIGHTS COMMITTEE

Martínez Muñoz v. Spain

Communication No. 1006/2001

30 August 2003

CCPR/C/79/D/1006/2001

VIEWS

Submitted by: Mr. José Antonio Martínez Muñoz (represented by Mr. José Luis Mazón Costa)

Alleged victim: The author

State party: Spain

Date of communication: 15 November 2000 (initial communication)

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

Meeting on 30 October 2003,

Having concluded its consideration of communication No. 1006/2001, submitted on behalf of Mr. José Antonio Martínez Muñoz 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 dated 3 May 1999 is José Antonio Martínez Muñoz, a citizen of Spain, who claims to be a victim of a violation by Spain of article 14, paragraph 1, article 14, paragraph 3 (b), (c) and (d), and article 17 of the International Covenant on Civil and Political Rights. He is represented by counsel. The Optional Protocol entered into force for Spain on 25 January 1985.

The facts as submitted by the author

2.1 On 21 September 1990, the author, together with six other persons, took part in writing *pintadas* ("graffiti") in favour of the right to refuse to perform military service, on the outer facade of the bullring in the town of Yecla. For this reason, they were intercepted by two local policemen. The author alleges that, when one of the policemen attempted to arrest him, a struggle ensued and he accidentally struck the policeman in one eye, causing a contusion.

2.2 The author was held in custody on 21 September 1990 and released on 22 September 1990. The hearing took place on 14 June 1995. The author was accused by the prosecutor of two misdemeanours and an offence and, on 16 June 1995, Criminal Court No. 3 of Murcia sentenced him for the offence of attacking a law enforcement officer to a penalty of six months' and one day's imprisonment and compensation in the amount of 70,000 pesetas in favour of the injured policeman.

2.3 The author filed an appeal to the Murcia Provincial High Court, claiming a violation of the principle of equality before the law and of equality of arms, as well as a violation of his right to a defence. All the allegations were dismissed on 20 November 1995.

2.4 The author filed an application for *amparo* and requested the Constitutional Court to allow him to dispense with the *procurador* and to represent himself. That request was denied on 15 January 1996. The author then requested the court to appoint a *procurador*. When that person had been appointed in accordance with article 27 of the Free Legal Assistance Act, the Constitutional Court required the freely chosen lawyer to waive his fees. In the light of this requirement, the author filed an application for reconsideration, which was rejected on 22 March 1996.

2.5 When the freely chosen lawyer refused to waive his fees, on 13 December 1995 the author requested the court to appoint counsel. The lawyer assigned to him requested the Constitutional Court to excuse her from filing an application for *amparo*, since she believed that that remedy was unnecessary because there had been no violation of fundamental human rights.

2.6 The author said that he wished to dismiss the court-appointed counsel. On 1 July 1996, the Constitutional Court informed him that it could not accede to his request but transmitted the pleas of fact to the General Council of Spanish Lawyers which, on 9 September 1996, concluded that the application for *amparo* that the author's court-appointed counsel had not filed was partly sustainable, since it could be admissible only with respect to the complaint of undue delay in the proceedings.

2.7 On 7 October 1996, the author was assigned another counsel, who was given 20 days to file an application for *amparo*. The application was filed in connection with the alleged undue delay in the proceedings and, on 5 March 1997, was rejected by the Constitutional Court, which considered that the application did not contain enough information to justify a decision.

The complaint

3.1 The author complains of violations of article 14, paragraph 1, of the Covenant. He claims a violation of the principles of equality before the law and of equality of arms, arguing that, during the proceedings, "inexplicable privileges" were granted to the prosecution, such as allowing it to

propose certain measures. He also claims that, since he was not allowed to dispense with a *procurador* and represent himself before the Constitutional Court, he was placed in a situation of inequality with respect to persons with a law degree. For the author, the provisions of article 81, paragraph 1, of the Constitutional Court Organization Act constitutes an unjustified inequality since, according to that paragraph, the services of the *procurador* are limited to the transmission of documents between the court and counsel.

