



International Covenant on Civil and Political Rights

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Human Rights Committee

Decision adopted by the Committee under the Optional Protocol, concerning communication No. 3142/2018*, **

<i>Communication submitted by:</i>	M.C.I.C. (represented by counsel, Jaime Elías Ortega)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Spain
<i>Date of communication:</i>	23 January 2017 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 19 March 2019 (not issued in document form)
<i>Date of adoption of decision:</i>	27 July 2022
<i>Subject matter:</i>	Right to be presumed innocent; right to freedom of association; right to freedom from discrimination on political grounds
<i>Procedural issues:</i>	Exhaustion of domestic remedies; failure to substantiate claims
<i>Substantive issues:</i>	Access to justice; non-discrimination; victims' rights
<i>Articles of the Covenant:</i>	14 (2), 22 (1) and (2), and 26
<i>Articles of the Optional Protocol:</i>	3 and 5 (2)

1. The author of the communication is M.C.I.C., a national of Spain born on 27 August 1942. She claims that the State party has violated her rights under articles 14 (2), 22 (1) and (2), and 26 of the Covenant. The Optional Protocol entered into force for the State party on 25 April 1985. The author is represented by counsel.

Facts as submitted by the author

2.1 On 28 March 1980, the author and her husband were victims of a terrorist attack when the car in which her husband was seated, and which the author was about to enter, exploded.

* Adopted by the Committee at its 132nd session (27 June–27 July 2022).

** The following members of the Committee participated in the examination of the communication: Wafaa Ashraf Moharram Bassim, Yadh Ben Achour, Arif Bulkan, Mahjoub El Haiba, Furuya Shuichi, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Soh Changrok, Kobauyah Tchamdja Kpatcha, Hélène Tigroudja, Imeru Tamerat Yigezu and Gentian Zyberi. Pursuant to rule 108 (1) (a) of the Committee's rules of procedure, Carlos Gómez Martínez did not participate in the examination of the communication.



The Emilio Guezala cell of the Batallón Vasco Español claimed responsibility for the attack.¹ As a result of the explosion, the author's husband suffered the traumatic amputation of his left leg and forearm, a major injury to his abdominal wall and a fracture to his right tibia, fibula and rearfoot. The author suffered first- and second-degree burns, a scalp injury and loss of hearing in her left ear because of a ruptured eardrum.

2.2 On 7 September 1992, the author's husband died and, in accordance with the Act on Solidarity with Victims of Terrorism (Act No. 32/1999), the Ministry of the Interior, by a decision dated 4 May 2001, awarded the author and her children – in their capacity as heirs – compensation for the absolute, permanent disability of the author's husband.

2.3 Article 1 of the Act on Recognition of and Comprehensive Protection for Victims of Terrorism (Act No. 29/2011 of 22 September 2011) states that:

The purpose of the present law is to recognize the victims of terrorism and to establish a framework for compensation, aid, benefits, guarantees and awards to acknowledge and mitigate, as far as possible, the consequences of the terrorist act for the victims and their families or for persons who have suffered damages because of it.

Article 3 (2) of the Act provides that:

This shall also apply in respect of the victims of acts aimed at achieving the aims set out in the preceding paragraph, even when the perpetrators are not members of such criminal organizations or groups.

Moreover, in the light of the wording of Act No. 17/2012 of 27 December on the general State budget for 2013, Act No. 29/2011 was amended to include article 3 bis – “Requirements for awarding the aid and benefits provided for in the Act” – paragraph 2 of which states that “the granting of the aid and benefits recognized in the present law shall be subject to the principles that, in order for the relevant compensation to be paid, are laid down in the European Convention on the Compensation of Victims of Violent Crimes”.² According to article 8 of the Convention, “compensation may [also] be reduced or refused on account of the victim's or the applicant's involvement in organized crime or his [or her] membership of an organization which engages in crimes of violence”.

