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HUMAN RIGHTS COMMITTEE
Eighty-sixth session
13-31 March 2006

VIEWS

Communication No. 1156/2003

Submitted by:	Rafael Pérez Escolar (represented by counsel)
Alleged victim:	The author
State party:	Spain
Date of communication:	13 December 2002 (initial submission)
References:	Special Rapporteur's rule 97 decision, transmitted to the State party on 20 February 2003 (not issued in document form) CCPR/C/80/D/1156/2003: decision on admissibility dated 9 March 2004
Date of adoption of Views:	28 March 2006
Subject matter:	Scope of review in cassation proceedings in the Spanish Supreme Court; imposition of heavier penalties by the higher court
Procedural issues:	

* Made public by decision of the Human Rights Committee.

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Substantive issues: Right to have sentence and conviction reviewed by a higher court in accordance with the law

Article of the Covenant: 14, paragraph 5

Article of the Optional Protocol:

On 28 March 2006, the Human Rights Committee adopted the annexed draft as the Committee's Views under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 1156/2003. The text of the Views is appended to the present document.

[ANNEX]

Annex

VIEWS OF THE HUMAN RIGHTS COMMITTEE UNDER ARTICLE 5, PARAGRAPH 4, OF THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Eighty-sixth session

concerning

Communication No. 1156/2003*

Submitted by: Rafael Pérez Escolar (represented by counsel)

Alleged victim: The author

State party: Spain

Date of communication: 13 December 2002

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

Meeting on 28 March 2006,

Having concluded its consideration of communication No. 1156/2003, submitted to the Human Rights Committee on behalf of Mr. Rafael Pérez Escolar under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and the State party,

Adopts the following:

* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine Chanet, Mr. Maurice Glèlè Ahanhanzo, Mr. Edwin Johnson, 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.

Views under article 5, paragraph 4, of the Optional Protocol

1. The author of the communication, dated 13 December 2002, is Rafael Pérez Escolar, a Spanish national born in 1927, who claims to be a victim of a violation by Spain of article 14, paragraph 5, of the Covenant. The Optional Protocol entered into force for Spain on 25 April 1985. The author is represented by counsel, Mr. Iván Hernández Urraburu and Mr. José Luis Mazón Costa.

Factual background

2.1 The author was a shareholder and board member of the Banco Español de Crédito (BANESTO). On 28 December 1993 he was dismissed from his post along with the other board members.

2.2 On 14 November 1994, the prosecutor's office attached to the National High Court brought criminal proceedings against 10 individuals, including the author, for forgery of a commercial document and misappropriation. In the course of the hearings, which lasted two years, statements were taken from 470 witnesses and expert witnesses. The case file consisted of 53 volumes of pretrial proceedings and 121 volumes of evidence. The author was accused of involvement in 3 out of 11 allegedly irregular operations approved by the management of BANESTO. On 31 March 2000 the National High Court sentenced the author to five years and eight months' imprisonment and a fine of 18 million pesetas for fraud and four months for misappropriation. The author was acquitted of a charge of forgery. With regard to the first offence, the author states that he was charged with having obtained joint venture partnerships free of charge. He claims that the High Court refused to admit as evidence either the statements of seven expert witnesses for the defence or the documents submitted by the author himself - none of which evidence, according to the author, may be reviewed in the higher court. With regard to the second offence, the author claims that the conviction was based on conflicting evidence, including in particular the testimony of three prosecution witnesses whose credibility could not be reviewed by the higher court.

2.3 The author submitted an appeal in cassation on 16 grounds in the Criminal Division of the Supreme Court, requesting it to review various points of fact relating to his conviction. Since no review of the facts of a case is possible in cassation, the author attempted to obtain reconsideration of the prosecution evidence underpinning the conviction indirectly, by invoking the presumption of innocence, but without success. In the course of the cassation proceedings, the Committee published its opinion in the *Gómez Vázquez* case, which prompted the author to petition the Supreme Court on three different occasions to apply the Committee's reasoning on the second hearing principle contained in article 14, paragraph 5, but his applications were rejected.

