

HUMAN RIGHTS COMMITTEE

Fernández v. Spain

Communication No. 1007/2001**

7 August 2003

CCPR/C/78/D1007/2001*

VIEWS

Submitted by: Mr. Manuel Sineiro Fernández (represented by Mr. José Luis Mazón Costa)

Alleged victim: Author

State party: Spain

Date of communication: 15 November 2000 (initial submission)

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

Meeting on 7 August 2003,

Having concluded its consideration of communication No. 1007/2001, submitted on behalf of Mr. Manuel Sineiro Fernández 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 15 November 2000, is Manuel Sineiro Fernández, a Spanish national currently deprived of his liberty after being sentenced to 15 years' imprisonment for drug trafficking and belonging to an organized gang. He claims to be the

victim of violations by Spain of article 9, article 14, paragraphs 1, 2, 3 (b) and 5, and article 26 of the International Covenant on Civil and Political Rights. The Optional Protocol entered into force on 24 January 1985. The author has been represented by counsel, but the latter has informed the Committee, in a note received by it on 3 March 2003, that he is no longer acting for the author.

The facts as submitted

2.1 On 6 September 1996, the Criminal Division of the National High Court found the author guilty of drug trafficking and belonging to an organized gang, and sentenced him to 15 years' imprisonment and a fine of 200 million pesetas.

2.2 On 28 July 1998, the Supreme Court denied the author's application for a judicial review (*casación*). The author submitted an application for *amparo* to the Constitutional Court, but this was rejected on 17 February 2000. In its ruling, the Supreme Court stated that it was not part of its functions to reconsider the evidence on which the court of first instance had based its conviction.

The complaint

3.1 The author claims a violation of article 9, paragraph 1, of the Covenant on the grounds that, since the sentence imposed by the High Court was not reviewed by a higher court, he is being detained illegally.

3.2 The author also claims a violation of article 14, paragraphs 1 and 3 (b), because his initial interrogation was conducted in the presence not of the counsel he himself had appointed but of court-appointed counsel, and because of the allegedly hostile and coercive presence of the police, who advised the judge throughout the statement procedure.

3.3 In respect of the allegations of a violation of article 14, paragraph 2, the author claims that the burden of proof rests with the prosecution, not the defence, since the accused has the right to the presumption of innocence. He claims that the only evidence against him was an incriminating statement by a co-defendant, and that that was flimsy because it was not corroborated by other evidence against the co-defendant.

3.4 As to the alleged violation of article 14, paragraph 5, the author claims that a higher court should carry out a full review of the evidence in, and the course of, any case tried at first instance, since an application for judicial review implies only a partial review of the judgement.

3.5 Lastly, the author claims a violation of article 26 of the Covenant on the grounds that he never had the right of appeal or the right to a full review of the conviction and the sentence handed down, having been tried at first instance by the National High Court. If the offence he committed had carried a less severe penalty, he would have been tried by the Central Criminal Court of the National High Court and would then have had the right to a full review of the

conviction on appeal.

Observations of the State party on admissibility and the merits

4.1 In its communications of 22 October 2001 and 19 February 2002, the State party explains, in respect of the alleged violation of article 9 of the Covenant, that the author has been deprived of liberty for a reason established in the Penal Code and in accordance with the Criminal Procedure Act.

4.2 With regard to article 14, paragraph 5, the State party alludes to the Committee's opinion in respect of communication No. 701/1996 (1), that the issue is not the amendment, in the abstract, of Spanish legislation, but whether the appeal procedure followed provided the guarantees required under the Covenant. In this communication, the State party maintains that the alleged violation of article 14, paragraph 5, is inadmissible since, given that the issue is not the amendment, in the abstract, of the law, there is no reference in the author's communication to anything occurring during the domestic remedy procedure that might warrant that allegation.

4.3 With regard to the alleged violation of article 14, paragraph 2, of the Covenant, the State party points out that the High Court judgement indicated that all the evidence submitted was examined. The author's involvement in serious drug trafficking to which the conviction related has been adequately substantiated in adversarial proceedings in which the author exercised his full right to a defence. Moreover, the mere fact that the author disagrees with his conviction, stating vaguely that there is insufficient evidence, is no basis for a determination that judicial decisions violate the Convention. The State party therefore considers that this part of the communication is inadmissible.

4.4 In respect of the alleged violation of article 14, paragraph 1, of the Covenant, the State party points out that, during the proceedings before the National High Court, the Supreme Court and the Constitutional Court, the author was assisted by counsel of his own choosing. Furthermore, the author never made any such allegation in the documents he submitted during the domestic proceedings. Lastly, as regards the absence of any counsel of his own choosing during his first interrogation, the State party says that, besides the fact that he never raised the issue at the domestic level, the author simply refused to make a statement.

4.5 As to the allegedly hostile and coercive presence of the police while the author's statement was being taken, the State party points out that the High Court judgement addresses this allegation and that the version of events given by the author in his defence could not have been the result of fear or intimidation. Moreover, the Supreme Court, before which the author repeated his complaint, also replied in its judgement that there was no record whatsoever of police being present during the author's initial statement. Although the police were indeed present at the meeting between the author and the other defendant on 13 August 1992, there cannot be said to have been any intimidation on their part since the meeting took place in the presence of judicial officials and the co-defendants' lawyers. This part of the communication should therefore be declared inadmissible.

4.6 In respect of article 26 of the Covenant, the State party alludes to the Committee's comments of 20 July 2000 on communication No. 701/1996, *Gómez Vázquez v. Spain*, in which the Committee concluded, with reference to the fact that the Spanish system provides for various types of remedy depending on the seriousness of the offence, that different treatment for different offences does not necessarily constitute discrimination.