3.2 The author claims that his right to a defence under article 14, paragraph 3 (b), of the Covenant was violated in that Murcia Criminal Court No. 3 did not allow his lawyer to question him properly, claiming that the interrogation was being conducted in a tendentious manner. The court also did not allow his lawyer to have one of the witnesses re-enact the incident, evidence that was of fundamental importance to his defence since, according to the author, it would have made it possible to prove that he had struck the [policeman in the] eye by accident.

3.3 The author maintains that article 14, paragraph 3 (c), of the Covenant was violated since, owing to the lapse of almost five years between the incident, which occurred on 21 September 1990, and the hearing, which was held on 14 June 1995, his right to a speedy trial without undue delay was violated since, according to him, the relative straightforwardness of the case did not justify such a long delay.

3.4 The author claims a violation of article 14, paragraph 3 (d), of the Covenant, which guarantees the right to assigned legal assistance. He maintains that the lawyer assigned to him did not comply with her duty to defend him effectively before the Constitutional Court. The author states that, by refusing to file the relevant remedy, the lawyer prejudged his case.

3.5 The author claims a violation of article 17 of the Covenant, since the law provides that the freely chosen lawyer has the obligation to waive his fees when acting together with a court-appointed *procurador*. According to the author, this constitutes arbitrary interference in the private relationship between the lawyer and his client.

The State party's observations on admissibility and the merits

4.1 In its submission dated 1 October 2001, the State party challenges the admissibility of the communication on the basis of article 2 of the Optional Protocol, claiming that domestic remedies were not exhausted since, although the author had appealed the decision of Criminal Court No. 3 to the Murcia Provincial High Court, neither he nor his lawyer was present when his appeal was heard at which time the author would have had an opportunity to state his allegations. The State party claims that, by not attending the hearing of his appeal, the author voluntarily renounced the possibility of filing or rectifying complaints. Therefore, when hearing the appeal, the National High Court had had to limit itself to the content of the written appeal.

4.2 The State party alleges that the author's complaint regarding the summary procedure was not lodged with the Spanish courts; it was therefore not examined and no decision was taken on it. The same applies to the complaints concerning the form of the interrogation and representation before the Constitutional Court. The State party maintains that the application for *amparo* that the author's lawyer filed with the Constitutional Court contained only allegations of undue delay in the

proceedings; at the same time, a petition for pardon was filed. The Court's decision was limited to consideration of the foregoing.

4.3 The State party alleges that the Constitutional Court in no way opposed the freely chosen lawyer's defence of the author; however, the law on free assistance, which had been applied owing to the author's lack of means, required that the professional lawyer should not receive a fee. Since the lawyer refused to waive his fee, the author dismissed him and requested the court to appoint counsel. The State party affirms that, with regard to the action taken by the court-appointed counsel, the complaint is based on a discrepancy between the actual lawyer and the conduct of appointed counsel. It alleges that, pursuant to a written submission by the first court-appointed counsel, in which she considered the remedy to be unsustainable, the General Council of Spanish Lawyers intervened and, following its ruling, the court appointed another lawyer, who filed the application for *amparo*. The State party therefore maintains the author was assisted by counsel.

4.4 The State party alleges that the facts bear no relation to the right to privacy dealt with in article 17 of the Covenant and that, in accordance with article 3 of the Optional Protocol, the claim should be declared inadmissible *ratione materiae*.

4.5 According to the State party, the author claims that the excessive duration of the proceedings constituted grounds for his pardon. However, it points out that there is no provision in the Covenant to this effect, and that the complaint concerning article 14, paragraph 3 (c), of the Covenant is unsubstantiated. The State party affirms that, in accordance with articles 292 et seq. of the Judiciary Organization Act, an undue delay in the proceedings provides the right to claim economic compensation for the shortcomings of the administration of justice. However, since the author has not filed this legally supported claim, he has not exhausted domestic remedies.

4.6 In its submission dated 18 February 2002, the State party informed the Committee that its observations dated 1 February 2001 should also apply to the merits, arguing that the complaints were not made through domestic channels and, therefore, could not be examined and a decision on them could not be taken. Consequently, the State party was unable to provide information in that regard.

