



**International covenant  
on civil and  
political rights**

Distr.  
RESTRICTED\*

CCPR/C/80/D/1074/2002  
28 April 2004

ENGLISH  
Original: SPANISH

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HUMAN RIGHTS COMMITTEE  
Eightieth - session  
15 March –2 April 2004

**DECISION**

**Communication No. 1074/2002**

Submitted by: Isabel Ferragut Pallach (represented by counsel  
Mr. Javier Bruna Reverter)

Alleged victim: Arturo Navarra Ferragut

State party: Spain

Date of communication: 16 October 2002 (initial submission)

Document references: Special Rapporteur's rule 91 decision, transmitted to  
the State party on 2 May 2002 (not issued in  
document form)

Date of decision: 31 March 2004

[ANNEX]

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\* Made public by decision of the Human Rights Committee.

**Annex**

DECISION OF THE HUMAN RIGHTS COMMITTEE UNDER  
THE OPTIONAL PROTOCOL TO THE INTERNATIONAL  
COVENANT ON CIVIL AND POLITICAL RIGHTS

Eightieth session

concerning

**Communication No. 1074/2002\*\***

Submitted by: Isabel Ferragut Pallach (represented by counsel  
Mr. Javier Bruna Reverter)

Alleged victim: Arturo Navarra Ferragut

State party: Spain

Date of communication: 16 October 2002 (initial submission)

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

Meeting on 31 March 2004

Adopts the following:

**Decision on admissibility**

1. The author of the communication, dated 16 October 2000, is Isabel Ferragut Pallach, a Spanish national who claims that Spain committed violations of article 7 and article 14, paragraph 1, of the International Covenant on Civil and Political Rights with respect to her son, Arturo Navarra Ferragut, who died on 27 December 1993. The author 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 3 March 1988, Arturo Navarra Ferragut, at the age of 27, suffered from obsessive neurosis, underwent radiosurgery, performed by doctors Enrique Rubio García and

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\*\* The following members of the Committee participated in the examination of the present communication: Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Alfredo Castillero Hoyos, Ms. Christine Chanet, Mr. Franco Depasquale, Mr. Maurice Glèlè Ahanhanzo, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, 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.

Benjamín Guix Melchor. In the years that followed, he gradually and irreversibly lost his vital faculties, until he died on 27 December 1993.

2.2 The author filed a complaint against the doctors with Barcelona Criminal Court No. 13, accusing them of recklessly negligent professional conduct (*imprudencia temeraria profesional*) resulting in death. In a judgement dated 14 July 1997, the Criminal Court judge acquitted the defendants because of lack of irrefutable evidence of negligent conduct.

2.3 The author lodged an appeal with the Provincial High Court in Barcelona. She sought authorization for a hearing so that the appeal could be processed and settled more expeditiously. The Provincial High Court rejected her appeal in a judgement of 27 January 1998.

2.4 The author then filed an application for amparo with the Constitutional Court, claiming a violation of the right to effective legal protection and of the right to life and physical and moral integrity. The Court rejected the application in a decision of 13 July 1998.

2.5 She next lodged a complaint with the European Court of Human Rights claiming violations of articles 2, 3 and 8 and article 6, paragraph 1, of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The European Court declared her application inadmissible in a decision of 27 April 2000.

### **The complaint**

3.1 The author claims a violation of article 7 of the Covenant, with regard to the prohibition on being subjected to medical or scientific experimentation. She states that the treatment that caused her son's death was presented by the doctors as a remedy for psychiatric disorders, when in fact it is used to combat malignant brain tumours. She maintains that her son's case was used as a scientific experiment to examine the possibility of carrying out gamma ray radiosurgery on patients with psychiatric disorders.

3.2 The author claims a violation of article 14, paragraph 1, of the Covenant on the grounds that the Barcelona Provincial High Court did not issue a decision on her specific request that a public hearing should be held before the delivery of a judgement.

### **Observations by the State party on admissibility**

4.1 In its submission dated 20 June 2002, the State party maintains that the communication is inadmissible under article 5, paragraph 2 (a), of the Optional Protocol on the grounds that the communication submitted to the Committee concerns exactly the same matter as that which was submitted by the same person to the European Court of Human Rights. The State party adds that the aim of the examination conducted by the European Court was to consider the procedure as a whole. It recalls that, on a number of occasions, the Committee has stated that the "same matter" concept, within the meaning of article 5, paragraph 2 (a), of the Optional Protocol, should be understood to include the same claim

concerning the same individual, submitted by that individual to an international body.<sup>1</sup> The State party claims that confusing the “same matter” with an isolated reason for complaint implies overlooking the unitary concept of the process, which requires its comprehensive examination.

