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HUMAN RIGHTS COMMITTEE
Eighty-eighth session
16 October-3 November 2006

DECISION

Communication No. 1305/2004

Submitted by:	Víctor Villamón Ventura (represented by counsel, José Luis Mazón Costa)
Alleged victim:	The author
State party:	Spain
Date of communication:	26 September 2001 (initial submission)
Document references:	Special Rapporteur's rule 97 decision, transmitted to the State party on 25 August 2004 (not issued in document form)
Date of decision:	31 October 2006
Subject matter:	Conviction of the author on insufficient evidence
Procedural issues:	Failure to substantiate claims
Substantive issues:	Failure of the court of second instance to reconsider the facts
Article of the Covenant:	14, paragraph 5
Article of the Optional Protocol:	2

[ANNEX]

* Made public by decision of the Human Rights Committee.

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Annex

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

Eighty-eighth session

concerning

Communication No. 1305/2004*

Submitted by:	Víctor Villamón Ventura (represented by counsel, José Luis Mazón Costa)
Alleged victim:	The author
State party:	Spain
Date of communication:	26 September 2001 (initial submission)

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

Meeting on 31 October 2006,

Adopts the following:

Decision on admissibility

1. The author of the communication, dated 26 September 2001, is Mr. Víctor Villamón Ventura, a Spanish national born in 1930 and now retired. He claims to be the victim of a violation by Spain of articles 14, paragraph 5, and 26 of the Covenant. The Optional Protocol entered into force for the State party on 25 April 1985. The author is represented by counsel, Mr. José Luis Mazón Costa.

* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Alfredo Castillero Hoyos, Ms. Christine Chanet, Mr. Edwin Johnson, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Ms. Elisabeth Palm, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Ivan Shearer, Mr. Hipólito Solari Yrigoyen and Mr. Roman Wieruszewski.

Factual background

2.1 On 21 September 1993, the author complained to the police that he had been threatened by a former neighbour, who accused him of sexually abusing his 10-year-old daughter. As a result of the complaint, the police launched an investigation that led to a criminal trial on charges of sexual assault of three minors, S.S.V. (born 3 October 1983), A.S.V. (born 22 February 1985) and M.T.G.P. (born 5 May 1983). The three children, who were friends of the author's daughter, claimed that they had on several occasions between 1991 and 1993 been sexually molested by the author and that he had also exposed his genitals to them.

2.2 On 16 December 1994, the Third Section of the Murcia Provincial Court found the author guilty on three counts of sexual assault, sentencing him to a prison term of one and a half years per count and awarding each child civil damages of 1 million pesetas.

2.3 The author claims that the only evidence produced by the prosecution was the girls' statements, which contained numerous contradictions and completely implausible allegations. He also claims to have been the victim of a conspiracy by the girls. He lists many points in the girls' statements which he considers ridiculous and draws particular attention to the statement made on 23 September 1993 by M.T.G.P., which in his view contains contradictory and/or absurd claims. According to the author, the Provincial Court accepted statements of a vague or very general nature as proven fact.

2.4 On 24 February 1995, the author submitted an appeal in cassation to the Supreme Court, which rejected it in a judgement dated 31 May 1995. In his appeal, the author claimed, among others, a violation of the right to presumption of innocence on the grounds that there was no evidence against him and that the statements made by members of his family showed that the events described as proven fact could not have taken place as stated in the judgement. The author cites the Supreme Court's inadmissibility decision in which the Court gives its view that, provided due account has been taken of logic and past experience, the trial court's assessment of credibility could not be reviewed in cassation.

2.5 In the author's view, the appeal in cassation, a procedure subject to constraints imposed by the Spanish system, which does not allow a review of errors made in the weighing of evidence, did not permit a full reassessment of the credibility of the minors' statements; and given the implausible nature of the girls' testimony he would have been acquitted had he received a genuine second hearing.