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

5.1 In his submission dated 2 January 2002 concerning his appeal, the author claims that his absence at the hearing did not imply the forfeit of the right to an examination of the arguments that he had previously submitted in writing, since the first paragraph of the decision states that "... the absence of the appellant when the appeal was heard in second instance does not prevent the consideration of the reasons for the recourse filed in writing ...". The author claims that he was not present at the hearing because the court-appointed *procurador* did not forward the notification to his lawyer in time.

5.2 The author alleges that it should not be considered that his application for *amparo* contained only an allegation concerning undue delay in the proceedings and a petition for pardon. According to him, it should be taken into account that the court-appointed lawyer ignored his arguments and did not present all his complaints before the Constitutional Court, and that this was not the fault of the author but was due to the incompetence of the defence. It was therefore the fault of the State,

which hires legal counsel.

5.3 The author affirms that his complaint regarding the lack of equality of arms between the prosecutor and his counsel in the summary criminal proceeding was cited in the appeal and that that matter could not have been brought before the Constitutional Court owing to the unlikelihood of its success.

5.4 With regard to his complaint concerning the shortcomings of the defence, the author alleges that the State party does not give any reasons for its objection. The author insists that the court did not allow his lawyer to ask certain kinds of questions because it considered them deceitful or tendentious; this measure was not applied to the prosecutor, to whom the court granted freedom of interrogation without disallowing questions that also seemed to be formulated in a similar manner.

5.5 The author claims that the Constitutional Court was obliged to allow him to represent himself, since he insists that the duties of the *procurador* are limited to receiving notifications and transmitting them to the lawyer, and that he had requested that the court dispense with the *procurador*, not the lawyer.

5.6 The author states that the two lawyers who were assigned to him did not meet the requirements of effective legal assistance, since they omitted from the application for *amparo* the defensible arguments contained in the appeal. The author therefore insists that this constituted a violation of article 14, paragraph 3 (d), of the Covenant.

5.7 The author maintains that there was a violation of article 17 of the Covenant, claiming that article 27 of the Free Legal Assistance Act provides that the beneficiary of free legal assistance may use his own lawyer and *procurador*, but must pay their fees; on the other hand, when the beneficiary uses a lawyer or *procurador* of his own choosing, the law requires the other appointed professional to waive his fees in writing and before the Bar Association, without this being justified.

5.8 In his submission dated 18 April 2002, the author replies to the State party's observations of 18 February 2002, reiterating the same arguments that he made on 2 January 2002.

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 ascertained, as required under article 5, paragraph 2 (a), of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

6.3 The author claims a violation of article 14 (1) of the Covenant, arguing that, during the proceedings, privileges were granted to the prosecution, which was allowed to propose measures after the summary procedure had begun. In this regard, the Committee notes that the author does not substantiate his complaint by indicating what these measures were and how they damaged his case.

He also does not substantiate his complaint that Murcia Criminal Court No. 3 granted complete freedom of interrogation to the prosecutor, without disallowing questions formulated in a manner similar to that which the author's counsel was not permitted to use. Consequently, this part of the complaint is admissible under article 2 of the Optional Protocol.

6.4 The author also claims a violation of article 14, paragraph 1, of the Covenant, arguing that, since he was not allowed to dispense with a *procurador* and to represent himself before the Constitutional Court, he was placed in a situation of inequality with respect to persons with a law degree; such inequality was not justified. In this regard, the Committee recalls its constant jurisprudence¹ that the requirement for representation by a *procurador* reflects the need for a person with knowledge of the law to be responsible for handling an application to that court. The Committee therefore considers that the author's allegations have not been properly substantiated for the purposes of admissibility. Consequently, this part of the communication is inadmissible under article 2 of the Optional Protocol.