4.2 The State party asserts that, in accordance with article 795 of the Criminal Procedure Act, appeal hearings before the National High Court are held not at the request of the parties, but at the discretion of the judicial body. In accordance with this article, a hearing shall be held only “*when the High Court deems it necessary for the correct formation of a well-founded conviction*”. It asserts that the High Court did not consider it necessary to hold another hearing in the author’s case because one had already been held before the Criminal Court and that, furthermore, this issue was considered by the European Court. In addition, the State party maintains that the European Court also considered- the arguments which the author invokes before the Committee under article 7 of the Covenant, drawing attention in that regard to the existence of a document signed by Arturo Navarra Ferragut in which he consented to the medical treatment he received.

### **Comments by the author on admissibility**

5.1 In her submission dated 22 November 2002, the author claims that the complaints submitted to the Committee have not been raised before other international bodies. She states that, although they may have arisen during the same legal process, the facts and legal issues she is now submitting to the Committee constitute a different matter from that which she submitted to the European Court.

5.2 The author accepts that the National High Court was not obliged by law to hold a hearing in order to resolve the appeal, but submits that this does not mean that it was unable to do so, especially as the law itself provides for such a possibility. In her view, the principles of due process, effective legal protection and the right to obtain a legal judgement on the questions submitted by the parties to the courts are included in article 14, paragraph 1, and obliged the Court to issue a decision on her request, which was ignored.

### **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 notes that the author filed a complaint with the European Court of Human Rights, which, on 27 April 2000 declared her appeal inadmissible on the grounds that it was manifestly unfounded. The Committee notes that the European Court examined the facts that are now being presented by the author, as well as the legal procedure in its entirety. Specifically, the Court delivered a decision on the alleged failure of the National High Court to respond to the author’s request for the holding of a hearing. The Court considered that the

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<sup>1</sup> This has been the tenor of the Committee’s decisions on communications Nos. 808/1998, *Rolj and daughter v. Germany*, and 744/1997, *Linderholm v. Croatia*.

author had not proved that she had not had a fair hearing in the Spanish courts. Likewise, it took into consideration the fact that, according to the judgement of the Barcelona Criminal Court No. 13 on 14 July 1997, Arturo Navarra Ferragut had signed a document authorizing the radiosurgery treatment that was performed on him, and that the said document explicitly set out the possible side effects. In light of the above, it can be established that, although the author wishes the Committee to approach the case from a different angle from that taken by the European Court, the case addresses the “same matter” that has already been examined under another procedure of international investigation and analysed in this context. The Committee notes that while most of the authentic language versions of article 5.2 a) of the Optional Protocol refer only to instances where the same matter is pending before another international body, the Spanish text of the said provision also relates to situations where such examination has been concluded. The Committee maintains its position that article 5.2 a) of the Optional Protocol is to be interpreted in the light of the other authentic languages, rather than the Spanish one. However, it notes that the State party’s reservation submitted in Spanish<sup>2</sup>, at the time of accession to the Optional Protocol, uses terminology close to the text of the Spanish version of article 5.2.a) of the Optional Protocol. It concludes that the State party had the clear intention to extend, by way of reservation, the provision of article 5 paragraph 2 (a) of the Optional Protocol to cover communications the consideration of which has been completed under another international procedure. The communication must therefore be declared inadmissible under article 5, paragraph 2 (a), of the Optional Protocol, as modified by the State party’s reservation

7. The Human Rights Committee therefore decides:

- (a) That the communication is inadmissible under article 5, paragraph 2 (a) of the Optional Protocol;
- (b) That this decision shall be communicated to the author and, for information purposes, to the State party.

[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.]

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<sup>2</sup> The original text in Spanish reads: “El Gobierno español se adhiere al Protocolo Facultativo del Pacto Internacional de Derechos Civiles y Políticos, interpretando el artículo 5, párrafo 2, de este Protocolo, en el sentido de que el Comité de Derechos Humanos no considerará ninguna comunicación de un individuo a menos que se haya cerciorado de que el mismo asunto no ha sido sometido o no esté siendo sometido a otro procedimiento de examen o arreglo internacionales”