2.6 The author is of the view that domestic remedies have been exhausted with the judgement handed down by the Supreme Court. He acknowledges that he has not submitted an application for *amparo* to the Constitutional Court, but maintains that this option is pointless in the light of the Constitutional Court's consistently held position that an appeal to the Supreme Court complies with the requirement for a review established under article 14, paragraph 5, of the Covenant.

The complaint

3. The author claims a denial of his right to a genuine review of his criminal conviction and to non-discrimination in respect of remedies, in violation of articles 14, paragraph 5, and 26 of the Covenant. In the initial communication, the author had also claimed violations of article 14, paragraphs 1 and 2, of the Covenant, but withdrew the complaints relating to these allegations on 10 June 2004.

State party's observations on admissibility and the merits

4.1 By notes verbales dated 30 September 2004 and 31 May 2005, the State party submitted its observations on the admissibility and merits of the communication. The State party argues that the communication is inadmissible under article 5, paragraph 2 (b), of the Optional Protocol, for non-exhaustion of domestic remedies, inasmuch as there was no application for *amparo*. It also claims that the communication is inadmissible as constituting an abuse of the right to submit communications, inter alia because of the time that elapsed before its submission and its manifest lack of substance.

4.2 In the State party's view, domestic remedies have not been exhausted inasmuch as the Constitutional Court had no opportunity to state its opinion in *amparo* proceedings on the scope of review in cassation in the specific case presented by the author. The State party further argues that the fact that the communication initially invoked the rights to "benefit of the doubt" and equality of arms, a supposed right to a "verbatim record of the trial as a guarantee of due process", the right to transparent, public proceedings and to non-discrimination with regard to remedies highlights the failure to initiate *amparo* proceedings. The State party maintains that the remedy of *amparo* has proved effective, with even the Constitutional Court discussing the differences between the *Gómez Vázquez* case[1] and others in which the remedy of cassation has led to lengthy opinions on points of fact. The State party also draws attention to the evolution of court practice in cassation, a remedy that now clearly provides a review of the evidence examined in the trial court.

4.3 The State party further argues that the communication constitutes a manifest abuse of the right of submission, owing to (a) the timing of its presentation and (b) the fact that a part of it had been withdrawn. It points out that the communication was submitted on 26 September 2001, more than six years after the Supreme Court judgement allegedly constituting the violation, and that on 15 June 2004 nearly all the grounds for the complaint were withdrawn.

4.4 On the merits, and with regard to the Supreme Court ruling, the State party comments that, contrary to what the author claims, the Court reviewed the evidence and concluded that the trial court's consideration thereof had taken due account of logic and past experience and that the testimony of members of the author's family could not be given any greater weight. The grounds adduced for the alleged violation of the author's rights are generic, and do not relate to the case in point.

4.5 The State party maintains that the Supreme Court, in formulating its judgement, responded precisely to the request contained in the author's appeal, taking due account of the report of the trial and reviewing the testimony given by the witnesses. The State party argues that the Supreme Court carried out a review of the evidence. It notes that the author claims in his appeal that the trial court's judgement should be quashed on the sole basis of statements on circumstantial points made by members of his family in his defence, which he considers sufficient to cast doubt on the consistent testimony of the three minors, which was given separately and without any communication between them, as provided for by law with regard to the examination of witnesses. The State party considers that in this case the Supreme Court had no obligation to take fresh statements from the girls, since the fact that they had been made legally and with all applicable safeguards was never challenged by the author. The author, it concludes, cannot claim to substitute his own assessment of the evidence for the logical, reasoned assessment thereof carried out by the courts.

Author's comments

5.1 With regard to the exhaustion of domestic remedies, the author repeats (27 July 2005) that the Constitutional Court consistently rejects any application for *amparo* made on grounds of failure to provide a second hearing. He refers to the Committee's conclusions on communications Nos. 1156/2003 (*Pérez Escolar v. Spain*, Views of 28 March 2006) and 986/2001 (*Semey v. Spain*, Views of 30 July 2003). According to the author, the Constitutional Court's case law holds the scope of the remedy of cassation to be consistent with the right to a second hearing under article 14, paragraph 5, of the Covenant. He further claims that the Supreme Court summarily rejected his appeal in cassation on 31 May 1995 and that the Constitutional Court's case law, then as now, held that the scope of the remedy of cassation was consistent with the right to a second hearing under article 14, paragraph 5, of the Covenant.

