

LEGAL RIGHTS - CRIMINAL - Right Against Self-Incrimination

III. JURISPRUDENCE

ICCPR

- *Burgos v. Uruguay* (R.12/52), ICCPR, A/36/40 (29 July 1981) 176 at paras. 11.5 and 13.

...

11.5 ...The State party has not refuted the author's allegations that López Burgos was forced to sign false testimony against himself and that this testimony was used in the trial against him...

...

13. The Human Rights Committee...is of the view that the communication discloses violations of the Covenant, in particular:

...

of article 14(3) (g) because López Burgos was compelled to sign a statement incriminating himself.

See also:

- *Izquierdo v. Uruguay* (R.18/73), ICCPR, A/37/40 (1 April 1982) 179 at paras. 7.2-7.7 and 9.
- *Zelaya v. Nicaragua* (328/1988), ICCPR, A/49/40 vol. II (20 July 1994) 12 (CCPR/C/51/D/328/1988) at paras. 10.4 and 11.
- *Estrella v. Uruguay* (74/1980) (R.18/74), ICCPR, A/38/40 (29 March 1983) 150 at paras. 8.3 and 10.

...

8.3 On 15 December 1977...[the author]...and his friend, Luis Bracony, were kidnapped at his home in Montevideo by some 15 strongly armed individuals in civilian clothes. They were brought blindfolded to a place where he recognized the voices of Raquel Odasso and Luisana Olivera. There the author was subjected to severe physical and psychological torture, including the threat that the author's hands would be cut off by an electric saw, in an effort to force him to admit subversive activities...

...

10. The Human Rights Committee...is of the view that the facts, as found by the Committee, disclose the following violations of the International Covenant on Civil and Political Rights, in particular:

...

of article 14 (3) (g), because of the attempts made to compel him to testify against himself and to confess guilt...

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- *Conteris v. Uruguay* (139/1983), ICCPR, A/40/40 (17 July 1985) 196 at paras. 9.2 and 10.

...

9.2. Hiber Conteris was arrested without a warrant by the Security Police on 2 December 1976, at the Carrasco airport and taken to the intelligence service headquarters in the city. He was later transferred to different military establishments, including the establishment known as “El Infierno” and the Sixth Calvary Headquarters. From 2 December 1976 to 4 March 1977, he was held *incommunicado*, and his relatives were not informed of his place of detention. During this period, Mr. Conteris was subjected to extreme ill-treatment and forced to sign a confession...The remedy of *habeas corpus* was not available to Hiber Conteris. He was never brought before a judge and was kept uninformed of the charges against him for over two years. He was not granted a public hearing at which he could defend himself and he had no opportunity to consult with his court appointed lawyer in preparation for his defence. He was tried and sentenced by a military court of first instance to 15 years' imprisonment and, it appears, to one to five years of precautionary detention. His own statements to the military court of first instance were ignored and not entered into the court records...

10. The Human Rights Committee is of the view that the facts as found by the Committee disclose violations of the Covenant, in particular:

...

- of article 14, paragraph 3(g) because he was forced by means of torture to confess guilt.

- *Cariboni v. Uruguay* (159/1983), ICCPR, A/43/40 (27 October 1987) 184 at paras. 9.2 and 10.

...

9.2 Raúl Cariboni was arrested on 23 March 1973, charged with “subversive association” and “attempts against the Constitution in the degree of conspiracy, followed by preparatory acts”. He was forced to make a confession, which was later used as evidence in the military penal proceedings against him. Proceedings against him lasted six years. Although the prosecutor requested a sentence of nine years' imprisonment, he was sentenced in 1979 to 15 years' imprisonment by the Supreme Military Court, partly on the basis of his forced confessions...

...

10. The Human Rights Committee...is of the view that the facts as found by the Committee ... disclose violations of the International Covenant on Civil and Political Rights, particularly of:

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...

Article 14, paragraph 1, paragraph 3 (c) and paragraph 3 (g), because he was compelled to testify against himself and was denied a fair and public hearing, without undue delay, by an independent and impartial tribunal.

- *Kelly v. Jamaica* (253/1987), ICCPR, A/46/40 (8 April 1991) 241 (CCPR/C/41/D/253/1987) at paras. 3.1 and 5.5.

...

3.1 The author alleges a violation of articles 7 and 14, paragraph 3(g), of the Covenant on the ground that he was threatened and beaten by the police, who tried to make him give and sign a confession. Although the police sought to dismiss his version during the trial, the author contends that several factors support his claim: his “voluntary confession” was not obtained until nearly four weeks after his arrest; no independent witness was present at the time when he purportedly confessed and signed his statement; and there were numerous inconsistencies in the prosecution’s evidence relating to the manner in which his statement was obtained.

...

5.5 ...[T]he Committee notes that the wording of article 14, paragraph 3(g) - i.e., that no one shall “be compelled to testify against himself or to confess guilt” - must be understood in terms of the absence of any direct or indirect physical or psychological pressure from the investigating authorities on the accused, with a view to obtaining a confession of guilt. *A fortiori*, it is unacceptable to treat an accused person in a manner contrary to article 7 of the Covenant in order to extract a confession. It is...the Committee's duty to ascertain whether the author has sufficiently substantiated his allegation, notwithstanding the State party's failure to address it. After careful consideration of this material...the Committee is unable to conclude that the investigating officers forced the author to confess his guilt, in violation of articles 7 and 14, paragraph 3 (g).

- *Campbell v. Jamaica* (248/1987), ICCPR, A/47/40 (30 March 1992) 232 at paras. 6.6 and 6.7.

...

6.6 ...In the present case, it is uncontested that the author instructed his lawyer to raise objections to the confessional evidence, as he claimed this was obtained through maltreatment; this was not done. This failure had a clear incidence on the conduct of the appeal; the written judgement of the Court of Appeal...emphasizes that no objections were raised by the defence in respect of the confessional evidence...

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6.7 As to the claim under article 14, paragraph 3(g), the Committee notes that the wording of this provision - i.e. that no one shall "be compelled to testify against himself or to confess guilt" - must be understood in terms of the absence of any pressure from the investigating authorities on the accused, with a view to obtaining a confession of guilt. In the present case, the author's claim that he was beaten during interrogation and forced to sign a blank confession statement has not been contested by the State party. It remains the Committee's duty to ascertain whether the author has sufficiently substantiated his allegation, notwithstanding the State party's failure to address it. After careful consideration of the material before it, the Committee is unable to determine that the investigating officers used force to compel Mr. Campbell to confess his guilt, in violation of article 14, paragraph 3 (g), or that the judge erred in admitting the confessional evidence put forth by the prosecution.

- *Berry v. Jamaica* (330/1988), ICCPR, A/49/40 vol. II (7 April 1994) 20 (CCPR/C/50/D/330/1988) at 11.3, 11.7 and 13.

...