2.4 The General Workers Union (UGT), the plaintiff in the appeal in cassation, claimed before the Supreme Court that, with regard to the offence of misappropriation for which the author had been convicted as an accessory, the incriminating conduct should have been classed as the perpetration of an offence, not merely aiding and abetting. The author disputed that claim, notably in a letter to the Supreme Court dated 4 December 2000, which is in the file before the Committee. In a judgement dated 29 July 2002, the Supreme Court ruled on the appeal and increased the author's sentence for misappropriation from four months' to four years'

imprisonment, holding that he had been more deeply involved in the offence, as a perpetrator and not merely an accessory. According to the author, the Supreme Court failed to address questions of fact owing to the restricted nature of cassation proceedings, and he was thus deprived of the right to a full review of his case.

2.5 On the day sentence was handed down, i.e. 29 July 2002, the author was taken to prison where he stayed until September the same year, when he was released on probation by reason of his age and infirmity.

2.6 The author is of the view that domestic remedies were exhausted with the judgement handed down by the Supreme Court. He admits that he has not submitted an application for *amparo* (enforcement of constitutional rights) to the Constitutional Court, maintaining that this option is pointless in the light of the Constitutional Court's consistently held position that an appeal in cassation complies with the requirement for a review established under article 14, paragraph 5, of the Covenant.

The complaint

3.1 The author alleges a violation of article 14, paragraph 5, of the Covenant, arguing that he was unable to secure a full review of the judgements handed down by the National High Court. Although the author sought to have the evidence underpinning his conviction re-examined, alleging a violation of his right to presumption of innocence, he says that, owing to the narrow scope of cassation proceedings, the Supreme Court's review of his case was confined to points of law only, thereby precluding a re-examination of issues of fact and a review of the evidence originally dismissed by the National High Court. He maintains that the Supreme Court's argument that it is unable to review the evidence as it was not present at the trial does not apply in his case, since the entire trial proceedings were recorded on videotape.

3.2 According to the author, the Supreme Court has consistently taken the position that the assessment of evidence adduced in the course of proceedings is not a matter for an appeal in cassation, save in exceptional cases characterized by extreme arbitrariness or manifest irrationality. Moreover, the author argues that in rulings handed down after the Committee had delivered its opinion in the *Gómez Vázquez* case, the Constitutional Court has held that article 14, paragraph 5, of the Covenant does not actually establish the principle of a second hearing, but merely stipulates that the judgement and sentence should be referred to a higher court, and that an appeal in cassation, notwithstanding the restricted scope of this remedy, is in keeping with the review and safeguard function required by the Covenant.

3.3 In support of his complaint, the author cites the Committee's concluding observations on the fourth periodic report of Spain, which recommend that the State party should institute a right of appeal against decisions of the National High Court in order to meet the requirements of article 14, paragraph 5, of the Covenant. He also cites the Committee's opinion in the *Gómez Vázquez* case, wherein it concluded that the lack of any possibility of fully reviewing the author's conviction and sentence, the review having been limited to the formal or legal aspects of the conviction, meant that the guarantees provided for in article 14, paragraph 5, of the Covenant had not been met.

3.4 The author alleges a second violation of article 14, paragraph 5, on the grounds that he was denied any kind of review in relation to the increased sentence imposed by the Supreme Court. The author claims that Spain, unlike other States parties, did not enter reservations to article 14, paragraph 5, to ensure that this provision would not apply to first-time convictions handed down by an appeal court. He adds that the settled practice of the Constitutional Court is that there is no right of appeal in respect of a sentence handed down by the court of cassation, so it was futile to submit an application for *amparo*.

Observations of the State party on admissibility

4.1 In its written submission of 17 April 2003, the State party maintains that the communication is inadmissible under article 5, paragraph 2 (b), of the Covenant because domestic remedies have not been exhausted. It holds that the author of the communication should have submitted an application for *amparo* to the Constitutional Court with respect to the Supreme Court's decision to reject his appeal in cassation, and that *amparo* proceedings cannot be considered an ineffective remedy in the specific case of the author.

4.2 In the view of the State party, the Constitutional Court should have had the opportunity to give its opinion, in *amparo* proceedings, on the scope of review in cassation in the present case. Since the author failed to apply for *amparo*, the Constitutional Court was denied that opportunity. According to the State party, the question of the exhaustion of domestic remedies must be considered in relation to each specific case. As far as the author is concerned, the State party claims that the review of his conviction in cassation was not limited to formal or legal aspects, but allowed for a complete review of the facts and the evidence on which the conviction had been based, as the Supreme Court judgement in the author's case actually states. As to the scope of review in cassation, the State party argues that judicial practice has evolved on the question of the scope of review in cassation, especially in respect of errors of fact and assessment of evidence. The State party claims that this point is addressed in the cassation judgement too. In the State party's view, therefore, the author should have submitted an application for *amparo* in order to allow the Constitutional Court to consider the scope of the review undertaken in his specific case.