5.2 As to the absence of a proper or complete review of his conviction, the author maintains that it was not possible for the higher court to properly review the credibility of the testimony for the prosecution on which the conviction rested, since it confined itself to a superficial review on the ground of presumption of innocence. He repeats his claim that the girls' statements contained numerous inconsistencies and implausibilities.

Issues and proceedings before the Committee

6.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not the communication is admissible under the Optional Protocol to the Covenant.

6.2 The Committee has ascertained that the same matter is not being examined under any other international procedure of investigation or settlement, so that the provisions of article 5, paragraph 2 (a), of the Optional Protocol do not preclude its consideration of the complaint.

6.3 The Committee has noted the State party's argument that domestic remedies were not exhausted, since the alleged violations referred to the Committee were never brought before the Constitutional Court. However, the Committee recalls its established jurisprudence that it is only necessary to exhaust those remedies that have a reasonable prospect of success.[2] An application for *amparo* had no prospect of success in relation to the alleged violation of article 14, paragraph 5, of the Covenant, and the Committee therefore considers that domestic remedies have been exhausted.

6.4 The State party claims an abuse of the right to submit communications in view of the period of more than six and a half years that elapsed between the date of the Supreme Court judgement and the submission of the author's complaint to the Committee. The Committee observes that the Optional Protocol does not establish any deadline for the submission of communications, and that the period of time elapsing before doing so, other than in exceptional cases, does not of itself constitute an abuse of the right to submit a communication.[3]

6.5 The author alleges a violation of article 14, paragraph 5, of the Covenant, owing to the fact that the evidence for the prosecution that was decisive in his conviction in the lower court was not reviewed by a higher court, since Spain's remedy of cassation is not an appeal procedure but is admissible solely for specific reasons which expressly exclude the re-examination of the facts.

6.6 The Committee takes note of the author's argument that the Supreme Court judgement did not allow for a fresh assessment of the evidence and that the Court confined itself to reviewing the assessment made by the trial court. At the same time, the Committee finds that the judgement makes clear that the Supreme Court considered each of the author's arguments very carefully, particularly his argument that the statements made by members of his family showed that the events could not have taken place as described in the court judgement. In this regard, the Supreme Court found that the defence failed to take account of the difference between the assessment of witnesses' credibility and circumstantial evidence, and concluded that in this case due regard had been given to the rules of logic and past experience. Consequently, the Committee finds that this part of the communication has not been sufficiently substantiated for the purposes of admissibility and declares it inadmissible under article 2 of the Optional Protocol.

6.7 As to the author's claims of a violation of article 26 for discrimination in respect of remedies, the Committee finds that the author has failed to indicate what kind of allegedly discriminatory treatment, within the meaning of article 26, he suffered at the hands of the domestic courts. Consequently, the Committee finds that these allegations have not been sufficiently substantiated for the purposes of admissibility and declares this part of the communication inadmissible under article 2 of the Optional Protocol.

7. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under article 2 of the Optional Protocol;

(b) That this decision shall be communicated to the State party and to the author.

[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] Communication No. 701/1996, *Cesario Gómez Vázquez v. Spain*, Views of 20 July 2000.

[2] See, for example, communications Nos. 701/1996, *Cesario Gómez Vázquez v. Spain*, Views of 20 July 2000, para. 10.1; 986/2001, *Joseph Semey v. Spain*, Views of 30 July 2003, para. 8.2; 1101/2002, *Alba Cabriada v. Spain*, Views of 1 November 2004, para. 6.5; and 1293/2004, *Maximino de Dios Prieto v. Spain*, decision of 25 July 2006, para. 6.3.

[3] See communication No. 1101/2002, *Alba Cabriada v. Spain*, Views of 1 November 2004, para. 6.3.
