United Nations CCPR/C/126/D/2541/2015

International Covenant on Civil and Political Rights

Distr.: General
27 September 2019
English
Original: Spanish

Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2541/2015*, **

Communication submitted by:	María Dolores Martín Pozo (represented by counsel, Antonio Ortiz Fernández)
Alleged victim:	The author
State party:	Spain
Date of communication:	28 July 2014
Document references:	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 23 January 2015 (not issued in document form)
Date of adoption of Views:	18 July 2019
Subject matter:	Right to be presumed innocent, right to due process and right to review by a higher tribunal
Procedural issues:	Exhaustion of domestic remedies, case already submitted to another procedure of international settlement
Substantive issues:	Right to review by a higher tribunal, right to be presumed innocent, due process, right to a hearing by a competent, independent and impartial tribunal
Articles of the Covenant:	9 (1) and (3), 14 (1)–(3) and (5) and 26
Articles of the Optional Protocol:	2, 3 and 5 (2) (a) and (b)

1. The author of the communication is María Dolores Martín Pozo, an adult national of Spain. She alleges that Spain has violated her rights under articles 9 (1) and (3); 14 (1), (2), (3) and (5); and 26 of the Covenant. The author is represented by counsel. The Optional Protocol entered into force for the State party on 25 April 1985.

* Adopted by the Committee at its 126th session (1–26 July 2019).

** The following members of the Committee participated in the examination of the present communication: Tania María Abdo Rocholl, Yadh Ben Achour, Arif Bulkan, Ahmed Amin Fathalla, Shuichi Furuya, Christof Heyns, Bamariam Koita, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Hélène Tigroudja, Andreas Zimmermann and Gentian Zyberi.

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The facts as submitted by the author

2.1 The author and her ex-husband were legally separated under a judgment of 16 April 2003, which granted the author custody of the couple's daughter. On 28 March 2006, the author's ex-husband filed for divorce with Madrid Court of First Instance No. 24, requesting custody of their daughter.

2.2 A divorce hearing took place on 24 January 2007. On leaving that hearing, the author, who could not bear the thought of losing custody of her daughter, threatened her ex-husband, uttering the words "*te tengo que ver muerto*" ("I have to see you dead"). On 31 January 2007, the prosecutor's office issued a report recommending that the father should be awarded custody of the couple's daughter, without any access arrangements being established for the mother. On the same day, at approximately 8.30 p.m., a vehicle overtook the car in which the author's ex-husband was travelling, braking suddenly. The author's husband managed to swerve to overtake the vehicle and continue driving, only to be hit from behind by the other vehicle. In the end, the author's ex-husband was able to get away.

2.3 On 14 March 2007, the author's ex-husband was shot dead in the garage of his building.

2.4 During the judicial investigation, the author's telephone was tapped. On 17 April 2007, the authorities recorded a telephone conversation between the author and the president of the Constitutional Court, in which the two women, who knew each other, discussed the author's legal proceedings. The investigating judge took the view that the conversation could amount to a violation of article 441 of the Criminal Code, which prohibits judges from advising private individuals, and on 26 May 2008 lodged a "reasoned opinion" with the Second Chamber of the Supreme Court. In relation to these facts, the member of the General Council of the Judiciary for the Basque Country took a clear stand against the author and the judge with whom she had had the conversation, stating that such conduct was clearly unlawful. On 2 June 2008, the Supreme Court ordered the closure of the proceedings initiated based on the reasoned opinion on the grounds that the alleged facts did not constitute a crime.

2.5 On 20 May 2008, the author was arrested and placed in pretrial detention, as were the two other co-accused, alleged to have been direct joint perpetrators of the murder.

2.6 On 23 October 2009, Section 15 of the Provincial Court of Madrid ordered that the case be referred to Court of Investigation No. 5 of Valdemoro and that the investigating judge handle the case in accordance with the procedure for a trial by jury court. The prosecutor's office applied for reconsideration of this order but the appeal was dismissed by Section 15 on 30 November 2009. On 29 December 2009, the prosecutor's office filed an appeal against this decision before the Criminal Chamber of the High Court of Justice of Madrid. On 11 January 2010, the Provincial Court of Madrid ruled that the appeal was inadmissible. On 18 January 2010, the prosecutor's office filed a complaint against this order before the High Court of Madrid, which was dismissed by order of the same date. On 22 January 2010, the prosecutor's office filed another complaint with the Civil and Criminal Chamber of the High Court. On 22 January 2010, the prosecutor's office filed a new complaint with the Civil and Criminal Chamber of the High Court. On 12 February 2010, the Provincial Court ordered a report on the rejection of the appeal filed by the prosecutor's office, contained in the order of 11 January 2010, addressed to the High Court of Justice. According to the author, no additional notification or decision was received in relation to this appeal.

