



**International Covenant on
Civil and Political Rights**

Distr.:
RESTRICTED*

CCPR/C/81/D/961/2000
26 August 2004

ENGLISH
Original: SPANISH

**Human Rights Committee
Eighty-first session
5 – 30 July 2004**

DECISION

Communication No. 961/2000

<i>Submitted by:</i>	Ronald Everett (represented by counsel, Mr. Bertelli Gálvez)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Spain
<i>Date of communication:</i>	15 December 2000 (initial submission)
<i>Documentation references:</i>	Special Rapporteur's rule 91 decision, transmitted to the State party on 26 December 2000 (not issued in document form)
<i>Date of adoption of Decision:</i>	9 July 2004

[ANNEX]

* Made public by decision of the Human Rights Committee.

ANNEX

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

Eighty-first session

concerning

Communication No. 961/2000**

Submitted by: Ronald Everett (represented by counsel,
Mr. Bertelli Gálvez)

Alleged victim: The author

State party: Spain

Date of communication: 15 December 2000 (initial submission)

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

Meeting on 9 July 2004,

Adopts the following:

DECISION ON ADMISSIBILITY

1. Communication dated 15 December 2000, supplemented on 1 February 2001, from Mr. Ronald Everett, a British citizen, who was extradited from Spain to United Kingdom on 29 June 2001. He claims to be a victim of violations by Spain of article 9, paragraph 1; article 14, paragraphs 1 and 3 (b); and article 23, paragraph 1, of the Covenant. He is represented by counsel.

** The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine Chanet, Mr. Franco Depasquale, Mr. Maurice Glèlè Ahanhanzo, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Mr. Rafael Rivas Posada, Mr. Martin Scheinin, Mr. Ivan Shearer, Mr. Hipólito Solari Yrigoyen, Ms. Ruth Wedgwood and Mr. Roman Wieruszewski.

The facts as submitted by the author

2.1 The author arrived in Spain from the United Kingdom in 1983 and settled in Marbella with his wife. On 5 July 2000, he was arrested by the police pursuant to an extradition request from the United Kingdom based on a robbery alleged to have taken place in London in 1983, and on his alleged involvement in narcotics trafficking.

2.2 The author applied for provisional release. On 8 July 2000, Magistrates' Court No. 6 ruled that he should remain in provisional detention. The author appealed to the same court, arguing that he was a sick man and 70 years of age, and that he could not flee from justice because he had no identity documents. The court rejected his appeal in a judgement dated 20 July 2000. The author appealed to the First Criminal Division of the High Court, but his application was rejected on 10 October 2000. He also submitted an application for *amparo* to the Constitutional Court, but this was rejected on 16 November 2000.

2.3 The author's extradition was granted in a decision of the First Criminal Division dated 20 February 2001. The author submitted an appeal for reconsideration, which was rejected on 18 May 2001. The author again applied to the Constitutional Court for *amparo*, but his appeal was denied on 22 June 2001.

The complaint

3.1 The author alleges a violation of article 9, paragraph 1, of the Covenant. He asserts that, according to Constitutional Court judgement 128/1995, the only justification for provisional detention is to prevent the subject of an extradition request from absconding. According to the author, his detention during the extradition process was not warranted insofar as he had had no identity documents for more than 14 years — the United Kingdom having failed to renew his passport and the Spanish authorities having refused to regularize his residence status — which meant there was no risk that he would abscond. He further believes account should have been taken of the fact that his wife, also aged 70, was seriously ill. He states that neither Magistrates' Court No. 6 nor the First Criminal Division of the High Court responded to his counsel's contention that it was not possible for him to flee. The author also maintains that the measures provided for under article 8, paragraph 3, of the Law on Passive Extradition could have been applied to prevent him from absconding, but were not.

3.2 In his written submissions of 1 February, 5 March and 17 April 2001, the author alleges violations of article 14, paragraphs 1 and 3 (b), on the grounds that, in his view, he has been denied the right to an impartial tribunal and a properly prepared defence. He claims that he was refused access to the extradition file; and that he was informed only of the robbery charges and was told of the charges of conspiracy to import drugs into the United Kingdom only when he appeared before the court to make a statement, which meant he was deprived of the opportunity to prepare a defence. The author also claims a violation of his rights under article 14 inasmuch as the penalty for the offence was less than one year's imprisonment, which means that, under article 2, paragraph 1, of the European Convention on Extradition, and article 2, paragraph 1, of the Law on Passive

Extradition, extradition may not be granted. He further claims that the United Kingdom requested his extradition solely for “conspiracy to fraudulently evade the prohibition on the import of drugs”.