4.3 The State party refers to the judgement handed down by the Supreme Court in the author's case, which reads: "As a perusal of this judgement will confirm, the various parties have had the opportunity to formulate more than 170 grounds for cassation, frequently invoking errors of fact in the assessment of evidence and the subsequent review of proven facts. The presumption of innocence is also invoked as grounds for challenging the rationality and logic applied in assessing the evidence. This implies that we are speaking of a remedy that goes beyond the strictly defined, formal limits of cassation in the conventional sense and satisfies the requirement of a second hearing."

4.4 The State party argues that a heavier penalty was imposed in full compliance with the accusatorial procedure and that the author was fully aware of the penalties associated with the charges; moreover, it was quite untrue to say that it was a first-time conviction for the author. In the State party's view, the fact that a number of States parties have made reservations to article 14, paragraph 5, of the Covenant, thereby excluding its application to cases in which a heavier sentence is handed down, does not imply that the provision itself precludes the imposition of a heavier sentence.

Author's comments

5.1 In his written submission of 25 July 2003, the author reiterates the futility of submitting an application for *amparo* to the Constitutional Court. He says that the settled practice of the Supreme Court and the Constitutional Court both before and after publication of the Committee's opinion in the *Gómez Vázquez* case has not changed with regard to cassation proceedings, in the sense that neither will review matters of fact in a given case. He indicates that the so-called evolution of judicial practice actually refers to a situation that has always existed, for the Supreme Court may examine the facts in cassation proceedings in cases characterized by extreme arbitrariness or manifest irrationality.

5.2 The author emphasizes that it is untrue that in cassation the Supreme Court undertook a complete review of the errors of fact in the judgement. He calls attention to the fact that the judgement handed down by the National High Court ignored evidence presented in his defence, and that this was not reviewed in cassation. According to the author, his communication is identical to the one on which the Committee ruled in the *Gómez Vázquez* case and should be dealt with in the same manner. He alleges that, while the State party claims the possibility of a remedy of *amparo* before the Constitutional Court, it also admits that if he were to exercise that remedy it would be dismissed, which he considers to be proof of its futility.

Decision of the Committee on admissibility

6. At its eightieth session, on 8 March 2004, the Committee found that domestic remedies had been exhausted in accordance with article 5, paragraph 2 (b), of the Optional Protocol and declared the communication admissible inasmuch as it raised issues relating to article 14, paragraph 5, of the Covenant.

Submissions of the State party on the merits

(a) Legislative amendment extending the remedy of appeal in Spain

7.1 The State party reports that Organic Law No. 19/2003, of 23 December 2003, instituted the right to a second hearing in Spain, empowering the Criminal Divisions of the High Courts of Justice to try appeals against rulings handed down by the provincial courts and providing for the creation of an Appeals Division in the National High Court. According to the preamble, the aim of this Act was, in addition to reducing the workload of the Second Division of the Supreme Court, to resolve the controversy that arose following publication of the Human Rights Committee's opinion of 20 July 2000, in which it found that Spain's current cassation procedure violated the Covenant. The State party further notes that the considerable extension of the scope of cassation had necessitated a legislative amendment to transfer responsibility from the Supreme Court and allow it to confine itself to standardizing the application of the law. The State party stresses that the law was amended not because the scope of cassation was not broad enough to meet the requirements of the Covenant but because, on the contrary, that scope had been broadened so far that it became necessary to address the problem of the Supreme Court's excessive caseload.

(b) Scope of cassation now considerably extended

7.2 The State party argues that the remedy of cassation is now considerably broader in scope than it used to be. The State party cites a Supreme Court judgement of 16 February 2004 which notes that, as originally conceived and as amended prior to the entry into force of the Spanish Constitution, the remedy of cassation was bound by a rigid formalism that precluded any review of the evidence save, in exceptional cases, on the basis of documentation providing incontrovertible proof of the error committed by the trial court. The State party maintains that the situation changed with the adoption of the new Constitution and the amendment of article 5.4 of the Judiciary (Organization) Act, which opened up ample opportunity for the review of evidence. The possibility of action for violation of the basic rights enjoyed by anyone accused of a criminal offence and, more fundamentally, the overriding right to an effective legal remedy and the presumption of innocence, as well as the requirement for an adequate account of the considerations and logic that led the court to hand down a given judgement, are a sufficient basis for asserting that the remedy can be effective.