11.3 As to the author's claim that he did not receive a fair trial, under article 14 of the Covenant, because of the presence in the jury of an allegedly biased person, and the use of evidence against him which was allegedly obtained under duress, the Committee observes that these issues were not raised during the trial. Furthermore, the written judgement of the Court of Appeal reveals that the issue of self-incrimination without prior cautioning by the police was raised during the trial, when N.W. testified that the author had made his statement after police cautioning. Neither counsel nor the author contended at the trial that he had not been cautioned. The Committee is of the opinion that the failure of the author's representative to bring these issues to the attention of the trial judge, which purportedly resulted in the negative outcome of the trial, cannot be attributed to the State party, since the lawyer was privately retained. The Committee therefore finds no violation of article 14, paragraph 1, of the Covenant in this respect.

...

11.7 As to the claim under article 14, paragraph 3 (g), *juncto* article 7, the Committee recalls that the wording of article 14, paragraph 3 (g), that no one shall be "compelled to testify against himself or to confess guilt", must be understood in terms of the absence of any direct or indirect physical or psychological pressure from the investigating authorities on the accused with a view to obtaining a confession of guilt. *A fortiori*, it is unacceptable to treat an accused person in a manner contrary to article 7 of the Covenant in order to extract a confession. The Committee notes that, in the present case, the author claims that the investigating officer, N.W., threatened to shoot him and forced him to sign a prepared statement; this claim has not been contested by the State party. On the other hand, the Committee notes that N.W. testified during the trial that the author had made his statement after police cautioning. The Committee observes that, in order to reconcile these different

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versions, the written depositions made and used during the preliminary hearing were required. The Committee further observes that counsel has requested the State party, on several occasions, to make available to him the transcript of the author's preliminary hearing, including the depositions of witnesses, and that finally, after several reminders, he was informed by the judicial authorities that they were unable to locate them. These allegations have not been denied by the State party and therefore due weight must be given to the author's claims. In this respect, therefore, the Committee finds a violation of article 14, paragraph 3 (g), *juncto* article 7, of the Covenant.

...

13. The Human Rights Committee...finds that the facts before it disclose violations of articles 6, 9, paragraphs 3 and 4...and 14, paragraph 3 (g) *juncto* article 7, of the Covenant.

- *E. Johnson v. Jamaica* (588/1994), ICCPR, A/51/40 vol. II (22 March 1996) 174 (CCPR/C/56/D/588/1994) at para. 8.7.

...

8.7 Regarding the claim under articles 7 and 14, paragraph 3 (g) - i.e. that the author was beaten during police interrogation with a view to extracting a confession of guilt - the Committee reiterates that the wording of article 14, paragraph 3 (g), namely that no one shall "be compelled to testify against himself or to confess guilt", must be understood in terms of the absence of any direct or indirect physical or psychological pressure from the investigating authorities on the accused, with a view to obtaining a confession of guilt. *e/* Although the author's claim has not been refuted by the State party, which promised to investigate the allegation but failed to forward its findings to the Committee, the Committee observes that the author's contention was challenged by the prosecution during the trial and his confession statement admitted by the judge. The Committee recalls that it must consider allegations of violations of the Covenant in the light of all the written information made available to it by the parties (art. 5, para. 1, of the Optional Protocol); in the instant case, this material includes the trial transcript. The latter reveals that the author's allegation was thoroughly examined by the court in a *voir dire*, 28 pages of the trial transcript being devoted to this issue, and that his statement was subsequently admitted by the judge after careful weighing of the evidence; similarly, the jury concluded to the voluntariness of the statement, thereby endorsing the judge's ruling that the author had not been ill-treated. There is no element in the file which allows the Committee to question the decision of the judge and the jury. It must further be noted that on appeal, author's counsel accepted the voluntariness of Mr. Johnson's statement and used it to secure a reduction of the charge against his client from murder to manslaughter. On the basis of the above, the Committee concludes that there has been no violation of articles 7 and 14, paragraph 3 (g).

Notes

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e/ [See Official Records of the General Assembly,] Forty-seventh Session, Supplement No. 40 (A/47/40), annex IX.D, Communication No. 248/1987 (*G. Campbell v. Jamaica*), adopted 30 March 1992, para. 6.7.

See also:

- *Neptune v. Trinidad and Tobago* (523/1992), ICCPR, A/51/40 vol. II (16 July 1996) 84 (CCPR/C/57/D/523/1992) at para. 9.3.
- *Lewis v. Jamaica* (527/1993), ICCPR, A/51/40 vol. II (18 July 1996) 89 (CCPR/C/57/D/527/1993) at paras. 2.4 and 10.2.

...

2.4 During the trial, the author made an unsworn statement from the dock. He testified that he had been elsewhere at the time of the murder and that he had been ill-treated by the police during the interrogation at Montego Bay Police Station. He alleged that, on 25 October 1985, he had been kicked, beaten and threatened with a gun and that one of the officers hit him in his side with a big lock about 10 times. The same officer then ordered him to put his finger on the edge of a desk and struck it with a gun until his finger burst; he was then ordered to use his socks to tie up his finger and to wipe off the blood. The author further claimed that, on 28 October 1985, he was again brought to the C.I.B. office for interrogation. All the officers on duty participated in beating him and one of them struck him in the face with a piece of a mirror. He was then brought back to his cell where a weight was tied to his testicles. When he regained consciousness, he was told to sign a paper, which he refused to do in the absence of a Justice of the Peace. He was then allegedly subjected to electric shocks applied to his ears; after this treatment, he signed the paper.

...

10.2 With respect to the alleged violation of articles 7 and 14, paragraph 3 (g), of the Covenant, the Committee notes from the trial documents that the issue was before the jury during the trial, that the jury rejected the author's allegations, and that the matter was not raised on appeal. In the circumstances, the Committee concludes that the information before it does not justify a finding of a violation of articles 7 and 14, paragraph 3 (g), of the Covenant.

See also:

- *Kelly v. Jamaica* (537/1993), ICCPR, A/51/40 vol. II (17 July 1996) 89 (CCPR/C/57/D/537/1993) at paras. 2.4 and 10.2.

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- *Blaine v. Jamaica* (696/1996), ICCPR, A/52/40 vol. II (17 July 1997) 216 (CCPR/C/60/D/696/1996) at para. 8.2.

...

8.2 As regards the author's claim that he was beaten in order to make him sign a confession, the Committee notes that this claim was put before the judge and the jury at trial, who rejected it. The Committee further notes that the author, in his statement from the dock during the trial, did not make any allusion to having been beaten by the police. Although the matter was raised on appeal, counsel did not pursue it and the Court found no merit in it. The Committee concludes that the information before it does not justify the finding of a violation of articles 7 and 10 of the Covenant.

- *McLawrence v. Jamaica* (702/1996), ICCPR, A/52/40 vol. II (18 July 1997) 225 (CCPR/C/60/D/702/1996) at para. 5.8.