3.3 In the author’s view, his rights under article 14, paragraph 3 (c) were also violated insofar as the proceedings were unreasonably protracted and the time limits established in the European Convention on Extradition were not observed. He points out that, according to article 16, paragraph 4, of the Convention, “[arrest] ... shall not, in any event, exceed 40 days from the date of its beginning”, whereas he spent more than seven months in prison.

3.4 The author alleges a violation of article 14, paragraph 1, on the grounds that the court allowed the British authorities 30 days to provide supplementary information, which considerably delayed the extradition ruling. The author considers that the action of the State party in asking the United Kingdom to send supplementary information regarding the robbery amounted to an accusation and was out of order since it was a known fact that the statute of limitations applied to that offence.

3.5 The author further alleges a violation of article 23, paragraph 1, on the grounds that his extradition would leave his wife alone and in hospital, thereby violating his right to a family life.

State party’s observations on admissibility and the merits

4.1 In its written submissions dated 15 January 2001, 19 June 2001 and 31 July 2003, the State party requests the Committee to find the communication inadmissible under article 5, paragraph 2, of the Optional Protocol. It argues that the author had stated in a submission to a Spanish court that his complaint had been submitted to the European Court of Human Rights.

4.2 The State party also claims that the communication is inadmissible under article 3 of the Optional Protocol, and argues that the author was deprived of his liberty in accordance with the procedure established in the Law on Passive Extradition (No. 4/1985), and with the relevant international treaties and agreements. It adds that his arrest was carried out under international detention orders¹, for alleged involvement in serious crimes committed in the United Kingdom, and was ordered on the basis of properly reasoned judicial decisions. The State party claims that the author has in fact had every opportunity to exercise all his rights to a defence, insofar as all his claims have received repeated consideration by the highest Spanish courts.

4.3 The State party points out that the author was arrested and deprived of his liberty not in order to be tried for an offence, but with a view to extradition, a procedure that, in its view, is beyond the scope of article 14 of the Covenant. It explains that the remedy of reconsideration provided for by article 14, paragraph 2, of the Law on Passive Extradition

¹ The State party appears to refer to a request for provisional arrest in accordance with relevant international treaties.

need not meet the requirement for a second hearing before a higher tribunal in criminal cases, as provided for under article 14, paragraph 5, of the Covenant, but rather constitutes a remedy with devolutive effect and additional guarantees, whereby the court can review its decision in consultation with a greater number of judges.

4.4 As to the author's claim that he should not have been held in provisional detention since it was physically impossible for him to abscond, the State party maintains that the decision was taken on the grounds that there was a risk of escape and on the basis of other considerations that were duly argued and included in the court judgements. It further states that, according to the order of 8 July 2000, the fact that the author's papers were not in order was of no relevance to the decision on deprivation of liberty; and that account should also be taken of the fact that the decision was upheld in two subsequent judicial rulings. The State party further argues that, under article 2 of the Schengen Agreement, the author could have crossed the borders of European States without any requirement to produce papers of any kind. It also claims that the extradition papers state that the author had escaped from British justice using a false passport, a fact recalled in the Criminal Division judgement of 16 February 2001. The State party adds that it is not true to say that the author has no identity papers at all: the records show that his passport was confiscated along with a power of attorney made out to his lawyers, for which the author had had no difficulty in producing identification. The State party repeats that the courts have given a reasoned response to every one of the author's claims.

4.5 The State party asserts that, according to article 8 of the Law on Passive Extradition, the rules on provisional detention apply once the detainee has been brought before the court after 24 hours, and provided, as in this case, that the extradition request is duly submitted during the next 40 days. The State party claims that the time periods calculated by the author as a basis for his allegations of a violation of his right to be tried without undue delay are incorrect, since the law establishes only the time limits for charges to be brought and the maximum time before hearings are held, but does not rule out procedures such as requests for supplementary information or others that may be entailed by challenges or remedies initiated by the author himself. Furthermore, the additional information was requested by the court, in all impartiality, in order to establish an important fact relating to the statute of limitations on one of the offences for which extradition had been requested.