7.3 The State party further argues that neither in Spain's legal order nor in those of its neighbours do remedies of appeal imply a resubmission of the evidence. In the author's case, the Supreme Court stressed that there is no remedy of appeal that allows a full repetition of the lower court proceedings. Under article 795 of the Criminal Procedure Act, which provides that judgements handed down by the criminal courts may be appealed in the provincial court or the National High Court, the grounds for application are restricted to breaches of procedural rules and safeguards, errors in the evaluation of the evidence and violations of the Constitution or the law. Application may be made only for examination of evidence that the lower court was unable to examine, or of evidence that was rejected without just cause, or of evidence that was admitted but not examined, for reasons not attributable to the appellant, and provided the right to a defence was violated. The State party goes on to list various European countries whose legislation, in its view, also precludes from appeals any repetition of the trial with a full resubmission of the evidence.

7.4 The State party points out that, in the author's case, the Supreme Court deliberated at great length over whether the remedy of cassation includes a right to review of the judgement and the sentence. According to the State party, the judgement draws attention to the remarkable breadth of the review of proven facts, stating: "It is true that the 9 November 1993 judgement (in the *Gómez Vázquez* case) held that such evidence has to be evaluated exclusively by the lower court in accordance with the provisions of article 741 of the Criminal Procedure Act, and that a re-evaluation of the evidence would change the nature of the remedy of cassation and turn it into a second hearing; however, that does not alter the fact that the remedy of cassation has lost its procedural rigidity and formalism and now provides numerous opportunities for review, including review of the provincial courts' assessment of evidence."

7.5 Thus the judgement cited by the State party shows that the old rules under which evidence already examined could not be re-examined have been superseded. Rational evaluation of the evidence, action in respect of presumption of innocence, the requirement for reasoned court rulings and the rejection under the Constitution of any suggestion of arbitrary action by the public authorities, all entail the possibility, through the cassation process, of reviewing and assessing evidence. The Supreme Court has established in its case law not only that the cassation process includes an assessment of the legality or illegality of the evidence submitted,

but also that the review includes substantive examination of the evidence to determine whether it is incriminatory or exculpatory, or simply too flimsy to set aside the presumption of innocence. The maxim *in dubio pro reo*, a principle of interpretation long considered not to apply in cassation proceedings, is now one of the principles applied in assessing evidence and may be reviewed in cassation in the course of the review of the evidence. The State party stresses that due account must be taken of this indisputable development in the remedy of cassation in Spain, to the point where it now allows a detailed and extensive scrutiny of facts that were deemed proven in the lower court. In support of its arguments, the State party also cites a judgement of the European Court of Human Rights dated 19 February 2002, which, in ruling on a complaint by a Spanish national concerning the alleged lack of a right to a second hearing, found that the Spanish cassation process was compatible with articles 6, paragraph 1, and 13 of the European Convention on Human Rights.[1]

(c) Scope of the review in the author's case

7.6 The State party argues that it is necessary to examine the circumstances surrounding the review in cassation carried out specifically in the author's case. In the State party's view, unlike what happened in the *Gómez Vázquez* case, the Supreme Court reviewed matters of fact and of evidence on the eight occasions on which the author invoked factual errors in the evaluation of the evidence or violations of the presumption of innocence. In this regard, the State party cites the Supreme Court's own ruling on the author's case, stating that the formulation by the parties of more than 170 grounds for cassation, and their frequent invocation of errors in the assessment of evidence and the presumption of innocence, led it to conclude that in the author's case the right to a second hearing had been exercised. Lastly, the State party asserts that, whatever the merits of the appeal system within the Spanish legal order, it is clear that in this specific case there was a wide-ranging review of the facts and the author's conviction and sentence were submitted in their entirety to a higher court, in full compliance with the requirements of the Covenant.