...

5.8 The author has claimed a violation of article 14, paragraph 1, since a witness deemed to be crucial, Horace Beckford, was unavailable at trial, and because the judge failed to make a ruling on the voluntariness of the alleged confession statement and gave inadequate directions on the admissibility of fingerprint evidence...As to the issue of the voluntariness of the alleged confession statement and the admissibility of fingerprint evidence, the Committee recalls that it is generally for the appellate courts of States parties to the Covenant to evaluate all the facts and evidence in a given case. It is not for the Committee to question the evaluation of such evidence by the courts unless it can be ascertained that the evaluation was arbitrary or otherwise amounted to a denial of justice; neither is discernible in the present case. The Committee does not consider that the author has established a violation of article 14, paragraph 1.

- *Whyte v. Jamaica* (732/1997), ICCPR, A/53/40 vol. II (27 July 1998) 195 (CCPR/C/63/D/732/1997) at para 7.5.

...

7.5 The author has claimed that he was beaten by two police officers in order to make him sign a confession statement, which he refused. He states that he mentioned this to the judge at the preliminary hearing, but that no action was taken. The Committee considers that in view of the fact that this claim was raised neither at the trial nor in any other appropriate domestic proceeding, the author has failed to exhaust all domestic remedies available to him. This part of the communication is thus inadmissible...

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For dissenting opinion in this context see Whyte v. Jamaica (732/1997), ICCPR, A/53/40 vol. II (27 July 1998) 195 (CCPR/C/63/D/732/1997) at Individual Opinion by Ms. Cecilia Medina Quiroga, 203.

- *Richards v. Jamaica (639/1995), ICCPR, A/52/40 vol. II (28 July 1997) 183 (CCPR/C/60/D/639/1995) at para. 6.7.*

...

6.7 With regard to the authors' allegations that they were ill-treated and forced to confess, the Committee notes that this issue was the subject of a trial within a trial, to determine whether the authors' statements were admissible in evidence. In this connection the Committee refers to its prior jurisprudence and reiterates that it is generally for the courts of States parties to the Covenant to evaluate facts and evidence in a particular case; it notes that the Jamaican courts examined the authors' allegations and found that the statements had not been procured under duress. In the absence of clear evidence of bias or misconduct by the judge, the Committee cannot reevaluate the facts and evidence underlying the judge's findings. Accordingly this part of the communication is inadmissible as incompatible with the provisions of the Covenant, pursuant to article 3 of the Optional Protocol.

- *Yasseen and Thomas v. Guyana (676/1996), ICCPR, A/53/40 vol. II (30 March 1998) 151 (CCPR/C/62/D/676/1996) at para. 7.5.*

...

7.5 Mr. Thomas argues that he was subjected to ill-treatment in order to force him to confess the killing of Kaleem Yasseen, in violation of article 14, paragraph 3(g). The Committee notes that this claim was examined by the judge at the first trial (1988) during a *voir dire* and found to be lacking in substance. The Committee has no material before it that would indicate whether or not any issues relating to the alleged ill-treatment or the confession were raised at the last trial (1992) or on appeal (1994). In the circumstances, the Committee considers that there is no basis to find a violation of article 14, paragraph 3(g).

- *Morrison v. Jamaica (635/1995), ICCPR, A/53/40 vol. II (27 July 1998) 113 (CCPR/C/63/D/635/1995) at para. 22.1.*

...

22.1 With respect to the author's claim that he was threatened by police officers if he were not to admit to the murder of Mr. Hunter, the Committee notes that the officers named by the author as being responsible for the threats, gave evidence at the trial against him. At no point

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during the cross-examination of these witnesses, did counsel for the author put the claim to them that they had threatened the author. Nor did the author give evidence to this effect at the trial. In the circumstances, the Committee finds that the author's claim that he was threatened by the police officers is unsubstantiated.

- *Ajaz and Jamil v. Republic of Korea* (644/1995), ICCPR, A/54/40 vol. II (13 July 1999) 111 at paras. 2.1, 3.1, 12.6, 14.2 and 15.

...

2.1 The authors state that they were convicted of murdering one Mokhter Ahmed (Vicky) and one Ahsan Zuber (Nana), two fellow Pakistani citizens, in Songnam City on 24 March 1992. The authors were tried and sentenced to death on 29 September 1992, after having pleaded not guilty to the charges.

...

3.1 The authors state that, during the trial, both Zubi and Zahid testified that the police forced them to sign statements which implicated the authors. The authors also claim that no evidence was brought against them at trial. They state that the murder weapons were never found, that evidence of a "racketeering and criminal ring" in which they were allegedly involved was never substantiated and that after a witness testified to being present while the authors were being beaten by the police, the court was cleared of all defendants, following which, upon their return, the witness retracted his statement on record. They also complain about errors in the translation of their statements.

...

12.6 The State party provides copies of English translations of the Courts' judgements. From the judgements, it appears that the District Court considered the voluntariness of the statements made by the defendants, but that in the light of the testimonies it found no sustainable reason to doubt the voluntariness of the statements. On appeal, the High Court examined the authors' grounds of appeal that the statements made by the defendants were not trustworthy because of mistakes in the translation and interpretation, and because of threats and violence used against the defendants. The High Court found however that the interpreters were capable of interpreting in Pakistani and Korean, and did so correctly. It also noted that the police officer in charge of the investigation had made detailed and elaborate reports on the investigation process and that no evidence was found to prove that he had treated the accused harshly in any way or that he fabricated testimony. The Court concluded that the defendants had not been forced to testify, nor tortured. The Supreme Court rejected the authors' appeal on the basis that no misinterpretation of facts in the use of evidence occurred which would cause a violation of the law.

...

14.2 The Committee notes that the authors' claims that there was not enough evidence to convict them, that they had been tortured in order to force them to confess and that mistakes

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occurred in the translations of their statements were examined by both the court of first instance and the court of appeal, which rejected their claims. The Committee refers to its jurisprudence that it is not for the Committee, but for the courts of States parties, to evaluate the facts and evidence in a specific case, unless it can be ascertained that the evaluation was clearly arbitrary or amounted to a denial of justice. The Committee regrets that the State party did not provide a copy of the trial transcript which has prevented the Committee from examining fully the conduct of the trial. Nevertheless, the Committee has considered the judgements of the District Court and the High Court. Having regard to the content of these judgments and in particular their evaluation of the authors' claims subsequently made to the Committee, the Committee does not find that those evaluations were arbitrary or amounted to a denial of justice or that the authors have raised before the Committee any issues beyond those so evaluated.

...

15. The Human Rights Committee...is of the view that the facts before it do not disclose a violation of any of the articles of the International Covenant on Civil and Political Rights.

- *Sánchez López v. Spain* (777/1997), ICCPR, A/55/40 vol. II (18 October 1999) 204 at paras. 2.1, 2.2, 6.4 and 7.