2.4 On 3 May 2012, on the basis of Act No. 29/2011, the author filed a request for compensation with the Directorate General for Support to Victims of Terrorism of the Ministry of the Interior “for permanent, non-incapacitating injury not established by judicial decision”,³ on account of the injuries she had suffered as a result of the terrorist act that had occurred on 28 March 1980. On 25 June 2013, the Ministry of the Interior rejected the request filed by the author on the basis of article 3 bis of Act No. 29/2011, arguing that, based on a report received on 28 May 2013 from the State Secretariat for Security, which reiterated that both spouses were members of Gestoras Pro Amnistía⁴ and Herri Batasuna,⁵ and on information from newspaper articles, which stated that the couple had links to these organizations, it had been “established that the requirement of involvement in outlawed organizations had been met owing to those organizations' support for the terrorist organization [Euskadi Ta Askatasuna (ETA)] in the case giving rise to this decision”. The author notes that both organizations were legal in 1980 and were only outlawed by the

¹ The Batallón Vasco Español was an extreme right-wing vigilante terrorist organization that operated primarily in the Basque Country and southern France. After its dissolution in 1981, some of its members went on to join the Grupos Antiterroristas de Liberación (GAL).

² European Convention No. 116, adopted on 24 November 1983; the Convention entered into force for Spain on 1 February 2002.

³ Based on table II of annex I of Act No. 29/2011 and the system for assessing damages, the author determined that these injuries, together with the days where she was unable to work, the sequelae of her injuries and other expenses she had incurred, entitled her to claim a total of €18,988.86 in compensation.

⁴ Organization established in 1979 to help secure the release of ETA prisoners and to support alleged ETA members deprived of their liberty. It was definitively outlawed by decision of the Constitutional Court on 16 October 2009.

⁵ Political coalition of the Basque Country that sought independence and socialism therein. It was definitively outlawed by decision of the Constitutional Court on 16 January 2004.

National High Court in the 2000s, when they were found to have links to the terrorist organization ETA.

2.5 On 27 September 2013, the author filed an administrative appeal against the Ministry of the Interior's decision of 25 June 2013 and, on 8 January 2014, filed an administrative claim in which: (a) she reiterated her entitlement to the compensation requested under Act No. 29/2011, and (b) stated that she "does not belong, nor did she ever belong, to Gestoras Pro Amnistía or to Herri Batasuna or to any organization engaged in perpetrating violent crimes", appending documentary, personal and expert evidence to her claim. On 25 March 2014, the Counsel for the State challenged the author's request and the submission of the personal evidence on the grounds that it was unnecessary, and requested the dismissal of the claim. He did the above on the basis of three reports dated 21 February 2014, 27 February 2014 and 7 March 2014, issued by the Operations Division of the Directorate General of the Civil Guard, the General Commissariat of the Police and the State Secretariat for Security, respectively, which, according to the Counsel for the State, detailed the trajectory of the author's husband as an active member of Herri Batasuna and Gestoras Pro Amnistía, entities linked to ETA, and also that of the author, who had visited certain members of ETA in order to provide them with moral and material support, and on the basis of press media⁶ linking the author and her husband to both groups.

2.6 On 3 April 2014, after having registered the claim, the Administrative Litigation Division issued an order by which it decided not to admit the personal evidence submitted by the author on the grounds that it was unnecessary. On 15 April 2014, the author filed a request for review of the order of 3 April 2014, in which she argued the relevance of the personal evidence, insofar as it could provide relevant information on the author's links, or lack thereof, to the outlawed organizations referred to by the Ministry of the Interior. On 11 September 2014, the Administrative Litigation Division ruled to dismiss the request for review.

2.7 On 24 June 2015, the Fifth Section of the Administrative Litigation Division of the National High Court dismissed the administrative appeal filed by the author on 27 September 2013, stating that:

In the absence of a criminal ruling, the courts are empowered, in view of the evidence submitted during the proceedings, to determine the facts on which the legal interpretation that they are called on to apply rests, without there being any infringement of the principle of legality or of the principle of the presumption of innocence, when the factual determination that the administrative court may make has effects exclusively within its sphere of competence and has no effect whatsoever in the criminal sphere.

On this basis, it concluded that:

Regarding the link of [M.C.I.C.] to Herri Batasuna, it must be pointed out that, according to the daily newspaper *ABC*, on 29 March 1980, Herri Batasuna issued a communiqué following the attack of which the couple were victims in which it acknowledged that the couple injured in the attack belonged to Herri Batasuna and had numerous links to the Pro Amnistía committees in the province and that, consequently, the information made available during the proceedings confirmed the actor's involvement in and membership of the organizations outlawed by the Spanish courts because they complemented and lent political support to the activities of the terrorist organization ETA to help it achieve its aims of subverting the constitutional order and seriously disturbing public peace.⁷

2.8 On 8 September 2015, the author applied to the Administrative Litigation Division of the National High Court for an annulment of proceedings, which was dismissed on 18 September 2015. Subsequently, on 19 September 2015, the author filed an application for

⁶ On 29 March 1980, following the attack, the daily newspaper *ABC* published a story indicating that "the couple wounded in the attack belong to Herri Batasuna and have numerous links to the Pro Amnistía committees in the province".