2.7 At the end of the investigation phase, the case was referred to Section 4 of Madrid Provincial Court for trial by jury. The Public Prosecution Service challenged the application of the jury procedure; the Provincial Court upheld the challenge by order of 7 July 2010, ordering that the case be tried in summary proceedings before a professional judicial body instead. The author appealed this order to the High Court of Justice. On 6 April 2011, the High Court issued a final decision dismissing the author's appeal. On 27 April 2011, Section 4 of the Provincial Court returned the case to Court of Investigation No. 5 of Valdemoro for it to prepare the summary proceedings, since the investigation had been conducted in accordance with the procedure for a jury court trial but, according to the order of 6 April 2011, the case would now be tried by the Provincial Court.

2.8 On 22 December 2011, the Madrid Provincial Court sentenced the author to 17 years, 6 months and 1 day in prison for the crime of murder with the aggravating circumstance of the existence of family ties; 3 years, 9 months and 1 day for attempted murder;[1] and 1 year, 3 months and 1 day for threats.

2.9 The author lodged an appeal in cassation against the decision of the Provincial Court on the grounds that her trial had been unreasonably prolonged, the principle of the presumption of innocence had not been respected, the aggravating circumstance of being related to the victim should not have been applied to her and she should have been tried by a jury court.

2.10 On 20 September 2012, the Supreme Court upheld the Provincial Court's decision. The Supreme Court found that the length of the judicial proceedings was not disproportionate and was justified by the complexity of the case and the time needed to determine which court had jurisdiction over the case (jury court or provincial court) because of the various crimes involved. Furthermore, it concluded that the author's presumption of innocence had not been violated, the jury court did not have jurisdiction over her case and the aggravating circumstance of the existence of family ties had been correctly applied by the Provincial Court.

2.11 On 31 October 2012, the author lodged an application for *amparo* before the Constitutional Court. She claimed that her right to the presumption of innocence had been violated because the only evidence used in her case was an accusation by one of the co-defendants, and that to consider the relationship between the author and her ex-husband as an aggravating circumstance was discriminatory, as she was divorced from the victim. On 3 April 2013, the Constitutional Court rejected the application for *amparo* on the grounds that there had manifestly been no violation of a fundamental right covered by that remedy.

2.12 On 30 September 2013, the author submitted an application to the European Court of Human Rights. On 12 December 2013, the European Court found the application inadmissible on the grounds that it did not meet the requirements under articles 34 and 35 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights).

The complaint

3.1 The author considers that the State party has violated her rights to the presumption of innocence and due process under article 14 (1) and (2) of the Covenant. Furthermore, she considers that the fact that she was held in pretrial detention throughout the proceedings constitutes a violation of article 9 (1). In particular, her right to the presumption of innocence was not respected as there was no evidence to support her conviction. The only evidence was the statement of the co-defendant ESB, who was later convicted as the direct perpetrator of the murder, which does not meet the minimum requirements to constitute evidence. In this regard, the author notes that ESB's statement was imprecise and generic and was considered by the court to be contradictory and untruthful, which led to the acquittal of another co-defendant (CMG) in the same case. In addition, co-defendant ESB's statement was intended to be self-exculpatory and aimed at obtaining a reduced sentence by using confession as a mitigating circumstance, which is what happened, as the sentence requested by the prosecution was reduced from 39 years to 13 years and 1 day in prison. In referring to the co-defendant, the Provincial Court itself described his attitude as "partially cooperative". The author considers that the fact that co-defendant ESB's testimony incriminating both her and CMG was dismissed in respect of the latter but accepted as evidence in her case constitutes unequal treatment. She submits that, under the applicable law, statements by co-defendants are not, strictly speaking, evidence, since the obligation to tell the truth that is imposed on witnesses does not apply to them, i.e., these statements are not made under oath. According to applicable national law and jurisprudence, in order for such statements to have evidentiary weight, other requirements have to be met, such as the absence of a motive (e.g. obtaining more favourable procedural treatment or acquittal) and the need for the defendant's participation in the acts to be corroborated by other evidence. In this case, the other evidence used by the Court to corroborate the statement was the author's threats against her ex-husband on 24 January 2007 and her alleged motive, namely the dispute between her and her spouse over custody of their daughter. According to the

[1] The murder attempt involves the incidents described in paragraph 2.2 above.

author, these elements do not corroborate her participation in the acts. She emphasizes that, according to the conviction, it was not possible to prove that the author remunerated the direct perpetrator of the murder in any way and it was therefore not possible to prove her connection with the acts. Lastly, the author considers that the police investigation was unsound, as lines of investigation were inexplicably abandoned that pointed to a dangerous criminal gang that might have been involved in the perpetrator's first murder attempt. In the author's view, all of this constitutes a violation of her rights to due process and the presumption of innocence, as set out in articles 9 (1) and 14 (1) and (2) of the Covenant.