...

2.1 On 5 May 1990, the author was driving his car at 80 km/h in an area where the speed limit was 60 km/h. The car was photographed after being detected by the police radar. The General Department of Traffic (Ministry of the Interior) asked him, as the owner of the vehicle by means of which the offence had been committed, to identify the perpetrator of the offence or driver of the vehicle, in other words, himself...

2.2 Pursuant to this request and exercising the fundamental right not to confess guilt, Mr. Sánchez López sent the traffic authorities a letter in which he stated that he was not the driver of the vehicle and did not know who had been driving it since he had lent it to several people during that period. As the perpetrator of a serious misdemeanour, he was fined 50,000 pesetas (the speeding fine was 25,000 pesetas).

...

6.4 With regard to the claim that the author's rights to the presumption of innocence and the right not to testify against himself as protected by article 14 paragraph 2 and 3 (g) of the Covenant were violated by the Spanish State, since he had to identify the owner of the vehicle reported for committing a traffic offence, the Committee considers that the documentation in its possession shows that the author was punished for non-cooperation with the authorities and not for the traffic offence. The Human Rights Committee considers that a penalty for failure to cooperate with the authorities in this way falls outside the scope of application of the above-mentioned paragraphs of the Covenant. Accordingly, the

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communication is held to be inadmissible under article 1 of the Optional Protocol.

...

7. The Human Rights Committee therefore decides:

(a) that the communication is inadmissible...

- *Robinson v. Jamaica* (731/1996), ICCPR, A/55/40 vol. II (29 March 2000) 116 at paras. 3.4, 3.7 and 9.4.

...

3.4 Counsel alleges that the trial judge's instructions to the jury and his failure to exclude certain evidence amount to a denial of justice, which, according to the Committee's jurisprudence, constitutes a violation of article 14, paragraphs...2. As to the trial judge's instructions to the jury, counsel submits that the trial judge prejudiced the author's case in the following respects:

the judge failed to remind the jury that the fact that no objection was made to the confession statement being admitted into evidence was irrelevant to the issue the jury had to decide, namely whether the statement was forged or not...

...

3.7 Counsel alleges a violation of article 14, paragraphs 1, 2, 3(b), 3(d) and 5, on the ground that defence counsel on appeal, Lord Gifford, made an erroneous submission that there was no arguable point in the author's case, and, contrary to the author's instructions, stated that the author had accepted this advice. 3/ Counsel argues that Lord Gifford thereby failed to make a case as to whether the cautioned statement was forged or not. It is submitted that Lord Gifford failed to inform the Court both that he had advised the author to obtain a handwriting expert to review the signatures on the disputed statement, and that the author wanted to obtain such an expert, but did not have the necessary funds. Furthermore, counsel argues that Lord Gifford failed to ask for an adjournment to enable funds to be raised.

...

9.4 With regard to the author's allegation of violations of article 14, paragraphs...2, on the ground of improper instructions from the trial judge to the jury on the issues set out in para. 3.4 *supra*, and the admission of the confession statement and the police officers' testimony into evidence, the Committee reiterates that while article 14 guarantees the right to a fair trial, it is generally for the domestic courts to review the facts and evidence in a particular case. Similarly, it is for the appellate courts of States parties to review whether the judge's instructions to the jury and the conduct of the trial were in compliance with domestic law. As both parties also have pointed out, the Committee can, when considering alleged breaches of article 14 in this regard, solely examine whether the judge's instructions to the jury were

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arbitrary or amounted to a denial of justice, or if the judge manifestly violated his obligation of impartiality. The material before the Committee and the author's allegations do not show that the trial judge's instructions or the conduct of the trial suffered from any such defects. Accordingly, this part of the communication is inadmissible as the author has failed to forward a claim within the meaning of article 2 of the Optional Protocol.

Notes

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3/ There is nothing in the file which indicates any earlier mention of such contrary instructions from the author.

- *Sahadeo v. Guyana* (728/1996), ICCPR, A/57/40 vol. II (1 November 2001) 81 (CCPR/C/73/D/728/1996) at paras. 2.1, 2.3-2.6 and 9.3.

...

2.1 On 18 September 1985, Mr. Terrence Sahadeo, a friend called Mutez Ali, and the latter's girlfriend, Shireen Khan, were arrested in Berbice, Guyana, for the murder of one Roshanene Kassim committed earlier the same day.

...

2.3 From the incomplete notes of evidence of the retrial in 1994 submitted by the alleged victim, it appears that the case for the prosecution was that Terrence Sahadeo and Mutez Ali, according to a common plan including also Ms. Kahn, went to the house of the deceased in order to rob her. The alleged victim and Mr. Ali tied her up and put a knife through her throat. One witness for the prosecution testified at the trial that, in the morning of the incident, she had overheard that Ms. Kahn, in the presence of the accused, had inquired a little girl about who would be in the house of the deceased. They were told that Roshanene Kassim would be in the house by herself. Ms. Kahn then told the two other accused to go and see what they could get. The witness testified that, through a window two houses away, she saw Ms. Kassim in the house and the two men enter and return about fifteen minutes later. She stated further that Mr. Sahadeo had blood on his hands that he washed away and that he handed over jewellery to Ms. Kahn. During her cross-examination the witness stated that she was held for two days by the police and tried to contact a lawyer, since she felt she was held against her will, before she made her statement.

2.4 The only other evidence against Mr. Sahadeo was his confession and other statements given by the investigating police officers. At the retrial in 1994, the voluntariness of the statement was challenged by the defence and examined in a *voir dire*. Mr. Sahadeo claimed that during police investigation in 1985 he was beaten by three policemen and that one policeman hit him on the toe with a small hammer. He then signed the statement. The prison

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doctor testified that when Mr. Sahadeo was admitted, he complained that he had been beaten on the back. When the doctor examined him, he found no injuries on his back, but discovered a toe injury, for which he gave him antibiotics. After the *voir dire*, the judge ruled the statement admissible.

2.5 The investigating police officers stated in the retrial in 1994 that the alleged victim was arrested, since he was found outside the house next to Kassim's with scratches on the upper part of his body. The officers denied having used force or threats when questioning the alleged victim and asserted that Mr. Sahadeo has received regular meals during his detention.

2.6 In a statement from the dock, Mr. Sahadeo denied having anything to do with the murder and stated that he had been beaten in order to force him to sign the confession on the third day after his arrest. It is submitted that after Mr. Sahadeo was arrested, he was taken to a doctor, who, after an examination of the alleged victim, issued a medical certificate to the police that he did not find any injuries on his body. The author further submits that the alleged victim was deprived of any food until the day after he made the confession.

...