4.6 According to the State party, the author complained to the Supreme Court on 2 April 2001, accusing the President of the Criminal Division of the High Court and several other judges of breach of public trust in respect of his case; and filed another submission on 19 April 2001 challenging four of the judges comprising the full court of the Criminal Division that was to consider one of his appeals, on the grounds of "open hostility". The State party adds that the public prosecutor opposed the challenge, which he described as "reckless, constituting as it does a clear abuse of process and of procedural law". The Division ultimately rejected the challenges. The Criminal Division of the High Court found that the author lacked "any grounds whatsoever for believing that the delay [was] the result of a premeditated plan". The State party adds that, according to the Supreme Court's doctrine and case law, for a challenge under article 219, paragraph 9, to be heard,

the complaint against the judge must be lodged before the proceedings open, and the challenge must be based on allegations of genuine offences or errors; moreover, the complaint must have been found admissible, which was not the case. In the event, says the State party, the author failed to demonstrate such alleged partiality and both the Constitutional Court and the full court of the Criminal Division of the High Court ruled on the allegation of a violation of his right to an impartial tribunal, which was an attempt on the part of the author to delay his extradition.

4.7 The State party reports that, in its decision of 20 February 2001, the High Court ruled that extradition to the United Kingdom (a) could not be granted in respect of the robbery offence, by reason of the statute of limitations; and (b) could be granted in respect of the drug-trafficking offences. In response to the author's claim that extradition could not be granted because the offence was punishable by less than one year's imprisonment, the State party asserts that, under the provisions of the articles of the Criminal Code cited by the author, conspiracy to traffic in hashish carries a six-month to one-year prison sentence if the penalty is reduced by one category, or a three- to six-month sentence if it is reduced by two categories; however, the offence also involved conspiracy to traffic in cocaine, which carries a prison sentence of three to nine years. Thus the author is not correct in claiming that the threshold sentence for the granting of extradition was not attained.

4.8 In the State party's view, the claim of a violation of article 23, paragraph 1, is inadmissible because it is not duly substantiated. It argues that the author told the Criminal Division of the High Court that his wife had been admitted to hospital in the United Kingdom. It also points out that, while the deprivation of liberty may affect personal relationships in some respects, that does not in itself constitute a violation of any provision of the Covenant. The State party also says that, although the medical examination the author underwent revealed various age-related health problems, it also found that "the prognosis is in principle and at the present time favourable and no intervention or hospitalization is required".

4.9 The State party reminds the Committee that, according to article 7 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, States are required to provide the widest measure of mutual legal assistance in respect of such offences, and to facilitate the availability of persons in custody.

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

5.1 In his written submissions of 5 March, 16 April and 10 August 2001, the author contests the State party's observations: he claims it is not true that his case has been submitted to another international procedure of settlement, and he did not flee from the United Kingdom on a false passport, since he left London in late spring 1983 and entered Gibraltar on his own passport. In addition, since he is unable to prove his identity he would never dare to change his place of residence.

5.2 The author claims that the free movement of persons within the European Community does not mean there is no obligation to keep identity papers in order. He explains that the power of attorney referred to by the State party was granted in 1986, when his British passport was still valid.

5.3 The author points out that the State party has omitted to mention that he had an operation for a pituitary tumour and that he had to be admitted to the prison infirmary. The State party also failed to mention his wife's state of health: she suffers from Crohn's disease, which, in conjunction with her advanced age, means she needs constant care and attention. The author had been caring for her, and she had to go into hospital when he stopped doing so on his arrest.

5.4 The author reiterates that, according to article 2, paragraph 1, of the European Convention on Extradition and article 2, paragraph 1, of the Law on Passive Extradition, his extradition should not be granted. He claims that he was first charged with "conspiracy to fraudulently evade the prohibition on the import of drugs", and since the penalty for that offence is less than one year's imprisonment, the original charge was changed to a charge of having imported massive quantities of hashish from Spain to the United Kingdom on several occasions. In this regard, the author claims that he was held for three weeks beyond the permitted date, and that this was undoubtedly because the State party was trying to ensure that the case was taken by a judge who was prepared to comply with its wishes.

5.5 The author repeats his claim that, in accordance with articles 368, 373 and 701, paragraph 2, of the Spanish Criminal Code, the maximum penalty for conspiracy to traffic in hashish is a prison sentence of six months to one year minus a day, and that extradition should therefore never have been granted. He adds that, as stated in the report on which the extradition request was based, he had withdrawn from the plan to import cocaine.