6.5 The author claims that his right to a defence, guaranteed in article 14, paragraph 3 (b), was violated, since the court did not authorize the form - which it called "tendentious" - in which his lawyer wished to question him, nor did it permit the re-enactment of the incident by one of the witnesses, which, according to the author, was crucial to his defence. The Committee notes that the dismissal of that complaint was argued both by the court of first instance and by the National High Court in its decision on the appeal. In this regard, the Committee recalls its constant jurisprudence that the interpretation of domestic law in a specific case is essentially a matter for the courts and authorities of the State party concerned. It is therefore not for the Committee to evaluate facts and evidence, unless the domestic decisions are manifestly arbitrary or amount to a denial of justice. In the present case, the author has not substantiated any claim in this regard. Consequently, this part of the communication is declared inadmissible under article 2 of the Optional Protocol.

6.6 The State party submits that the communication should be declared inadmissible, stating that domestic remedies have not been exhausted, as the author failed to avail himself of the administrative remedy envisaged in Law No. 6/1985 on the Judiciary (*Ley Orgánica 6/1985 del Poder Judicial*). This Law, in its Chapter V, stipulates the conditions under which those who consider themselves prejudiced by an unreasonable delay in judicial proceedings, which constitutes an irregularity in the administration of justice in the State party, may claim compensation from the State. The Committee recalls its jurisprudence in Communication No. 864/1999, *Alfonso Ruiz Agudo v Spain*, according to which domestic remedies are considered as exhausted, despite the possibility of a claim for compensation under administrative law, if judicial proceedings have been unreasonably prolonged without sufficient explanation provided by the State party. In the present case, the events occurred on 21 September 1990; the author was detained the same day and released two days later; he was indicted in 1992; the oral hearing took place on 14 June 1995; the judgment of the first instance tribunal was delivered on 16 June 1995, and the judgment of the Provincial Court of Murcia on 20 November 1995. The appeals lodged by the author were rejected at both stages of the trial and, on 5 March 1997, the Constitutional Tribunal dismissed his complaint about an unreasonable delay. Taking into account this delay, the nature of the offence, and the absence of elements which would have complicated the investigations and judicial proceedings, as well as the absence of an explanation by the State party concerning the delay of such proceedings, the Committee concludes that the communication is admissible with regard to a possible violation of

article 14, paragraph 3 (c), of the Covenant.

6.7 The author alleges a violation of article 14, paragraph 3 (d), which guarantees his right to have legal assistance assigned to him, arguing that the court-appointed counsel did fulfil her obligation to defend him effectively before the Constitutional Court. In this regard, the Committee observes that, pursuant to the ruling of the General Council of Spanish Lawyers of 9 September 1996, a new court-appointed counsel was assigned to the author, who filed an application for *amparo* within the time limit established by the Constitutional Court and in accordance with the terms suggested by the General Council of Spanish Lawyers. Consequently, the Committee is of the view that the author does not substantiate his claim for the purposes of admissibility, and declares this part of the claim inadmissible under article 2 of the Optional Protocol.

6.8 The author claims that article 17 of the Covenant has been violated, since the Free Legal Assistance Act requires the freely chosen lawyer to waive his fees when acting together with a court-appointed *procurador*, which amounts to arbitrary interference in the private sphere of client-lawyer relations. None of the arguments adduced by the author leads the Committee to consider that the facts have any bearing on article 17 of the Covenant. Consequently, this part of the complaint should be declared inadmissible under article 2 of the Optional Protocol.

Consideration as to the merits

7.1 The author claims that there were undue delays in his trial, since almost five years elapsed between the date of the incident and the hearing. The Committee notes that the circumstances of the case involved a flagrant offence, and that the evidence required little police investigation and, as the author points out, the low level of complexity of the proceedings did not justify the delay. The Committee recalls its constant jurisprudence that exceptional reasons must be shown to justify delays - in this case, five years - until trial. In the absence of any justification advanced by the State party for the delay, the Committee concludes that there has been a violation of article 14, paragraph 3 (c), of the Covenant.

7.2 In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy, including adequate compensation. The State party is also under an obligation to take the necessary measures to ensure that similar violations do not occur in the future.

