

F. Communication No. 310/1988, M.T. v. Spain (Decision of 11 April 1991, adopted at the forty-first session)

Submitted by: M.T. (name deleted)

Alleged victim: The author

State party concerned: Spain

Date of communication: 17 February 1988 (date of the initial letter)

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

Meeting on 11 April 1991,

Adopts the following:

Decision on admissibility

1. The author of the communication is a Spanish citizen, born in 1954. At the time of submission he was detained in Finland, awaiting extradition to Spain. He alleges to be a victim of a violation of article 7 of the International Covenant on Civil and Political Rights by the Government of Spain. The Optional Protocol entered into force for Spain on 25 April 1985. The author is represented by counsel.

Facts as submitted by the author

2.1 The author, a former political activist, states that he lived in France from 1957 to 1979. From 1974 to 1977, he served a prison sentence for acts of sabotage committed against Spanish property in France. In 1979, he returned to Spain. He acknowledges that he was aware that some of his former friends had formed a political organization, Action Directe, but explains that he never joined the organization.

2.2 On 19 March 1984, the Special Services of the Spanish Guardia Civil arrested the author. He was detained for 10 days, during which time he was allegedly tortured repeatedly by the Guardia Civil and forced to sign a "confession" incriminating himself as a member of a terrorist group. During this period, the author also made statements to the examining magistrate in charge of the case. He was released because of several contradictions in his case.

2.3 On 26 August 1987, he travelled to Finland and requested political asylum. On 8 October 1987, he was taken into custody by the Finnish security police, in application of the Aliens Act. On 16 December 1987, the Government of Spain, through Interpol, requested the author's extradition. On 4 March 1988, the Supreme Administrative Court of Finland decided that the author's detention under the Aliens Act was lawful and on 10 March the Minister of Justice approved his extradition. He was extradited to Spain on 28 March 1988. a/

2.4 On 14 October 1988, the Juzgado Central de Instrucción convicted the author of armed robbery and sentenced him to seven years' imprisonment. He is currently appealing his conviction to the Supreme Court of Spain and remains on bail.

Complaint

3. The author claims that the treatment he was subjected to in the Carabanchel prison in Madrid in March 1984 violated article 7 of the Covenant, and that in spite of the fact that the Optional Protocol only entered into force for Spain on 25 April 1985, the Committee should consider itself competent to consider his claim, since the torture allegedly suffered in 1984 continues to have "immediate effects", in that he was extradited from Finland allegedly on the basis of his 1984 confession. He also states that he fears that he will again be subjected to torture in Spain.

State party's observations

4.1 The State party submits that with regard to the allegation of torture in 1984, the communication is inadmissible ratione temporis. It disputes that the alleged violation could be deemed as continuing after the entry into force of the Optional Protocol for Spain. Further, it submits that the extradition request of 16 December 1987 was based primarily on admissions made by the author before the examining magistrate in charge of the earlier case; the author had never claimed that these statements were made under duress.

4.2 The State party further argues that the author has failed to exhaust domestic remedies. Since torture constitutes an offence under article 204 bis of the Spanish Civil Code, the author could have denounced the alleged events before the competent civil and criminal tribunals. He could have filed such a complaint with the Spanish authorities any time after March 1984 and thereby given the Government of Spain the possibility of investigating the alleged violation. In order to satisfy the requirement of exhaustion of domestic remedies, it was not necessary for the author to prove that he was a torture victim, but he should have at least filed a complaint. If dissatisfied with the judicial process, the author could still have had recourse to the constitutional remedy of amparo, pursuant to article 53 of the Constitution and article 43 of the Ley Orgánica del Poder Judicial.

Issues and proceedings before the Committee

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

5.2 With regard to the application of the Optional Protocol for Spain, the Committee recalls that it entered into force on 25 April 1985. It observes that the Optional Protocol cannot be applied retroactively and concludes that the Committee is precluded ratione temporis from examining acts said to have occurred in March 1984, unless these acts continued after the entry into force of the Optional Protocol and allegedly constituted a continued violation of the Covenant or had effects that themselves constitute a violation of the Covenant.

5.3 The Committee has also noted, ex officio, that the author's allegation that his confession in 1984 was obtained under duress could raise issues under article 14, paragraphs 1 and 3 (g), of the Covenant. However, this alleged duress equally did not continue after the entry into force of the Optional Protocol for Spain.

5.4 Accordingly, the Committee finds that it is precluded ratione temporis from examining these allegations.

6. The Human Rights Committee therefore decides:

(a) The communication is inadmissible;

(b) This decision shall be communicated to the State party and to the author through his counsel.

Notes

a/ In its views in communication No. 291/1988, dated 2 April 1990, the Committee found that the author's inability to challenge his detention under the Finnish Aliens Act during the first week of detention constituted a violation of article 9, paragraph 4, of the Covenant.