Author's comments on admissibility and the merits

5.1 With regard to article 14, paragraph 5, the author claims, in his comments of 27 December 2001 and 27 March 2002, that he was able to bring before the Supreme Court only his complaints concerning violations of fundamental rights and the misapplication of the law, and was not able to apply specifically for a review of his conviction on the grounds of lack of credibility of the prosecution witness. Lastly, he maintains that he was unable to obtain a review of the conviction in a higher court.

5.2 As to the State party's allegations that he did not raise the issue of a second hearing before the Supreme Court or the Constitutional Court, the author points out that the Constitutional Court has consistently held that judicial review meets the requirements set forth in article 14, paragraph 5, of the Covenant, concerning a second hearing in criminal cases.

5.3 With regard to article 14, paragraph 2, the author states that the only evidence presented by the prosecution was a statement by a co-defendant. He also expresses doubt about the statement by the Chief of Intelligence, Madrid, by whom the co-defendant was employed, that that informant had not passed on any information implicating the author.

5.4 With regard to the alleged violation of article 14, paragraphs 1 and 3 (b), the author rejects the State party's contention that he never raised the counsel issue during the domestic proceedings; he states that the point was raised in the application for judicial review and that that was the reason why he had refused to sign the first statement. He also claims that a police official admits that during the first interrogation two of the policemen in charge of the investigation provided the judge with information and advice.

5.5 Lastly, the author repeats that the allegations concerning articles 9, paragraph 1, and 26 should be considered on their merits, since they have not received a proper response from the State party.

Issues and proceedings before the Committee

6.1 In accordance with rule 87 of its rules of procedure, before considering any claims contained in a communication, the Human Rights Committee must decide whether or not the communication 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. It has also ascertained that the victim has exhausted domestic remedies for the purposes of article 5, paragraph 2 (b), of the Optional Protocol.

6.3 With regard to the claim that there has been a violation of article 9 of the Covenant, the Committee considers that the author has not demonstrated, for the purposes of admissibility, in what way the failure of a higher court to review his sentence constitutes a violation of article 9. It therefore concludes that this part of the communication is inadmissible under article 2 of the Optional Protocol.

6.4 With regard to the allegation that article 26 of the Covenant was violated because the Spanish system provides for various types of remedy depending on the seriousness of the offence, the Committee restates the position it adopted in its Views on communication No. 701/1996, *Gómez Vázquez v. Spain*, in which it concluded that different treatment for different offences does not necessarily constitute discrimination; it therefore declares this part of the communication inadmissible under article 3 of the Optional Protocol.

6.5 With regard to the author's allegations that the State party violated his right to the presumption of innocence because of the lack of evidence proving his guilt, the Committee observes that it has consistently taken the view that, in general, the facts and evidence submitted in a case are for the domestic courts to evaluate unless it can be shown that their evaluation has been manifestly partial, arbitrary or tantamount to a denial of justice. The Committee therefore concludes that the author has not substantiated his claim and that this part of the communication is inadmissible under article 2 of the Optional Protocol.

6.6 With respect to the author's allegations that there was a violation of article 14, paragraphs 1 and 3 (b), because he did not have a lawyer of his own choosing during his first interrogation, and because of the hostile and coercive police presence, the Committee takes note of the State party's observations to the effect that the author was assisted by counsel of his own choosing during the trial and that he refused to make a statement during the interrogation stage. The State party also denies that the police acted coercively during the statement stage. Taking account of the arguments put forward by the State party, the Committee concludes that the author has not substantiated his claim and that this part of the communication is inadmissible under article 2 of the Optional Protocol.

6.7 Lastly, the Committee declares the author's allegations regarding article 14, paragraph 5, are admissible and proceeds to a consideration on the merits in the light of the information provided by the parties, in accordance with the provisions of article 5, paragraph 1, of the Optional Protocol.

Consideration on the merits

7. As to whether the author has been the victim of a violation of article 14, paragraph 5, of the Covenant because his conviction and sentence were reviewed only by the Supreme Court, a procedure that constitutes a partial review of the conviction and sentence, the Committee refers

to the position it adopted on communication No. 701/1996, *Gómez Vázquez v. Spain*. There, the inability of the Supreme Court, as the sole body of appeal, to review evidence submitted at first instance was tantamount, in the circumstances of that case, to a violation of article 14, paragraph 5. Similarly, in the present communication, the Supreme Court expressly stated that it was not part of its functions to reconsider the evidence on which the court of first instance had based its conviction. As a result, the author has been denied the full review of his conviction and sentence.

8. Accordingly, 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 disclose a violation of article 14, paragraph 5, of the Covenant.

9. Under article 2, paragraph 3 (a), of the Covenant, the author is entitled to an effective remedy. The author's conviction must be reviewed in accordance with article 14, paragraph 5, of the Covenant. The State party is under an obligation to take the necessary measures to ensure that similar violations do not occur in future.

10. 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 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 the event that 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.

[Done 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.]

* Made public by decision of the Human Rights Committee.

** The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Alfredo Castillero Hoyos, Mr. Franco Depasquale, Mr. Maurice Glèlè Ahanhanzo, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Mr. Rafael Rivas Posada, Mr. Martin Scheinin, Ms. Ruth Wedgwood and Mr. Roman Wieruszewski.

Note:

1. Communication *Gómez Vázquez v. Spain*, Views of 20 July 2000, paragraph 10.2.