



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE
Eighty-third session
14 March-1 April 2005

DECISION

Communication No. 860/1999

Submitted by: Aurelio Fernández Álvarez (not represented by counsel)

Alleged victim: The author

State party: Spain

Date of communication: 2 November 1997 (initial submission)

Document references: Special Rapporteur's rule 97 decision, transmitted to the State party on 1 March 1999 (not issued in document form)

Date of decision: 31 March 2005

[ANNEX]

* 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**

Eighty-third session

concerning

Communication No. 860/1999*

Submitted by: Aurelio Fernández Álvarez (not represented by counsel)

Alleged victim: The author

State party: Spain

Date of communication: 2 November 1997 (initial submission)

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

Meeting on 31 March 2005,

Adopts the following:

Decision on admissibility

1. The author of the communication, dated 2 November 1997, is Aurelio Fernández Álvarez, a Spanish national, who alleges that he is the victim of torture and ill-treatment by Spain. Although the author has not alleged specific violations of any of the provisions of the Covenant, his complaint would seem to raise issues in connection with articles 7 and 10 of the International Covenant on Civil and Political Rights. The author is not represented by counsel.

The facts

2.1 When the author submitted his communication in November 1997, he was serving a sentence¹ in the penitentiary in Huelva, Spain. In his many letters addressed to the Committee he complains of having been held under the regime for extremely dangerous prisoners, under

* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Ms. Christine Chanet, Mr. Maurice Glèlè Ahanhanzo, Mr. Edwin Jonson López, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Michael O'Flaherty, Ms. Elisabeth Palm, Mr. Rafael Rivas Posada, Mr. Ivan Shearer, Mr. Hipólito Solari Yrigoyen, Ms. Ruth Wedgwood and Mr. Roman Wieruszewski.

which various of his rights were violated. In particular, he complains of having been beaten and subjected to ill-treatment by prison officials in the various Spanish prisons where he has been incarcerated.

2.2 The author alleges that on several occasions in 1997, while he was being held in the Puerto I penitentiary in Cádiz, he and other prisoners in the isolation block were immobilized by being shackled to their beds. He adds that they were insulted, beaten and had gas sprayed in their mouths, were handcuffed to the bars of their cells and forced to remain naked. He further states that the food served to them had gone bad; they were prohibited from communicating with each other through the windows and were denied access to athletic facilities; they were not provided with any medical care and received death threats.

2.3 In a letter dated 25 October 1999, the author informs the Committee that on 11, 12 and 17 September 1999 officials at the Madrid II penitentiary, where he was then being held, handcuffed him, forced him to strip naked and had him do deep knee bends for half an hour in their offices. He further alleges that they beat and kicked him every time he stopped to rest, and also held his head in a bucket of water from time to time. He maintains that he was forced to remain in solitary confinement for up to five days unattended. In a letter dated 9 June 2002, the author complains of further physical assaults similar to those that occurred in 1999.

2.4 With regard to the exhaustion of remedies, the author has attached various documents, according to which:

(a) On 17 August 1995 the prison supervision court removed the author from the list of inmates who are kept under close observation (the FIES regime).² On 8 January 1996, the Provincial High Court of Madrid upheld the prison supervision court's decision, despite which the author continued to be subject to the special regime.

(b) On 2 October 1996, when the author was an inmate at the Villanubla penitentiary, Valladolid, he filed a complaint with the Valladolid prison supervision court seeking to be released from the special regime. The author alleges that on 8 January 1996 the Provincial High Court of Madrid³ had decided to remove him from the FIES roster, despite which he continued to be confined in "special wings", where he had remained for seven years and where, among other things, he was physically assaulted, handcuffed and subjected to strip-searches and received constant death threats. The court rejected his complaint on the grounds that the restrictions imposed on the author were consistent with the prison regime applicable to him under the Penitentiary Act, which stipulated that an inmate classified as being extremely dangerous must be held in closed facilities or in special wings. On 25 November 1996, the court rejected an application for review filed by the author. On 30 June 1997, the Provincial High Court of Valladolid rejected an appeal by the author.