9.3 With regard to the circumstances in which the confession was signed, the Committee notes that Mr. Sahadeo identified those he holds responsible; further details of his allegations appear from the notes of evidence. The Committee recalls the duty of the State party to ensure the protection against torture and cruel, inhuman or degrading treatment as provided for in article 7 of the Covenant. The Committee considers that it is important for the prevention of violations under article 7 that the law must exclude the admissibility in judicial proceedings of statements or confessions obtained through torture or other prohibited treatment. The Committee observes that Mr. Sahadeo's allegations of torture had been dealt with during the first trial in 1989 and again in the retrial in 1994. It appears from the notes of evidence of the retrial that Mr. Sahadeo had the opportunity to give evidence and that witnesses of his treatment during his detention by the police were cross-examined. The Committee recalls that it is in general for the courts of States parties, and not for the Committee, to evaluate the facts in a particular case. The information before the Committee and the arguments advanced by the author do not show that the Courts' evaluation of the facts were manifestly arbitrary or amounted to a denial of justice. In the circumstances, the Committee finds that the facts before it do not sustain a finding of a violation of article 7 and article 14, paragraph 3 (g), of the Covenant in relation to the circumstances in which the confession was signed.

For dissenting opinion in this context, see Sahadeo v. Guyana (728/1996), ICCPR, A/57/40 vol. II (1 November 2001) 81 (CCPR/C/73/D/728/1996) at Individual Opinion by Mr. Martin Scheinin, 86 and Individual Opinion by Mr. Hipólito Solari Yrigoyen, 87.

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- *Hendricks v. Guyana* (838/1998), ICCPR, A/58/40 vol. II (28 October 2002) 113 (CCPR/C/76/D/838/1998) at paras. 2.1, 2.2, 3.4 and 6.2.

...

2.1 The author, who was suspected of having murdered, on 12 December 1992, his three step-children aged 2, 4 and 7, was arrested on 13 December 1992 in West Bank Demerara, Guyana.

2.2 On 5 February 1996, the author was sentenced to death by hanging by a trial court in West Demerara County. On 4 July 1997, the Court of Appeal confirmed his sentence.

...

3.4 The author alleges that he was forced to sign a confession, as when he asked for some food and water, he was told that he would receive food and water only if he signed a confession.

...

6.2 As to the allegations related to the question of whether or not he was informed of his right to be assisted by a lawyer when he was questioned after his arrest and also the question of his forced confession, raising possibly issues under article 14, paragraph 3 (d) and (g), of the Covenant, the Committee notes that the trial transcript reveals that the author's counsel fully canvassed those issues before the trial court with a view to render his confession inadmissible in evidence and that the Court duly considered it. In this connection, the Committee reiterates its jurisprudence that it is primarily for the courts of States parties to the Covenant to review facts and evidence in a particular case. It is for the appellate courts of States parties to the Covenant, and not for the Committee, to review the conduct of the trial and the judge's instructions to the jury, unless it can be ascertained that the evaluation of evidence was clearly arbitrary or amounted to a denial of justice, or that the judge manifestly violated his obligation of impartiality. The trial transcript in the author's case did not reveal that his trial suffered from such defects. Accordingly, this part of the communication does not reveal a violation of article 14, paragraph 3 (d) and (g) of the Covenant.

- *Kurbanova v. Tajikistan* (1096/2002), ICCPR, A/59/54 vol. II (6 November 2003) 354 (CCPR/C/79/D/1096/2002) at paras. 2.1, 2.2, 7.4 and 7.5.

...

2.1 According to the author, Mr. Kurbanov went to the police on 5 May 2001 to testify as a witness. He was detained for seven days in the building of the Criminal Investigation Department of the Ministry of the Interior, where according to the author he was tortured.

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Only on 12 May 2001, a formal criminal charge of fraud was made against him, an arrest warrant was issued for him, and he was transferred to an investigation detention centre. He was forced to sign a declaration that he renounced the assistance of a lawyer.

2.2 On 9 June 2001, a criminal investigation was opened in relation to the triple murder of Firuz and Fayz Ashurov and D. Ortikov, which had occurred in Dushanbe on 29 April 2001. In addition to the initial fraud charge, the author's son was, on 30 July 2001, charged with the murders and with illegal possession of firearms^{2/}. The author claims that her son was tortured before he accepted to write down his confession under duress; during her visits, she noted scars on her son's neck and head, and as well as broken ribs. She adds that one of the torturers - investigation officer Rakhimov - was charged in August 2001 with having received bribes and with abuse of power in 13 other cases also related to the use of torture; he was later sentenced to 5 years and 6 months of imprisonment.

...

7.4 The Committee has noted the author's fairly detailed description of beatings and other ill-treatment that her son was subjected to. She has furthermore identified by name some of the individuals alleged to have been responsible for her son's ill-treatment. In reply, the State party has confined itself to stating that these allegations were neither raised during the investigation nor in court. The Committee recalls,^{4/} with regard to the burden of proof, that this cannot rest alone with the author of a communication, especially considering that the author and the State party do not always have equal access to evidence and that frequently the State party alone has access to relevant information. Further, the mere fact that no allegation of torture was made in the domestic appeal proceedings cannot as such be held against the alleged victim if it is proposed, as in the present case, that such an allegation was in fact made during the actual trial but was neither recorded nor acted upon. In the light of the details given by the author on the alleged ill-treatment, the unavailability of a trial transcript and the absence of any further explanations from the State party, due weight must be given to the author's allegations. Noting in particular that the State party has failed to investigate the author's allegations, which were brought to the State party's authorities' attention, the Committee considers that the facts as submitted disclose a violation of article 7 of the Covenant.

7.5 In the light of the above finding and the fact that the author's conviction was based on his confession obtained under duress, the Committee concludes that there was also a violation of article 14, paragraph 3 (g), of the Covenant.

...

Notes

...

^{2/} It transpires from documents later submitted by the State party that the author's son was on 11 June 2001 initially informed that he was suspected of the murders.

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...

4/ See, for example, communication No. 161/1983, *Rubio v. Colombia*.

- *Saidov v. Tajikistan* (964/2001), ICCPR, A/59/40 vol. II (8 July 2004) 164 at paras. 6.2, 6.3 and 6.7.

...

6.2 With regard to the claim that the author's husband was tortured and threatened following his arrest to make him confess, the Committee notes that the author has provided the names of the officials who beat her husband, using batons and kicks, and has described in some detail her husband's resulting injuries. From the documents submitted by the author, it transpires that these allegations were presented to the President of the Supreme Court on 7 April 2000, and that he responded that the allegations had already been examined by the Military Chamber of the Supreme Court and were found to be groundless. The author argues that her husband and his co-accused revoked their initial confessions in court, having been extracted under torture; this challenge to the voluntariness of the confessions was dismissed by the judge. The Committee notes that the State party has failed to indicate how the court investigated these allegations, nor has it provided copies of any medical reports in this respect. In the circumstances, due weight must be given to the author's claim, and the Committee considers that the facts as submitted disclose a violation of article 7 of the Covenant.