3.2 The author also considers that she has been subjected to discrimination and unequal treatment before the law, in violation of articles 14 (1) and 26 of the Covenant. She notes that she received an aggravated sentence because she was the wife of the deceased, even though they were divorced and the relationship between them had ended. The Court considered that the aggravating circumstance was applicable since the origin of the dispute that motivated the crime was the marital relationship. The author takes the view that the broad application of this aggravating circumstance is tantamount to leaving the defendant marked for life, with the potential imposition of a much heavier penalty than would be applied to another person for the same acts. Consequently, in her opinion, the application of this aggravating circumstance constitutes discrimination in her case. In addition, she emphasizes that this aggravating circumstance was applied to her under the Criminal Code as amended on 29 September 2003, despite the fact that the marital bond between the author and the deceased had been severed in 2001, prior to the entry into force of the Code. The application of this amendment to the Criminal Code in the author's case therefore contradicts the principle of non-retroactivity of the most unfavourable criminal law.

3.3 The author also claims that her case was not tried by a competent, independent and impartial tribunal, in violation of article 14 (1). She considers that there was a clear lack of impartiality on the part of both the examining judge and the sentencing court, the Provincial Court. The investigating judge's bias is illustrated by the fact that she submitted to the Supreme Court a reasoned opinion based on a telephone conversation discovered in the course of an investigation that had nothing to do with the facts in question. In doing so, the examining judge demonstrated her lack of impartiality vis-à-vis the author. Furthermore, the impartiality of the Provincial Court is questionable, since the judge who presented the case turned out to be Judge JPGG, who had publicly stated that the conversation between the author and the president of the Constitutional Court constituted an unlawful act.

3.4 The author recalls that her trial started in 2008 and lasted until the end of 2011, and that she was held in continuous pretrial detention from May 2008. She argues that the delay in the trial was not caused by the investigation but by the time it took to decide on the appeals concerning the procedure to be followed and the competent court (jury court or provincial court). According to the author, this constitutes an undue delay, in violation of articles 9 (3) and 14 (3) (c) of the Covenant.

3.5 The author claims that she was not tried by a court established and predetermined by law, in violation of article 14 (1). According to article 1 of the Organic Act on the Jury Court, this institution is competent to prosecute murder cases, and jurisdiction shall be determined based on the charge that carries the heaviest penalty.[2] Article 5 of the Act provides that jurisdiction shall be determined on the basis of the alleged offence, regardless of the participation or degree of involvement attributed to the defendant, and shall extend to related offences if they have been committed in order to perpetrate others, facilitate their execution or secure impunity. The author considers that the crime of threats was a crime related to murder, and therefore the jurisdiction of the jury court should have been extended in her case.

3.6 Lastly, the author submits that it was not possible to lodge an ordinary appeal against the Provincial Court's judgment of 22 December 2011, as only appeals in cassation to the Supreme Court and applications for *amparo* to the Constitutional Court were possible, both of which she filed but which do not constitute a second instance, in violation of article 14 (5) of the Covenant. The author recalls that the Supreme Court's judgment of 20 September 2012 itself states that the court of cassation is not authorized to re-evaluate all the evidence available to the trial court, and that the trial court did not take up many of the arguments she put forward in her appeal. According to the author, the Supreme Court

[2] Organic Act No. 5/1995 of 22 May on the Jury Court.

considered that the evidence was sufficient to convict her, but did not assess the evidence itself. The author recalls the Committee's consistent jurisprudence that an appeal in cassation does not constitute a review by a court of second instance.[3] With regard to the remedy of *amparo*, the author recalls that, since the reform of the Organic Act on the Constitutional Court in 2007, more than 95 per cent of the appeals filed have been found inadmissible, as happened in her case. In the author's view, under this new system, rather than having to prove that there are no grounds for inadmissibility, the appellant must now prove that there are grounds for his or her appeal to be admitted and, in particular, that it has "special constitutional significance". The author therefore considers that her right to have her judgment reviewed by a higher tribunal was not upheld, in violation of article 14 (5) of the Covenant.

3.7 The author therefore requests immediate, effective and urgent reparation of the violated rights, as well as financial compensation, including for the moral damage caused and expenses incurred as a result of these violations.