7.3 On becoming a State party to the Optional Protocol, Spain recognized the competence of the Committee to determine whether or not there has been a violation of the Covenant. 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. The State party is requested to publish the Committee's 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, Mr. Alfredo Castellero Hoyos, Ms. Christine Chanut, Mr. Franco Depasquale, Mr. Maurice Glèlè Ahanhango, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Martin Scheinin, Mr. Ivan Shearer, Mr. Hipólito Solari Yrigoyen, Ms. Ruth Wedgwood, Mr. Roman Wieruszewski and Mr. Maxwell Yalden.

The text of one individual opinion signed by Committee members Mr. Nisuke Ando, Ms. Ruth Wedgwood, Mr. Roman Wieruszewski and Mr. Maxwell Yalden are appended to the present document.

APPENDIX

Individual opinion of Committee members Mr. Nisuke Ando, Mr. Maxwell Yalden, Mrs. Ruth Wedgwood and Mr. Roman Wieruszewski

We are unable to share the majority view in the present case that there has been a violation of article 14, paragraph 3(c) of the Covenant. According to the majority view, there was undue delay in the trial, since almost five years elapsed between the date of the incident and the date of the conviction.

However, the incomplete factual record before the Committee does not substantiate this view. The record indicates that the author was arrested for assaulting a policeman on September 21, 1990, in the town of Yecla, Spain, and was released the next day. On September 29, 1992, there was some sort of judicial hearing on potential charges, but we do not have any account or summary of that hearing before us. A trial took place before a first-instance tribunal on 14 June 1995, with judgment of conviction delivered on 16 June 1995, and the judgment was affirmed by the Provincial High Court on 20 November 1995. On 5 March 1997, Spain's Constitutional Court dismissed the author's claim concerning unreasonable delay on the ground that "the application did not contain enough information to justify a decision." See the Committee's Views, paragraph 2.7.

With due respect to the majority view, we face the same dilemma as the Constitutional Court. The author, represented by legal counsel before this Committee, has not provided an adequately informative chronology of the facts, much less any supporting documents. We do not know when the criminal charges on which he was convicted were actually filed. It is entirely possible that all initial charges were dismissed without prejudice after the defendant's overnight arrest for allegedly striking a policeman in the eye.

Article 14(3) of the Covenant guarantees the right to "be tried without undue delay" in "the determination of any criminal charge against him." This provision has to be construed with proper attention to widely accepted state practice. In most legal systems, a speedy trial claim is not measured by the gap in time between the date of a criminal incident and its judgment at trial. Rather, speedy trial provisions limit the disposition of pending charges. There is nothing in the record before the Committee that indicates charges were pending from 1990 to 1992. The ability of a state to take

some time to consider whether to bring charges will often benefit defendants. In a case that arises out of the posting of political graffiti, a state might reflect on whether or not to proffer charges. The proffering of charges is, of course, subject to some time limits as well. In most legal systems, a statute of limitations runs from the date of the incident. But for serious charges, the statute of limitations can be as long as five years or more.

In the present case, the entire first-instance trial process was complete within five years. As noted above, Spain's Constitutional Court dismissed the author's claim concerning unreasonable delay on the ground that "the application did not contain enough information to justify a decision." In this connection, we would like to emphasize that the Committee should make it a matter of routine to obtain and translate the judgment of the appellate court that has heard the precise claim brought before the Committee. Especially where an author is represented by counsel, the burden of substantiating the claim is properly put on the author.

Under the circumstances of the present case, we consider it difficult to conclude that the trial process as a whole has suffered undue delay or that it constitutes a violation of article 14, paragraph 3(c). Perhaps the Committee would have been more prudent to conclude that the author failed to substantiate his claim for the purpose of admissibility.

[*Signed*] Mr. Nisuke Ando

[*Signed*] Mr. Maxwell Yalden

[*Signed*] Mrs. Ruth Wedgwood

[*Signed*] Mr. Roman Wieruszewski

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

Notes

1/ Communication No. 865/1999, *Alejandro Marín Gómez v. Spain*, Views adopted on 22 October 2001, para. 8.4; communication No. 866/1999, *Marina Torregrosa Lafuente et al. v. Spain*, Views adopted on 16 July 2001, para. 6.3; and communication No. 1005/2001, *Concepción Sánchez González v. Spain*, Views adopted on 22 March 2002, para. 4.3.