6.3 In the light of the above finding and of the fact that Mr. Saidov's conviction was based on his confession obtained under duress, the Committee concludes that article 14, paragraph 3 (g), of the Covenant, was also violated.

...

6.7 The Committee has noted the author's claim that her husband's right to a fair trial was violated, *inter alia* by the fact that the judge conducted the trial in a biased manner and refused even to consider the revocation of the confessions made by Mr. Saidov during the investigation. No explanation was provided by the State party for the reasons of that situation. Therefore, on the basis of the strength of the material before it, the Committee concludes that the facts as submitted before it reveal a violation of Mr. Saidov's rights under article 14, paragraph 1, of the Covenant.

- *Nallaratnam v. Sri Lanka* (1033/2001), ICCPR, A/59/40 vol. II (21 July 2004) 246 at paras. 7.2 and 7.4-7.6.

...

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7.2 As to the claim of a violation of article 14, paragraph 3 (f), due to the absence of an external interpreter during the author's alleged confession, the Committee notes that this provision provides for the right to an interpreter during the court hearing only, a right which was granted to the author 15/. However, as clearly appears from the court proceedings, the confession took place in the sole presence of the two investigating officers - the Assistant Superintendent of Police and the Police Constable; the latter typed the statement and provided interpretation between Tamil and Sinhalese. The Committee concludes that the author was denied a fair trial in accordance with article 14, paragraph 1, of the Covenant by solely relying on a confession obtained in such circumstances.

...

7.4 On the claim of a violation of the author's rights under article 14, paragraph 3 (g), in that he was forced to sign a confession and subsequently had to assume the burden of proof that it was extracted under duress and was not voluntary, the Committee must consider the principles underlying the right protected in this provision. It refers to its previous jurisprudence that the wording, in article 14, paragraph 3 (g), that no one shall "be compelled to testify against himself or confess guilt", must be understood in terms of the absence of any direct or indirect physical or psychological coercion from the investigating authorities on the accused with a view to obtaining a confession of guilt 17/. The Committee considers that it is implicit in this principle that the prosecution prove that the confession was made without duress. It further notes that pursuant to section 24 of the Sri Lankan Evidence Ordinance, confessions extracted by "inducement, threat or promise" are inadmissible and that in the instant case both the High Court and the Court of Appeal considered evidence that the author had been assaulted several days prior to the alleged confession. However, the Committee also notes that the burden of proving whether the confession was voluntary was on the accused. This is undisputed by the State party since it is so provided in section 16 of the PTA [Prevention of Terrorism Act]. Even if, as argued by the State party, the threshold of proof is "placed very low" and "a mere possibility of involuntariness" would suffice to sway the court in favour of the accused, it remains that the burden was on the author. The Committee notes in this respect that the willingness of the courts at all stages to dismiss the complaints of torture and ill-treatment on the basis of the inconclusiveness of the medical certificate (especially one obtained over a year after the interrogation and ensuing confession) suggests that this threshold was not complied with. Further, insofar as the courts were prepared to infer that the author's allegations lacked credibility by virtue of his failing to complain of ill-treatment before its Magistrate, the Committee finds that inference to be manifestly unsustainable in the light of his expected return to police detention. Nor did this treatment of the complaint by its courts satisfactorily discharge the State party's obligation to investigate effectively complaints of violations of article 7. The Committee concludes that by placing the burden of proof that his confession was made under duress on the author, the State party violated article 14, paragraphs 2, and 3 (g), read together with article 2, paragraph 3, and 7 of the Covenant.

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7.5 The Human Rights Committee...is of the view that the facts before it disclose violations of articles 14, paragraphs 1, 2, 3, (c), and 14, paragraph (g), read together with articles 2, paragraph 3, and 7 of the Covenant.

7.6 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 and appropriate remedy, including release or retrial and compensation. The State party is under an obligation to avoid similar violations in the future and should ensure that the impugned sections of the PTA are made compatible with the provisions of the Covenant.

Notes

...

15/ *B.d.B. v. Netherlands*, case No. 273/1988, decision of 30 March 1989, and *Yves Cadoret v. France*, case No. 221/1987, decision of 11 April 1991 and *Herve Le Bihan v. France*, case No. 323/1988, decision of 9 November 1989.

...

17/ *Berry v. Jamaica*, case No. 330/1988, Views adopted on 4 July 1994.

- *Ganga v. Guyana* (912/2000), ICCPR, A/60/40 vol. II (1 November 2004) 40 at paras. 2.2, 5.1, 5.2 and 7.

...

2.2 According to the author, Mr. Deolall was convicted on the basis of a single piece of evidence, namely the confession, which he is alleged to have signed after being subjected to ill-treatment during the interrogation by police officers. Although the police record shows that Mr. Deolall had no marks of violence on his body, at the trial it was disclosed that he had such marks when he had been examined individually by three doctors. It appears from the trial transcript, submitted by the author, that Mr. Deolall was examined on 30 October 1993 and 8 November 1993. Dr. Persaud saw him on 30 October 1993, and in a medical report stated that the “examination revealed a small bruise on the lower level of the left alliae fosse region (lower region of the left side of the abdomen)”. Dr. Maynard saw him on the same day and had a similar finding. Dr. Joshua Deen day saw him on 8 November 1993, and stated in his medical report that Mr. Deolall had “scratch marks on his back” and that in his view they were received between 27 October 1993 and 31 October 1993, i.e. prior to making the alleged statement.

...

5.1 The author claims that Mr. Deolall was ill-treated during interrogations by police officers and forced to sign a confession statement, a claim that raises issues under article 14, paragraphs 1 and 3 (g) and article 6, of the Covenant. The Committee refers to its previous

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jurisprudence that the wording, in article 14, paragraph 3 (g), that no one shall “be compelled to testify against himself or confess guilt”, must be understood in terms of the absence of any direct or indirect physical or psychological coercion from the investigating authorities on the accused with a view to obtaining a confession of guilt, and that it is implicit in this principle that the prosecution prove that the confession was made without duress ^{3/}. In the current case, the Committee notes that the testimony of 3 doctors at the trial, that Mr. Deolall displayed injuries, as outlined in paragraph 2.2 above, as well as Mr. Deolall’s own statement, would *prima facie* support the allegation that such ill-treatment indeed occurred during the police interrogations, prior to his signing of the confession statement. In its instructions to the jurors, the court clearly stated that if the jurors found that Mr. Deolall was beaten by the police prior to giving his confession, even though it was a slight beating, they could not attach any weight to that statement and would need to acquit the defendant. However, the Court did not instruct the jurors that they would need to be convinced that the prosecution had managed to prove that the confession was voluntary.