State party's observations on admissibility

4.1 The State party submitted its observations on the admissibility of the communication in notes verbales dated 19 March and 20 July 2015. It submits that the communication is inadmissible under articles 2, 3 and 5 (2) (a) and (b) of the Optional Protocol because domestic remedies have not been exhausted, the case has been submitted to another procedure of international settlement and the claims have not been substantiated.

4.2 The State party considers that the author has not exhausted all domestic remedies, since her appeal in cassation invokes a violation of the right to effective judicial protection only nominally, merely referring to legal violations and not substantiating a violation of any fundamental right. In particular, with regard to the author's claim that two of the judges who heard her case lacked due impartiality, the State party submits that, under the Organic Act on the Judiciary, the author could have challenged the judges who made up the chamber of the Provincial Court. The State party recalls that hearings took place on up to nine different days, thus giving the author sufficient opportunity to bring her challenge once she knew which judges would be trying her case. In addition, the State party submits that the author did not allege bias on the part of the judges either in her appeal in cassation or in her application for *amparo*. With regard to the violation of her right to a review by a court of second instance, the State party notes that the author did not assert this right either in her appeal in cassation or in her application for *amparo*, nor did she submit an application for annulment of proceedings in respect of the Supreme Court's judgment.

4.3 The State party recalls that the European Court of Human Rights decided to dismiss the author's application on 12 December 2013, as it did not meet the admissibility requirements set out in articles 34 and 35 of the European Convention on Human Rights. Based on an assessment of the admissibility criteria of article 35 of the Convention, the State party concludes that the only criterion applicable to the author's application is the one contained in paragraph (3) (a) of that article: "the application is incompatible with the provisions of the Convention or the Protocols thereto, manifestly ill-founded, or an abuse of the right of individual application". The State party concludes that the European Court's decision involved an analysis of the substance of the application. Since the subject matter of that application is the same as that of the communication before the Committee, the State party considers that the communication is inadmissible under articles 3 and 5 (2) (a) of the Optional Protocol.

4.4 The State party adds that the allegations contained in the communication were rejected by the Constitutional Court on the grounds of the manifest absence of a violation of a fundamental right that could be protected under *amparo*. Accordingly, the communication is inadmissible under article 3 of the Optional Protocol.

[3] *Gómez Vázquez v. Spain* (CCPR/C/69/D/701/1996); *Semey v. Spain* (CCPR/C/78/D/986/2001); *Sineiro Fernández v. Spain* (CCPR/C/78/D/1007/2001); and *Alba Cabriada v. Spain* (CCPR/C/82/D/1101/2002).

Author's comments on the State party's observations on admissibility

5.1 In her comments of 7 April 2015, the author refutes the State party's assertion that the communication is inadmissible because it has already been submitted to another international mechanism. She argues that her application to the European Court of Human Rights was different to the present communication in that it concerned alleged violations of the European Convention on Human Rights. In addition, the author reiterates that the European Court did not at any time examine the merits of her application, which was rejected simply on the grounds that it did not meet the admissibility requirements of articles 34 and 35 of the European Convention, without any reasons being given.

5.2 With regard to the State party's claim that the communication is inadmissible for failure to exhaust domestic remedies, since in her appeal in cassation the author referred to the right to judicial protection only generically, she submits that in that appeal she put forward the same arguments as those presented to the Committee. In relation to the exhaustion of remedies in respect of the allegations concerning the judges' lack of impartiality, she notes that the impartiality of the judiciary is a matter of public procedural order, which may be assessed ex officio at all stages of proceedings, and that, under existing law, judges have an obligation to recuse themselves in cases of conflict of interest. In addition, the author claims that she was not notified of the composition of the chamber prior to the trial and that her knowledge of the judge's lack of impartiality was unexpected, fortuitous and coincidental, owing to her having read the Provincial Court's judgment. In relation to the failure to exhaust remedies for alleged violations of the right to a review by a second instance, the author argues that the application for annulment of proceedings does not constitute an effective remedy, since it is of an exceptional nature and it would not make sense to apply for it in cassation and *amparo* proceedings, since the violation stems precisely from the ineffectiveness of those remedies. The author recalls that she explicitly invoked the right to be tried without undue delay in her appeal in cassation, as well as the rights to equality and legality in relation to the application of the aggravating factor of a relationship with the victim in her cassation and *amparo* appeals.

5.3 The State party's allegation that the communication is unsubstantiated is based on the Constitutional Court's decision of inadmissibility. However, the author argues that this procedure is extraordinary and ineffective, and is a purely formalistic remedy (para. 3.6).