(d) Increased sentence not a violation of the Covenant

7.7 The State party argues that it is not only the convicted person but also the accusers, including those harmed by the offences being tried, who have the right to appeal and request a review of a conviction, and that this in no way impairs the convicted person's right to a defence, since he is aware of the charges and may advance whatever arguments he sees fit. The State party adds that any increase in the sentence is passed with every regard for the accusatory principle and in respect of crimes and penalties not exceeding those called for by the charges and of which the accused has been aware since the opening of the trial and naturally remains aware as the remedy proceeds. The rights to information and to a defence enjoyed by the accused in the lower court are not forfeit during cassation. Nor is there any material change in the accused's circumstances, since the penalties sought in the charges still stand. In this sense, the State party argues, remedies constitute a continuation of the trial. Furthermore, it is not true that the author was convicted for the first time in cassation. The possibility of increasing the sentence upon review and within the terms of the charges and the remedies sought is characteristic of all the sophisticated legal orders to be found in Spain's neighbours. Anything else would be a denial of the accuser's right to a remedy, which it cannot be claimed is required under article 14, paragraph 5, of the Covenant. The reservations to article 14, paragraph 5, entered by certain States parties in no way imply that that provision precludes an increase in the

sentence when a remedy is sought by the accusers; the intention appears to be rather to forestall any interpretation of article 14, paragraph 5, along the lines of the author's reading thereof: in other words the aim is to ensure the applicability of that provision, not to preclude it.

Author's comments on the State party's submissions on the merits

(a) Amendment to Organic Law No. 19/2003

8.1 In his submission dated 15 November 2004, the author states that this law is not immediately applicable and is not yet in force as the regulations required for its effective implementation have not been enacted. Furthermore, the amendment has no retroactive effect, which means the author's situation of having been deprived of the right to a second hearing remains unchanged, since the law provides no remedy for cases that have already been judged. The author claims that the *ratio legis* of the amendment is not, as the State party maintains, extension of the scope of cassation, but rather, as indicated in the preamble to the Act, settlement of the controversy arising out of the Committee's Views on the *Gómez Vázquez* case.

(b) Alleged extension of the scope of cassation

8.2 The author claims that the State party has disregarded the Committee's Views in the *Gómez Vázquez*, *Sineiro* and *Semey* cases, in which it found against the State party for the inadequacy of its reviews of criminal judgements. The Committee's task is to consider a specific case and not, as the State party claims, to give an opinion on the overall human rights situation in the country in question, which is more a matter for the periodic report procedure. The Supreme Court judgement of 16 February 2004 refers to the *Sineiro Fernández* case in rejecting an appeal in cassation, but disregards the Committee's Views on the communication submitted by Mr. Sineiro. The Constitutional Court resorted to reasoning the author finds less than convincing: "... it is quite impossible, for reasons both temporal and metaphysical, to faithfully reproduce all that occurred in the trial court. The system complies with the provisions of the Covenant if … it re-evaluates the interpretation of the evidence made by the trial court and reviews the rationality and deductive logic required by any judicial weighing of evidence ... One cannot stop time. Not even a video recording of the trial would suffice, for these are images of the past and show us only the scene, not the direct, uncommunicable experiences of those involved." In respect of the competence of the Supreme Court, says the author, the Constitutional Court states in the same judgement that "... a reassessment of the evidence upon which the trial court based its decision to convict is not one of its functions". The author adds that, under the Code of Criminal Procedure, article 884, any challenge to the facts deemed proven in the judgement is a ground for dismissal of an application; and, under article 849, an appeal in cassation may be lodged only on the basis of an error in the evaluation of the evidence, where said error is substantiated by documentary proof which is attached to the file, demonstrates the error of the court, and is not contradicted by other evidence.

(c) Scope of the review in the author's case

8.3 The author claims that the remedy of cassation does not permit any challenge to the credibility of the witness or expert testimony upon which the sentence was based except in cases of manifest arbitrariness or a complete absence of evidence for the prosecution. On the count of fraud, the National High Court judgement found that the author had obtained joint venture