Subsequently, the author filed an application for amparo with the Constitutional Court, alleging, among other arguments, the failure of the Provincial High Court to state the grounds for its decision. At the time he filed that application, the author was no longer in Valladolid but in the Puerto I prison, Cádiz. The author stated in his application that he continued to be subjected to degrading treatment and routine strip-searches; that he was not allowed to have newspapers; that he was denied access to athletic facilities; and that his belongings were treated roughly

whenever there was a cell inspection. On 30 November 1998 the Constitutional Court rejected the application, holding that the restrictions imposed on the author were consistent with the prison regime applicable to him as a result of his classification as an extremely dangerous prisoner and that, regardless of whether or not he agreed with that classification and regime, the response of the judicial authorities could not be considered as contrary to the Constitution. With regard to that decision, the author submits the argument to the Committee that the court's decision referred only to the issue of classification and did not deal with the complaints of physical ill-treatment, torture, and degrading and humiliating treatment to which he had been subjected. The author considers that he has exhausted all domestic remedies.⁴

(c) On 13 March 1997, the author filed a complaint of ill-treatment against the authorities of the Puerto I penitentiary.

(d) On 1 October 1997 the author filed a complaint with the Huelva examining police court concerning incidents that occurred on 30 September 1997, at which time he was allegedly beaten and handcuffed by prison guards.⁵

(e) On 26 January 1998, the author filed a complaint against the director of the Moraleja penitentiary with the Palencia police court, alleging that he had been held in solitary confinement, had been subjected to ill-treatment and torture, had had his mail intercepted and had been denied permission to participate in scheduled activities and sports. The author again cited the failure to implement the decision of 8 January 1996. On 5 March 1998, the court ordered that the investigation should be closed, as no offence had been proved.

(f) On 4 May 1998, the author filed a complaint with the Oviedo prison supervision court, alleging that he had been the victim of ill-treatment. On 15 June 1998, the court upheld the author's complaint in part and concluded that the prison authorities had not fully justified a strip-search of the author on 2 May 1998.⁶ The author filed an application for review of that decision, an application that was rejected by the court on 7 July 1998. The author filed an appeal with the Provincial High Court of Oviedo, which was rejected on 3 October 1998. The author filed an application for amparo with the Constitutional Court, which was rejected on 25 October 1999 on the grounds that the court of first instance had already resolved the matter.

(g) On 12 April 1999, the Constitutional Court rejected another application for amparo submitted by the author against the decision issued on 10 June 1998 by the Provincial High Court of Huelva concerning a complaint by the author that the prison authorities were not providing him with daily newspapers.

(h) On 8 June 1999, the Supreme Court accepted in part the appeal filed by the author against a ruling of the Disciplinary Commission of the General Council of the Judiciary dated 27 January 1995 to set aside a complaint lodged by the author in January 1995 against a prison supervision judge in Valencia for failing to resolve his claims concerning his prison situation in a timely manner. The Supreme Court's decision indicates that the author had complained to the judge in order to be allowed to take walks individually. The author maintains that, despite the decision of the Supreme Court, the Council took no action in that regard.

2.5 The author has also submitted the decision of the European Commission of Human Rights of 25 November 1996 concerning a complaint of ill-treatment during various incidents that took place in August 1993, October 1994, December 1994, May 1995 and October 1995. The Commission found the complaint inadmissible because domestic remedies had not been exhausted, since the author had not applied to the Constitutional Court.

The complaint

3.1 The author's basic allegation is that he has been subjected to inhuman and degrading treatment and torture in the Spanish prisons where he has been incarcerated under the special regime. He adds that the authorities have not taken any measures to reintegrate or rehabilitate him, and that one proof of this is that prisoners are denied access to newspapers.

3.2 The author alleges that, even though he was removed from the FIES roster by decision of 8 January 1996 of the Provincial High Court of Madrid, the prison authorities continued to subject him to a regime that restricted his rights.