State party's observations on the merits

6.1 On 20 July 2015, the State party provided its observations on the merits of the communication. With regard to the violation of the right to the presumption of innocence alleged by the author, it maintains that the domestic judicial authorities are aware of and apply the principle set out in the Covenant, according to which a simple statement by a co-defendant cannot give rise to a conviction if it has not been supplemented by other evidence. In this connection, the State party notes that the Provincial Court took into account two pieces of evidence corroborating the co-defendant's testimony. The first piece of evidence consists of the author's clear motive for murder, namely the animosity between her and the victim stemming from the dispute between them over custody of their daughter. The second piece of corroborating evidence was the serious threats made by the author on 31 January 2007, attested to by eyewitnesses. Lastly, the Provincial Court pointed out that the only link between the co-defendant and direct perpetrator of the murder (ESB) and the victim is the author. The Provincial Court also analysed the author's defence statement, according to which the co-defendant had testified against her in order to mitigate his responsibility, and found it implausible, since no one would participate in such serious acts solely in order to evade responsibility for much lesser criminal acts. The Supreme Court also examined the author's allegations regarding the lack of evidentiary weight of the co-defendant's testimony. In its judgment, the Supreme Court found that motive and threats constituted sufficient external corroborative elements. In addition, the Court recalled that there was no link between the deceased and the co-defendant other than the author. The Supreme Court also noted that co-defendant CMG was not acquitted on the grounds that ESB's statement was considered unreliable, but because it had not been possible to find specific external corroborative elements like those found in the author's case. The State party concludes that there was sufficient evidence for the prosecution and that this was properly assessed by the relevant judicial authorities, in strict compliance with articles 9 (1) and 14 (1) of the Covenant.

6.2 The State party contests the author's claim that the application of the aggravating factor of family ties with the victim constitutes discrimination. The Spanish Criminal Code establishes that this aggravating circumstance can be applied not only to the spouse or person with a similar relationship to the victim but also to a former spouse, which means that the fact that the relationship has ended is irrelevant. If the facts are related, either directly or indirectly, to the union, the aggravating factor of family ties must be applied. The State party therefore explains that the application of this aggravating factor is not conditional on the existence or otherwise of an intimate relationship. The domestic judicial authorities considered that, although the couple no longer lived together, the author and her ex-husband remained in contact in connection with the guardianship and custody of their daughter, which is precisely what caused the disagreements that culminated in the crimes that the court found to have been proven. The State party adds that the inclusion of this aggravating circumstance in the law was a legitimate decision that in no way violates the Covenant.

6.3 As to the allegation that the judges who heard the author's case were not impartial, the State party recalls that this point was not raised with the domestic authorities. Furthermore, it considers that this allegation is manifestly unfounded since there is nothing to call into question the impartiality of the Provincial Court, a collegiate body, which took the final decision unanimously, without a separate vote. Similarly, the author made no claim against the impartiality of the Supreme Court judges who upheld the Provincial Court's conviction.

6.4 With regard to the allegations of undue delays in the judicial process, in violation of articles 9 (3) and 14 (3) (c) of the Covenant, the State party maintains that the author did not allege delays during the proceedings in first instance. The events took place in March 2007, the author was arrested on 31 May 2008, the trial commenced on 15 November 2011 and the judgment was handed down on 22 December 2011. Part of that time was spent resolving the question of which court had jurisdiction to prosecute, but the State party considers that this was a relevant issue which, by its very nature, takes some time to process, study and resolve.

6.5 With regard to the author's claim that she was not tried by the competent body in accordance with the law, the State party notes that, in accordance with the Supreme Court's judgment of 20 September 2012 on the author's appeal in cassation, it was not advisable in this case to separately prosecute the crimes of threats and attempted murder on the one hand and murder on the other. Neither unconditional threats nor attempted murder come under the jurisdiction of the jury court. The Supreme Court found that none of the conditions set out in the Organic Act on the Jury Court to extend that court's jurisdiction were met in this case, since the crimes that fall outside its jurisdiction had not been committed for the purpose of perpetrating others, facilitating their execution or seeking impunity, nor was it a case of a single act being punishable under various provisions or of concerted action. The State party adds that, according to the Supreme Court, the author accepted the jurisdiction of the Provincial Court since, when the defence's appeal to the High Court of Justice was dismissed, the matter was not appealed in cassation under articles 666 et seq. of the Code of Criminal Procedure. In this regard, the State party considers that, as the Supreme Court conducted a thorough review of the issue of jurisdiction in this case, it is not for the Committee to review the interpretation of domestic legislation, but rather to verify that the decision was not arbitrary or did not result in the violation of the right to a fair trial and an impartial court.