5.6 The author repeats that he did not have an impartial tribunal, and that was why he challenged the judges trying his case. He claims that, under article 219.4 of the Judiciary (Organization) Act, judges against whom "complaints or challenges have been brought by any of the parties" are required to withdraw, but that his challenge was not allowed on the grounds that the complaint should first have been found admissible by the court hearing it. He also points out that the judges he challenged were members of the full court trying the appeal, and that therefore they could not give it an impartial hearing.

5.7 The author states that, according to Constitutional Court judgements 11/1983, 131/1994 and 141/1998, extradition proceedings are true trials.

Issues and proceedings before the Committee

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

6.2 The State party maintains that the author's communication should be found inadmissible under article 5, paragraph 2 (a), of the Optional Protocol, since Mr. Everett has stated in a submission to a Spanish court that his complaint had been submitted to the European Court of Human Rights. The author denies this. The Committee has noted that in June 1990 the European Commission of Human Rights found the complaint filed by the author against the United Kingdom to be inadmissible. It has therefore ascertained that the same matter has not been submitted to another international procedure of investigation or settlement. Accordingly, there is no impediment under article 5, paragraph 2 (a), of the Optional Protocol to consideration of the complaint.

6.3 The author alleges a violation of his right under article 9, paragraph 1, on the grounds that his provisional detention during the extradition proceedings was unwarranted, since there was no risk that he would abscond. In that regard, the State party maintains that the complaint should be found inadmissible under article 3 of the Optional Protocol, since the author was deprived of his liberty in accordance with the procedure established in the Law on Passive Extradition (No. 4/1985), and with the relevant international treaties and agreements. The State party adds that its decision was based on international detention orders² arising from the author's alleged involvement in serious offences on the territory of the requesting State. It also maintains that the detention was the subject of properly reasoned judicial decisions in which it had been determined that there was a risk of flight. The Committee notes that the measures provided for under article 8, paragraph 3, of the Law on Passive Extradition may be applied at the State party's discretion, and also that, as the State party points out, the author made use of the domestic remedies available to him, in all of which his complaint received consideration. The Committee finds that this part of the communication is not duly substantiated and is therefore inadmissible under article 2 of the Optional Protocol.

6.4 Recalling its earlier case law the Committee considers that although the Covenant does not require that extradition procedures be judicial in nature, extradition as such does not fall outside the protection of the Covenant. On the contrary, several provisions, including articles 6, 7, 9 and 13, are necessarily applicable in relation to extradition. Particularly, in cases where, as in the current one, the judiciary is involved in deciding about extradition, it must respect the principles of impartiality, fairness and equality, as enshrined in article 14, paragraph 1, and also reflected in article 13 of the Covenant. Nevertheless, the Committee considers that even when decided by a court the consideration of an extradition request does not amount to the determination of a criminal charge in the meaning of article 14. Consequently, those of the author's claims that relate to specific provisions in paragraphs 2 and 3 of article 14, are incompatible *ratione materiae* with the provisions in question and hence inadmissible pursuant to article 3 of the Optional Protocol. As to the remaining claim presented under article 14, namely that there was a violation of impartiality, the Committee considers that the author has not substantiated for purposes of admissibility, this part of his communication which is

² The State party appears to refer to a request for provisional arrest in accordance with relevant international treaties.

accordingly inadmissible pursuant to article 2 of the Optional Protocol irrespective of whether it is addressed under article 13 or 14 of the Covenant.

6.5 As to the complaint under article 23, paragraph 1, of the Covenant, the Committee notes the State party's contention that it is inadmissible on the grounds that it is not duly substantiated; and that, as it rightly points out, while deprivation of liberty may affect personal relationships to a certain extent, that does not in itself entail a violation of the Covenant. The Committee finds that this part of the communication is not sufficiently substantiated for the purposes of admissibility under article 2 of the Optional Protocol.

6.6 The Committee notes that the author alleges that the United Kingdom requested his extradition on the basis of an alleged conspiracy to fraudulently evade the prohibition on the import of drugs and that the initial charge considered by the State party was that of having imported quantities of hashish, for which the prison sentence was not more than one year, so that it was not appropriate to grant extradition. In the Committee's opinion, the correctness of extradition decided to United Kingdom, that could be contested in the light of article 2 paragraph 1 of the European Convention on Extradition and the Law on Passive Extradition, is beyond the scope of any particular provision of the Covenant. For this reason, the Committee considers that this part of the communication is inadmissible "ratione materiae".

7. Consequently, the Committee decides:

- a) That the communication is inadmissible under articles 2 and 3 of the Optional Protocol
- b) To communicate this decision to the author and the State party.

[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.]