5.2 The Committee maintains its position that it is generally not in the position to evaluate facts and evidence presented before a domestic court. In the current case, however, the Committee takes the view that the instructions to the jury raise an issue under article 14 of the Covenant, as the defendant had managed to present *prima facie* evidence of being mistreated, and the Court did not alert the jury that that the prosecution must prove that the confession was made without duress. This error constituted a violation of Mr. Deolall’s right to a fair trial as required by the Covenant, as well as his right not to be compelled to testify against himself or confess guilt, which violations were not remedied upon appeal. Therefore, the Committee concludes that the State party has violated article 14, paragraphs 1, and 3 (g), of the Covenant in respect of Mr. Deolall.

...

7. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide Mr. Deolall with an effective remedy, including release or commutation.

Notes

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^{3/} *Berry v. Jamaica*, case No. 330/1988, Views adopted on 4 July 1994 and *Nallaratnam Singarasa v. Sri Lanka*, case No. 1033/2001, Views adopted on 21 July 2004.

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- *Khalilov v. Tajikistan* (973/2001), ICCPR, A/60/40 vol. II (30 March 2005) 74 at paras. 2.5-2.8, 7.2-7.4 and 8.

...

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2.5 According to the author, her son was beaten by investigators to make him confess participation in different unresolved crimes, including murder, use of violence, robberies and theft, and different other crimes that occurred between 1998 and 2000. According to her, the investigators refused to interrogate neighbours of the aunts in whose houses her son hid between December 1997 and January 2000, and who could have testified that he was innocent.

2.6 On an unspecified date, Mr. Khalilov was transferred from the Lenin District Police Department to Kaferingansky District Police Department. In the meantime, his father was taken from his workplace and brought to his son in the Kaferingansky District Police Department. The father noted that his son had been beaten and stated that he would complain to the competent authorities. The investigators began to beat him in front of his son. The author's son was threatened and told that he had to confess his guilt of two murders during a TV broadcast or otherwise his father would be killed. Mr. Khalilov confessed guilt in the two murders as requested. Notwithstanding, the investigators killed his father 1/.

2.7 On 12 February, Mr. Khalilov was shown again on national television (broadcast "Iztirob"). According to the author, he had been beaten and his nose was broken, but the cameras showed his face only from one particular angle that did not reveal these injuries.

2.8 Mr. Khalilov's case was examined by the Supreme Court jointly with the cases of other five co-accused 2/. The author's son was found guilty of the crimes under articles 104(2) (homicide), 181 (3) (hostage taking), 186 (3) (banditism), 195 (3) (illegal buying, selling, keeping, transporting of weapons, ammunitions, explosives, etc.), 244 (theft), and 249 (robbery with use of violence), of the Criminal Code of Tajikistan. He was sentenced to death on 8 November 2000. According to the author, no victim or injured party recognized her son in court as a participant in the criminal acts, notwithstanding the fact that the witnesses had declared that they could recognize by face every participant in the crimes. The Court allegedly ignored their statements and refused to take them into account or to include them in its decision.

...

7.2 The Committee has taken note of the author's allegations that her son, while in detention, was ill-treated and beaten by the investigators to force him to confess guilt and that in order to put additional pressure on him, his father was beaten and tortured in front of him and as a consequence died in the police premises. The author furthermore identified by name some of the individuals alleged to have been responsible for the beatings of her son and for burning her husband's hands with an iron. In the absence of any State party information, due weight must be given to the author's allegations, to the effect that they have been sufficiently substantiated. The Committee considers that the facts before it justify the conclusion that the author's son was subjected to torture and to cruel and inhuman treatment, in violation of articles 7 and 10, paragraph 1, of the Covenant.

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7.3 As above-mentioned acts were inflicted by the investigators on Mr. Khalilov to make him to confess guilt in several crimes, the Committee furthermore considers that the facts before it also disclose a violation of article 14, paragraph 3 (g), of the Covenant.

7.4 The Committee has noted the author's claim, under article 14, paragraph 2, that her son's right to be presumed innocent was violated by investigators. She contends that her son was forced to admit guilt on at least two occasions during the investigation on national television. In the absence of any information from the State party, due weight must be given to these allegations. The Committee recalls its general comment No. 13 and its jurisprudence ^{6/} that it is "a duty for all public authorities to refrain from prejudging the outcome of a trial". In the present case, it concludes that the investigating authorities failed to comply with their obligations under article 14, paragraph 2.

...

8. The Human Rights Committee...is of the view that the facts before it disclose a violation of Mr. Khalilov's rights under articles 6, paragraph 1; 7; 10, paragraph 1; and 14, paragraphs 2, 3 (g) and 5, of the Covenant, and a violation of article 7 in the author's own respect.

Notes

^{1/} The author submits a letter of her son (dated 27 December 2000), addressed to the Committee, in which M. Khalilov contends that his father was brought to the police department and was beaten, humiliated, and burned with an iron by the investigators, until he died. According to Mr. Khalilov, his father was returned home dead and was buried on 9 February 2000. Mr. Khalilov gives the names of two officials who participated in his and his father's beatings: one N., chief of a Criminal Inquiry Department, and his deputy, U. According to him, there were also 3-4 other persons.

^{2/} The exact dates of the proceedings are not provided.

...

^{6/} See, for example *Gridin v. The Russian Federation*, communication No. 770/1997, Views adopted on 20 July 2000.

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- *Gomariz v. Spain* (1095/2002), ICCPR, A/60/40 vol. II (22 July 2005) 134 at paras. 2.1-2.3 and 6.2.

...

2.1 The author worked in sales promotion for the company Coloniales Pellicer S.A. in Murcia. On 20 January 1989, the author signed a private document acknowledging a debt to the company. Having signed the document, the author continued working for the company

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until May 1990, when he was dismissed. The author and the company signed a conciliation agreement before labour court No. 4 in Murcia, terminating the employment contract, and the money owed to the author in terms of salary and redundancy pay was deducted from the total debt he had acknowledged in January 1989.

2.2 The company lodged a complaint against the author for misappropriation. On 16 May 1996, the judge of criminal court No. 2 in Murcia acquitted the author. The company lodged an appeal. On 16 September 1996, the Provincial High Court sentenced the author to five months' imprisonment for misappropriation, disqualified him from public employment or office, suspended his right to vote and ordered him to pay costs.

2.3 The author lodged an *amparo* application before the Constitutional Court, which was rejected on 29 January 1997. In the application, the author alleged both violation of his right not to be compelled to testify against himself, given that the only evidence on which he was convicted was his acknowledgement of a debt to the company, and violation of his right to be tried without undue delay. Although the author had made this last claim at the beginning of the oral proceedings, in accordance with the rules governing criminal procedure, the Constitutional Court ruled that the author's claim had been lodged out of time, when the delays had ended. As to the alleged violation of the right not to confess guilt, it is clear from the Constitutional Court ruling submitted by the author that the Court concluded that the probative force of the acknowledgement of the debt had in no way affected his right not to confess guilt, given that the acknowledgment had taken place prior to the trial, and that the author did not claim to have been coerced in any way into acknowledging the debt.