6.6 With respect to the alleged violation of article 14 (5), the State party maintains that, in deciding on the cassation appeal, the Supreme Court considered without any formal limitation each and every one of the arguments that the author put forward against the judgment of the Provincial Court. The Supreme Court analysed the alleged violation of the principle of the presumption of innocence in relation to the statement of the co-defendant and examined the allegations of undue delay and the application of the aggravating circumstance of family ties, as well as the jurisdiction of the Provincial Court. Furthermore, there is no indication that the author requested new evidence to be brought that had been rejected by the Supreme Court. The State party considers that, in the author's case, the Supreme Court acted as a court of second instance.

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

7.1 On 17 November 2015, the author submitted her comments on the State party's observations. Concerning the alleged violation of the right to the presumption of innocence, the author insists that the co-defendant's testimony should be evaluated in its own right to establish whether it is sufficiently reliable as evidence. Furthermore, it is acknowledged in the judgment itself that it was not established that the author paid the co-defendant any remuneration for his involvement in the murder, nor was it proven who contacted the perpetrator of the murder. Therefore, the author argues that the factor of payment was withdrawn by the prosecution on the assumption that the mere possibility that the co-defendant had directly committed the murder would undoubtedly result in them not being able to impute any illegal conduct to the author. She reiterates that, if the statement by the co-defendant was not sufficiently credible to corroborate the involvement of CMG, it should not have been taken into consideration to conclude her guilt. Furthermore, she emphasizes that, according to the judgment of the Provincial Court, there are alternative hypotheses on the participation of unidentified third persons that have not been properly investigated.

7.2 With regard to the claim that the application of the aggravating circumstance of family ties constituted discrimination, she reiterates that this aggravating factor is applied when there is an intimate relationship with the victim and therefore cannot be used when these ties have been severed. Moreover, she reiterates that this aggravating circumstance was applied retroactively, as her separation preceded the entry into force of the amendment to the Criminal Code.

7.3 Concerning the impartiality of the judges who heard her case, the author notes that the State party merely argues that the court in question is a collegial body and that the Supreme Court upheld its decision. In her view, however, judges' bias cannot be remedied or validated simply because other judges or courts do not find that there has been a lack of impartiality.

7.4 The author also reiterates that there were undue delays in her trial and notes that the State party merely indicated that the delays were due to the time needed to determine the procedure to be followed. She underlines that this issue of determining the procedure to be followed was raised and prolonged by the Public Prosecutor's Office, which lodged an appeal even though final decisions had already been issued.

7.5 With respect to the alleged violation of the right to a court predetermined by law, the author reiterates that she was never notified of the decision on the appeal of the Public Prosecutor's Office of 22 January 2010 and that, in any case, this appeal should never have been admitted since it was lodged in respect of a final decision. Furthermore, she notes that the State party barely mentions the issue of the challenge to the application of summary proceedings before a professional judicial body.

7.6 The author refutes the State party's claim that the Supreme Court acted as a court of second instance, as the judgment itself establishes that the court of cassation is not entitled to re-evaluate all the evidence ordered by the court of first instance. To argue that the Supreme Court acted as a second instance would imply that it exceeded its jurisdiction.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with article 97 of its rules of procedure, whether the communication is admissible under the Optional Protocol to the Covenant.

8.2 The Committee notes that the author filed an application regarding the same facts before the European Court of Human Rights and recalls that, in ratifying the Optional Protocol, Spain introduced a reservation excluding the competence of the Committee in relation to cases that have been or are being examined under another procedure of international investigation or settlement.

8.3 The Committee notes that, by a letter dated 12 December 2013, the author was informed that, in a decision taken in a single-judge formation, her application had been dismissed. The letter stated that, on the basis of the evidence in its possession and insofar as

it was competent to decide on the applications submitted to it, the Court had concluded that her application did not meet the admissibility criteria established under articles 34 and 35 of the European Convention on Human Rights.

8.4 The Committee recalls its jurisprudence[4] relating to article 5 (2) (a) of the Optional Protocol, according to which, when the European Court bases a declaration of inadmissibility not solely on procedural grounds but also on grounds arising from some degree of consideration of the substance of the case, the matter should be deemed to have been examined within the meaning of the respective reservations to article 5.[5] However, the Committee also recalls that, even in cases where applications have been declared inadmissible on the grounds that they do not disclose a violation, the limited reasoning given in some decisions of this sort does not enable the Committee to assume that the European Court has examined a case on the merits.[6] In the present case, the Committee notes that the decision of the European Court indicates simply that the application fails to meet admissibility requirements, without further explanation. Accordingly, the Committee considers that it is not in a position to determine with certainty that the author's case has already been examined, albeit in a limited manner, on its merits,[7] and concludes that article 5 (2) (a) of the Optional Protocol does not constitute an obstacle to the admissibility of the present communication.