The State party's observations on admissibility and the merits

4.1 In its notes verbales dated 21 April 1999 and 23 August 1999, the State party maintains that the communication is inadmissible on the basis of article 5, paragraph 2 (a), of the Optional Protocol, since the author submitted the same matter to the European Commission of Human Rights. In its decision of 25 November 1996, the Commission found the complaint inadmissible. The State party also maintains that the communication should be found inadmissible in accordance with article 5, paragraph 2 (b), inasmuch as the author has not exhausted domestic remedies. It adds that the author has simultaneously brought his complaints before many domestic and international bodies, and that when he has brought his claims to the competent judicial organs, they have resulted in reasoned decisions. It points out that the author generally fails to inform the Committee of rulings that have been favourable to him.

4.2 According to the State party, some of the incidents reported by the author were subsequently addressed by means of judicial decisions in his favour. It adds that the complaints that were rejected were given thorough and rational consideration, and that the author did not make use of the proper remedies. The State party affirms that the author was removed from the FIES roster by order of the Madrid prison supervision court dated 17 August 1995, as confirmed by an order of the Provincial High Court of Madrid dated 8 January 1996, and that that ruling is being implemented.

4.3 The State party adds that the author complained of having been forced to undergo a strip-search at the Villanubla penitentiary, and the Valladolid prison supervision court upheld his complaint, holding that full searches could only be made when there were grounds for believing that prisoners were in possession of banned objects. The State party maintains that the complaints submitted by the author and other inmates on 13 March 1997 concerning ill-treatment that allegedly occurred in the Puerto I penitentiary were rejected on 20 May 1997 by the El Puerto prison supervision court. It adds that the complaint of ill-treatment that allegedly occurred in May 1997 in the same penitentiary was also rejected by the El Puerto prison supervision court. There is no indication that the author appealed these decisions.

4.4 In its submission of 26 October 1999, the State party adds that the author, by his constant complaints of ill-treatment by the prison authorities, is engaging in a kind of *actio popularis* that does not fall under established procedures.

The author's comments

5.1 In his letter of 25 October 1999 and other subsequent letters, the author insists that he has exhausted all domestic remedies and submits copies of many documents sent to administration and judicial authorities in that regard.

5.2 The author has also submitted copies of two newspaper articles. One article, dated 22 November 1999, refers to the alleged ill-treatment of the author and the complaints filed; the other refers to complaints of ill-treatment in Spanish prisons.

Additional observations of the parties

6.1 On 4 March 2002, the author sent the Committee copies of 13 forensic reports from various courts⁷ dating from September 1998 to February 2001. He also sent a medical report of injuries from the Valencia penitentiary dated December 1994. All these reports describe a variety of contusions, abrasions and bruises.

6.2 On 23 October 2002, the State party informed the Committee that the author was classified as an extremely dangerous prisoner, in treatment level I, under article 93, paragraph 1, of the Penitentiary Regulations, and that he was subject to the regime applicable to that classification, which was independent of the FIES regime, to which the author was no longer subject. The State party also reported that Madrid prison supervision court No. 5, in decisions dated 30 March 1999, had rejected two complaints by the author regarding his classification, finding it to be appropriate in view of his poor conduct in prison. There is no indication that the author has exhausted domestic remedies in regard to these judicial decisions. The State party reiterates that there has been no violation of the Covenant in this case.

6.3 By note verbale dated 6 November 2002, the State party stated that the author had arrived at the Madrid II penitentiary on 14 September 1998 classified as level I. On 17 February 1999 the penitentiary had decided to cancel the existing disciplinary sanctions and disciplinary file against him and to place him under an ordinary regime. However, the author did not cooperate with the prison authorities. After four days under the new regime he attacked a prison guard and broke his hand; with the approval of the prison supervision court he was returned to a level I prison regime in the isolation block.⁸ In relation to this incident he was subsequently convicted of assault and battery and assaulting a person in authority. The State party adds that the author displays very poor behaviour and is involved in daily incidents, insults, threats and attacks; he was written up for disciplinary matters 19 times in 2000, 58 times in 2001 and 16 times up to that point in 2002. From April 1999 to January 2002, the author submitted 29 complaints against the prison authorities to the prison supervision courts on various grounds. All those complaints were rejected. From April to June 2002, another six complaints brought by the author were rejected by prison supervision courts or by the Provincial High Court of Madrid.