...

6.2 Regarding the alleged violation of article 14, paragraph 3 (g), the Committee notes that the author admits to having signed the document acknowledging his debt of his own free will...before the trial against him began. In that document, he acknowledged that he had kept money belonging to the company without the company's knowledge or consent. The Committee recalls its jurisprudence that the wording of article 14, paragraph 3 (g) - i.e., that no one shall "be compelled to testify against himself or to confess guilt" - must be understood in terms of the absence of any direct or indirect physical or psychological pressure from the investigating authorities on the accused, with a view to obtaining a confession of guilt.^{3/} As to the author's allegation that the document acknowledging the debt, which was obtained outside the judicial process, was the only evidence on which his conviction was based, the Committee notes that the court's ruling based the author's responsibility on his conduct before, during and after the document was signed. In the court's opinion, the author's conduct proved his intent to deceive. In accordance with the Committee's settled jurisprudence, it is not for the Committee to examine the manner in which facts and evidence have been evaluated by domestic courts, unless it was clearly arbitrary or amounted to a denial of justice, which was not the case here. The Committee concludes that the author has not substantiated the alleged violation of article 14, paragraph

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3 (g), of the Covenant for purposes of admissibility, and that this part of the communication is inadmissible under article 2 of the Optional Protocol.

Notes

...

3/ Communication No. 253/1987, *Kelly v. Jamaica*, decision of 8 April 1991, para. 5.5.

For dissenting opinions in this context generally, see:

- *Jijón v. Ecuador* (277/1988), ICCPR, A/47/40 (26 March 1992) 261 at Individual Opinion of Mr. Bertil Wennergren, 266.
- *Lewis v. Jamaica* (708/1996), ICCPR, A/52/40 vol. II (17 July 1997) 244 (CCPR/C/60/D/708/1996) at Individual Opinion by Lord Colville at 253.

CAT

- *G. K. v. Switzerland* (219/2002), CAT, A/58/44 (7 May 2003) 177 (CAT/C/30/D/219/2002) at paras. 1.1, 2.1-2.3, 2.6, 2.8 and 6.9-6.11.

...

1.1 The complainant is G. K., a German national, born on 12 January 1956, at the time of the submission of the complaint held at the police detention centre at Flums (Switzerland), awaiting extradition to Spain. She claims that her extradition to Spain would constitute a violation by Switzerland of articles 3 and 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. She is represented by counsel.

...

2.1 In 1993, the complainant worked as a language teacher in Barcelona, Spain, where she became involved with one Benjamin Ramos Vega, a Spanish national. During that time, the complainant and Mr. Ramos Vega both rented apartments in Barcelona, one at Padilla Street, rented on 21 April 1993 in Mr. Ramos Vega's name, and one at Aragón Street, rented on 11 August 1993 in the complainant's name for the period of one year. According to counsel, the complainant had returned to Germany by October 1993.

2.2 On 28 April 1994, Felipe San Epifanio, a convicted member of the "Barcelona" commando of the Basque terrorist organization Euskadi Ta Askatasuna (Basque Fatherland and Liberty) (ETA), was arrested by Spanish police in Barcelona. The judgement of the Audiencia Nacional, dated 24 September 1997, sentencing him and other ETA members to prison terms states that, upon his arrest, Mr. San Epifanio was thrown to the floor by several policemen after he had drawn a gun, thereby causing him minor injuries which reportedly

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healed within two weeks. Based on his testimony, the police searched the apartment at Padilla Street a/ on 28 April 1994, confiscating firearms and explosives stored there by the commando. Subsequent to this search, Mr. Ramos Vega left Spain for Germany.

2.3 The Juzgado Central de Instrucción No. 4 de Madrid issued an arrest warrant, dated 23 May 1994, against both Mr. Ramos Vega and the complainant on suspicion of collaboration with ETA as well as possession of firearms and explosives. A writ was issued on 6 February 1995 by the same examining judge indicting the complainant and Mr. Ramos Vega for having rented, “under their name, the apartments at Padilla and Aragón streets, respectively, places which served as a refuge and for the hiding of arms and explosives, which the members of the commando had at their disposal for carrying out their actions”.b/

...

2.6 The complainant was arrested by Swiss police when crossing the Austrian-Swiss border at St. Margrethen on 14 March 2002, on the basis of a Spanish search warrant dated 3 June 1994. She was provisionally detained, pending a final decision on her extradition to Spain. During a hearing on 20 March 2002, she refused to consent to a simplified extradition procedure. By diplomatic note of 22 April 2002, the Government of Spain submitted an extradition request to the State party, based on an international arrest warrant dated 1 April 2002, issued by the Juzgado Central de Instrucción No. 4 at the Audiencia Nacional. This warrant is based on the same charges as the original arrest warrant and the writ of indictment against both the complainant and Mr. Ramos Vega.

...

2.8 By decision of 8 August 2002, the Federal Office of Justice granted the Spanish extradition request, subject to the condition that the complainant would not be tried for having committed the alleged offences for political motives and that the severity of the punishment would not to be increased on the basis of such motive...

...

6.9 With regard to the alleged violation of article 15 of the Convention, the Committee has noted the complainant’s arguments that, in granting the Spanish extradition request, which was, at least indirectly, based on testimony extracted by torture from Felipe San Epifanio, the State party itself had relied on this evidence, and that article 15 of the Convention applied not only to criminal proceedings against her in Spain, but also to the extradition proceedings before the Swiss Federal Office of Justice as well as the Federal Court. Similarly, the Committee has noted the State party’s submission that the admissibility of the relevant evidence was a matter to be decided by the Spanish courts.

6.10 The Committee observes that the broad scope of the prohibition in article 15, proscribing the invocation of any statement which is established to have been made as a result of torture as evidence “in any proceedings”, is a function of the absolute nature of the prohibition of torture and implies, consequently, an obligation for each State party to ascertain whether or not statements admitted as evidence in any proceedings for which it has

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jurisdiction, including extradition proceedings, have been made as a result of torture.^{r/}

6.11 At the same time, the Committee notes that, for the prohibition in article 15 to apply, it is required that the statement invoked as evidence be “established to have been made as a result of torture”. As the complainant herself stated, criminal proceedings initiated by Felipe San Epifanio against his alleged torturers were discontinued by the Spanish authorities. Considering that it is for the complainant to demonstrate that her allegations are well founded, the Committee concludes that, on the basis of the facts before it, it has not been established that the statement of Mr. San Epifanio, made before Spanish police on 28 April 1994, was obtained by torture.

...

Notes

a/ Apparently, the apartment was rented but not inhabited by Mr. Ramos Vega.

b/ Translation by the secretariat.

...

r/ See *P.E. v. France*, Communication No. 193/2001, in section A of annex VI to [*Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 44 (A/58/44)*].