8.5 Furthermore, the Committee notes the State party's assertion that the author has not exhausted all domestic remedies in relation to her allegation that two of the judges who heard her case lacked due impartiality as she did not ask the judges to recuse themselves and did not raise this point in her cassation and *amparo* appeals. In this regard, the author maintains that the judges' bias can be assessed ex officio and that her knowledge of the judges' lack of impartiality was unexpected, fortuitous and coincidental, based on her reading of the Provincial Court's own judgment. Nonetheless, the Committee notes that there is no evidence that the author included this allegation in her appeal in cassation to the Supreme Court or in her application for *amparo* to the Constitutional Court, both of which were lodged after the notification of the judgment. The Committee therefore considers that the author has not exhausted domestic remedies available in relation to her allegations concerning her right to a fair trial under article 14 (1) and considers this part of the communication inadmissible under article 5 (2) (b), of the Optional Protocol.

8.6 The Committee also notes the State party's argument that the author failed to exhaust domestic remedies in relation to the alleged violation of her right to a review by a second instance. In this respect, the State party notes that the author did not assert this right either in her appeal in cassation or in her application for *amparo*. The Committee recalls its jurisprudence to the effect that only those remedies that have a reasonable prospect of success need be exhausted.[8] In the present case, there is consistent jurisprudence of the Constitutional Court denying the remedy of *amparo* in cases alleging a violation of the review of judgments, which means that the application for *amparo* had no prospect of succeeding in relation to the alleged violation of article 14 (5) of the Covenant.[9] Accordingly, the Committee considers that domestic remedies have been exhausted in relation to the allegations made under article 14 (5).

8.7 The Committee also notes the State party's assertion that the author's allegations have not been sufficiently substantiated, as required by article 3 of the Optional Protocol, which is why the Constitutional Court rejected her application for *amparo*. However, the State party does not specify which aspects have not been substantiated by the author in her communication. The Committee notes that the author considers that the application in her case of the aggravating circumstance of family ties constituted discrimination, although she has not sufficiently substantiated, for the purposes of admissibility, why this application

[4] See, inter alia, *Achabal Puertas v. Spain* (CCPR/C/107/D/1945/2010), para. 7.3; and *A.G.S. v. Spain* (CCPR/C/115/D/2626/2015), para. 4.2.

[5] In this connection, see *Mahabir v. Austria* (CCPR/C/82/D/944/2000), para. 8.3; *Linderholm v. Croatia* (CCPR/C/66/D/744/1997), para. 4.2; and *A.M. v. Denmark* (CCPR/C/16/D/121/1982), para. 6.

[6] See *X v. Norway* (CCPR/C/115/D/2474/2014), para. 6.2.

[7] *Mahabir v. Austria*, para. 8.3.

[8] See, for example, *Gómez Vázquez v. Spain*, para. 10.1; *Semey v. Spain*, para. 8.2; *Alba Cabriada v. Spain*, para. 6.5; *Prieto v. Spain* (CCPR/C/87/D/1293/2004), para. 6.3; and *Villamón Ventura v. Spain* (CCPR/C/88/D/1305/2004), para. 6.3.

[9] Ibid.

was unjustified in her case. Accordingly, the Committee considers that the author has not sufficiently substantiated her claim of discrimination under articles 14 (1) and 26 of the Covenant and that this claim is therefore inadmissible under article 2 of the Optional Protocol.

8.8 The Committee considers that the author's remaining allegations, under articles 9 (1) and (3) and 14 (1), (2), (3) (c) and (5), have been sufficiently substantiated and meet the other requirements of admissibility and proceeds to their consideration on the merits.

Consideration of the merits

9.1 The Committee has considered the communication in the light of all the information made available to it by the parties, as provided for under article 5 (1) of the Optional Protocol.

9.2 The Committee notes the author's claim that her rights under articles 9 (1) and 14 (1), (2) and (3) (c) have been violated because she was convicted on the basis of the testimony of a co-defendant (paras. 2.11 and 3.1) and because the judicial authorities decided that her case should be tried in summary proceedings before a professional court (paras. 2.7 and 3.5). The Committee notes that, in this connection, the State party has stated that the Provincial Court took into account two pieces of evidence corroborating the testimony of the co-defendant (para. 6.1) and that none of the conditions set out in the Organic Act on the Jury Court to extend the jurisdiction of that court had been met in this case (para. 6.5). The State party adds that the Provincial Court and the Supreme Court rationally assessed the prosecution evidence, in strict compliance with the Covenant, as well as the question of jurisdiction in this case (para. 6.1). The State party maintains that it is not for the Committee to review the interpretation of domestic legislation, but rather to verify that the decision was not arbitrary or did not result in the violation of the right to a fair trial and an impartial court. The Committee notes that the author's claims refer to the evaluation of the facts and the evidence and the application of domestic legislation by the courts of the State party.