Issues and proceedings before the Committee

7.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not the complaint is admissible under the Optional Protocol to the Covenant.

7.2 The State party maintains that the author's communication must be ruled inadmissible on the basis of article 5, paragraph 2 (a), of the Optional Protocol because the same matter was submitted to the European Commission of Human Rights. In this connection, the Committee notes that the Commission's decision refers to presumed violations that are alleged to have occurred between August 1993 and October 1995, in relation to which the author submitted to the Committee a medical report of injuries dated 22 December 1994. That part of the communication must therefore be considered inadmissible according to article 5, paragraph 2 (a), of the Optional Protocol.

7.3 The complaint before the Committee also refers to violations that allegedly occurred after the above-mentioned dates. The Committee considers that with regard to the incidents the author complains of that occurred after 6 October 1995, the communication raises issues that are different from those raised before the European Commission of Human Rights and therefore should be examined to determine their admissibility.

7.4 The Committee takes note of the State party's observations that on various occasions the prison authorities revised the prison regime applicable to the author and that, although they tried to place him under a more flexible regime, his aggressive behaviour and the frequent incidents and fights with other prisoners and prison officials compelled them to place him back under the regime reserved for dangerous prisoners. As a consequence of these incidents the author was on several occasions subjected to disciplinary measures. The Committee further notes the medical certificates supplied by the author indicating the existence of injuries. These certificates, dating from September 1998 to February 2001, when the author was being held at the Madrid II penitentiary, refer to incidents that allegedly occurred subsequent to the submission of the initial communication. The author states that he complained of these incidents to the judicial authorities, but there is no indication in the file that the author appealed the decisions handed down by the lower courts. There is also no indication that the author appealed the judicial decisions handed down regarding the complaints he filed on 13 March 1997, 1 October 1997 and 26 January 1998. That part of the communication must therefore be considered inadmissible according to article 5, paragraph 2 (b), of the Optional Protocol.

7.5 The Committee observes that on 2 October 1996 the author filed a complaint against the authorities of the Villanubla penitentiary, Valladolid, regarding his prison regime, in which he mentioned the ill-treatment to which he was subjected under that regime. When his complaint was rejected at the lower court and appeal levels, the author filed an application for amparo with the Constitutional Court. The Committee considers that, in relation to those incidents, the author did exhaust all domestic remedies. However, the Committee considers that the author's complaints were not sufficiently substantiated to be able to conclude that he was subjected to treatment that was in violation of articles 7 and 10 of the Covenant, which therefore leads it to consider the communication inadmissible under article 2 of the Optional Protocol.

8. The Human Rights Committee therefore decides:

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

[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.]

Notes

¹ According to the file, the author was serving sentences for several offences of robbery with intimidation and a riot in 1981 in the Pontevedra prison.

² FIES: *Fichero de Internos de Especial Seguimiento*. In an internal judicial decision cited by the author there is a reference to the fact that the FIES roster is simply a database that records criminal, court and prison status of certain prisoners without dictating a way of life for the inmate, and that the prison regime for the treatment of extremely dangerous prisoners is governed by article 10 of the Act organizing the Penitentiary System, which provides for the possibility of an isolation regime.

³ At that time the author was serving a sentence at the Soto del Real penitentiary, Madrid province.

⁴ The main subject of the application, according to the document that appears in the file, was the author's classification in the FIES regime. The author does mention in that document that he was subjected to constant degrading treatment, routine strip-searches and physical ill-treatment, but he does not describe any particular incident.

⁵ The author provides no information on the outcome of these two complaints.

⁶ There is no information in the file about the consequences of this decision or the reasons why the author appealed it.

⁷ Seven of these reports emanate from Alcalá de Henares examining court No. 2 (Madrid province), one from examining court No. 3 and one from court No. 7 of the same city, and two from Madrid prison supervision court No. 1. The other two do not clearly show which court they pertain to.

⁸ Under this regime, the author can go out into the yard for two hours in the morning and two hours in the afternoon, where he can participate in sports and be in company with any other inmate in this block. He can read and study and has access in his cell to television, books, magazines and music.