partnerships free of charge; this the author denied, stating that what he had received were professional fees in payment for his services as a lawyer. A number of expert witnesses supported the author's version, but it was not accepted by the court; nor did the court admit the documentary evidence submitted by the author in his defence. No review of these points is possible in cassation, says the author. On the count of misappropriation, the National High Court based its ruling on conflicting statements of which the court accepted only those which told against the innocence of the accused, referring explicitly to three prosecution witnesses, whose credibility cannot be reviewed in cassation. The Supreme Court does not deny that it did not review the evidence in this regard, but claims that in reviewing the rationality of the court's consideration of the evidence it has complied with article 14, paragraph 5, of the Covenant. The prosecutor attached to the Supreme Court, on the other hand, recognized that the Supreme Court was not competent to assess the evidence. The author points out that the State party's reference to a judgement of the European Court of Human Rights disregards the fact that the right to a second hearing is not recognized in the European Convention on Human Rights but in Protocol No. 7 to that Convention, to which Spain is not a party. He further points out that the Inter-American Court of Human Rights, for its part, in a judgement handed down on 2 July 2004 in the case of *Herrera Ulloa v. Costa Rica*, took into account the Committee's decisions in the cases previously referred to and found that Costa Rica's system of cassation did not comply with the provisions of article 8 of the American Convention on Human Rights because the higher court may not "conduct a complete and thorough review of all the matters discussed and considered by the lower court".[2]

(d) No right to a second hearing on the increased sentence imposed in cassation

8.4 The author claims that those States parties that wish to preclude application of article 14, paragraph 5, of the Covenant in cases where a sentence is increased by the higher court have entered a specific reservation to that effect. The author cites the reservation entered by Austria in that regard. He adds that the State party could make certain simple changes to the law to ensure that a division of the Supreme Court could carry out a full review of a penalty imposed or increased on appeal. He points out that Spain's Judiciary (Organization) Act provides a review mechanism for similar cases, such as judgements handed down by the Administrative Division of the Supreme Court.

Issues and proceedings before the Committee

Consideration of the merits

9.1 The Human Rights Committee has considered the present communication in the light of all the information made available by the parties, as provided in article 5, paragraph 1, of the Optional Protocol.

9.2 In a previous case (communication No. 1095/2002, *Gomariz v. Spain*, Views of 22 July 2005, para. 7.1) the Committee held that the absence of a right of review by a higher court of a conviction imposed by an appeal court following acquittal by a lower court constituted a violation of article 14, paragraph 5, of the Covenant. The present case is different in that the conviction by the lower court was confirmed by the Supreme Court. That court, however, increased the penalty imposed by the lower court in respect of the same offence. The Committee notes that in the legal systems of many countries appeal courts may lower, confirm or increase

the penalties imposed by the lower courts. Although the Supreme Court in the present case took a different view of the facts found by the lower court, in that it concluded that the author was a principal, and not merely an accessory, in relation to the misappropriation offence, in the Committee's view the finding of the Supreme Court did not change the essential characterization of the offence but merely reflected the Supreme Court's assessment that the seriousness of the circumstances of the offence merited a higher penalty. Thus there is no basis for a finding of violation in this case of article 14, paragraph 5, of the Covenant.

9.3 As to the author's remaining claims under article 14, paragraph 5, of the Covenant, the Committee notes that several of the grounds for cassation submitted by the author to the Supreme Court referred to alleged errors of fact in the evaluation of the evidence and violation of the principle of presumption of innocence. It is clear from the judgement that the Supreme Court looked at the author's allegations in great detail and considered the evidence submitted in the trial and referred to by the author in his appeal, and found that there was sufficient incriminating evidence to rule out errors in weighing the evidence and set aside the presumption of innocence in the author's case.[3] The Committee finds that this part of the complaint of a violation of article 14, paragraph 5, is not duly substantiated by the author.

10. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it do not disclose a violation of article 14, paragraph 5, of the Covenant.

[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] European Court of Human Rights, case No. 65892/01, *Ramos Ruiz v. Spain*, decision adopted on 19 February 2002.

[2] Inter-American Court of Human Rights, *Herrera Ulloa v. Costa Rica*, judgement of 2 July 2004, series C, No. 107, paras. 166-167.

[3] For similar cases, see communication No. 1059/2002, *Carvallo v. Spain*, decision of 28 October 2005; communication No. 1399/2005, *Cuartero v. Spain*, decision of 25 July 2005, para. 4.4; communication No. 1356/2005, *Parra Corral v. Spain*, decision of 29 March 2005, para. 4.3; communication No. 1389/2005, *Bertelli v. Spain*, decision of 25 July 2005, para. 4.5.