9.3 The Committee recalls that, according to its settled jurisprudence, the assessment of facts and evidence is, in principle, a matter for national courts, unless it was manifestly arbitrary or amounted to a denial of justice.[10] The Committee notes that the Provincial Court assessed each piece of evidence presented by the parties individually and in a reasoned manner. The Provincial Court's assessment of the evidence was in turn carefully reviewed by the Supreme Court, which concluded that the assessment had been reasoned and sufficient. With regard specifically to the validity of the testimony of co-defendant ESB, the Committee notes that the Provincial Court itself stated that such testimony should be supplemented by other evidence and took into account two pieces of evidence corroborating that testimony, which in turn were re-evaluated by the Supreme Court (para. 6.1). Similarly, both the Provincial Court and the Supreme Court examined the parties' allegations regarding the procedure by which the author and the other co-defendants were to be tried, giving detailed reasons for their decisions (para. 6.5). The Committee considers that the information provided by the parties throughout the process does not allow it to conclude that the national courts have acted arbitrarily in the evaluation of evidence or in the interpretation of national legislation, and it is therefore not for the Committee to intervene in this respect, once it has verified the detailed reasoning of the courts and the consistency of the line of argument used.[11] Therefore, the Committee cannot conclude that the facts before it disclose a violation of article 14 (1) and (2). Given that the allegations concerning a violation of article 9 (1) were closely linked to the author's allegation that she was convicted following a trial in which the due process guarantees set out in article 14 (1) and (2) were not respected, and as no violation of that article has been found, the Committee concludes that the facts before it do not disclose a violation of article 9 (1).

9.4 The Committee also notes the author's claim that there were undue and unjustified delays in her trial, which started in 2008 and lasted until the end of 2011, and that she was in pretrial detention as of May 2008 (paras. 2.5 and 3.4). The author claims that the determination of the procedure to be followed was raised and prolonged by the Public

[10] See *Cañada Mora v. Spain* (CCPR/C/112/D/2070/2011), para. 4.3; *Manzano v. Colombia* (CCPR/C/98/D/1616/2007), para. 6.4; *L.D.L.P. v. Spain* (CCPR/C/102/D/1622/2007), para. 6.3.

[11] See *Y v. Spain* (CCPR/C/93/D/1456/2006), para. 8.3.

Prosecutor's Office (paras. 2.6–2.7, 3.4, 7.4). The State party notes that the author did not complain about these delays during the proceedings and argues that part of the time was spent resolving the question of which court had jurisdiction to prosecute, which is a relevant issue that by its very nature requires some time to process, study and resolve (para. 6.4). The Committee notes that it took just over three and a half years from the time of the author's arrest until a judgment was handed down (paras. 2.5–2.8). Slightly less than a year later, in September 2012, a decision was taken on the author's appeal in cassation, upholding the Provincial Court's judgment (para. 2.10). Although the duration was prolonged by the issue of appropriateness of the procedure and the appeals filed, the Committee notes that the maximum time taken to resolve an appeal was 10 months, as the High Court decided on the author's appeal against the Provincial Court's decision of 7 July 2010 on 6 April 2011. The Committee concludes that the appeals lodged by both parties were settled within a reasonable time and that the duration of the proceedings, taken as a whole, does not seem disproportionate to the seriousness of the crimes in question. The Committee therefore considers that the facts before it do not constitute a violation of articles 9 (3) and 14 (3) (c), of the Covenant.

9.5 The author alleges a violation of article 14 (5) of the Covenant, owing to the Supreme Court's failure to conduct a full review of the conviction handed down against her by the Provincial Court (paras. 3.6 and 7.6). The Committee notes, however, from the Supreme Court's judgment of 20 September 2012, that the Court reviewed in detail the Provincial Court's assessment of the evidence, in particular in relation to the validity of the testimony of co-defendant ESB and the existence of other evidence to supplement it, thereby justifying the conviction and sentence imposed (para. 6.6). Consequently, the Committee cannot conclude that the author has been denied the right to have her conviction and sentence reviewed by a higher court in accordance with article 14 (5) of the Covenant.

10. In the light of the above, the Human Rights Committee, acting under article 5 (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 the articles of the Covenant.