⁷ Judgment of 24 June 2015, issued by the Fifth Section of the Administrative Litigation Division of the National High Court, Appeal No. 0000342/2013.

amparo with the Constitutional Court for violation of the fundamental right to be presumed innocent and the right to effective judicial protection, and for the dismissal of evidence relevant to her defence. The author claimed that the contested decision was based on the exception provided for in article 8 of the European Convention on the Compensation of Victims of Violent Crimes, even though the author had repeatedly denied that she belonged to any illegal organization and that, even if she and her husband had had links to an organization that had subsequently been outlawed, that did not justify considering her to be a member of the terrorist group ETA.⁸ The author also claimed that no judicial proceedings had ever been brought against her for her alleged membership of these organizations, which, in any case, were legal on the dates referred to in the police reports, thus violating her right to be presumed innocent.⁹ The author also argues that the decision not to admit the personal evidence left her defenceless, particularly in the light of the police reports submitted by the Counsel of the State. On 30 May 2016, the Constitutional Court decided not to register the *amparo* application submitted by the author, since there was “clearly no violation of the rights to effective judicial protection, to present evidence and to be presumed innocent invoked”.¹⁰

2.9 The author points out that, on another occasion, the same Fifth Section upheld the administrative appeal filed by the widow of one of the co-founders of the daily newspaper *Egin*, who was also a former member of Gestoras Pro Amnistía, Herri Batasuna and Koordinadora Abertzale Sozialista (KAS),¹¹ in response to the Ministry of the Interior’s decision to refuse her compensation.¹² In that judgment, the Division concluded that there was insufficient evidence to prove that the criterion provided for in article 8 (2) of the Convention had been met, and ruled that:

While it is true that the daily newspaper *Egin* was shut down and that Gestoras Pro Amnistía, Herri Batasuna and KAS were outlawed by virtue of judicial decisions confirming the direct link between the newspaper and these entities and the terrorist group ETA, the decisions in question were taken more than 18 years after his death. That is to say, in 1980, when he died, the fact of having been a co-founder of *Egin*, a former member of Gestoras Pro Amnistía and also, at that time, a member of [Herri Batasuna] and KAS, was not sufficient to prove that the victim “was involved” in organized crime or “belonged” to an organization engaged in perpetrating violent crimes and, therefore, the contrary assessment of the administrative authorities is not in accordance with the law, which is why the administrative appeal is being upheld.¹³

Complaint

3.1 The author claims that the State party has violated article 14 (2) of the Covenant by failing to recognize her right to be presumed innocent, despite the fact that she has not been convicted of or prosecuted for any crime. The author argues that, while, in its judgment, the Administrative Litigation Division of the National High Court considers her to be a member of a terrorist organization, this assertion is based solely on police reports, which do not constitute sufficient evidence to attack the principle of the presumption of innocence. The author states that, in order for her to be deprived of her right to receive the compensation she is entitled to as a victim of a terrorist attack, or for that right to be limited, article 8 (2) of the European Convention on the Compensation of Victims of Violent Crimes requires that the victim and/or applicant be involved in organized crime or belong to an organization engaged in perpetrating violent crimes. In the author’s view, either scenario necessarily involves the commission of one or more crimes.

3.2 The author alleges a violation of articles 22 (1) and (2), and 26 of the Covenant, since, in March 1980, Gestoras Pro Amnistía and Herri Batasuna were both legal and were not

⁸ *Amparo* application submitted by the author on 19 September 2015.

⁹ Judgment of 24 June 2015, issued by the Fifth Section of the Administrative Litigation Division of the National High Court, Appeal No. 0000342/2013.

¹⁰ Constitutional Court, First Chamber, Second Section.

¹¹ Coordinadora Patriota Socialista, a collective body of the Basque Country.

¹² Judgment of 24 June 2015, Fifth Section of the Administrative Litigation Division of the National High Court, Appeal No. 0000045/2014, para. 4.

¹³ Ibid.

outlawed until the 2000s. Since the police reports refer to events that occurred in 1980, even if it was true that she was a member of those organizations, the decision to outlaw them more than two decades later can in no way affect persons who, in the past, may have been involved in them because they were convinced that they were lawful, as the outlawing of the organizations in question cannot have any retroactive effect.

State party's observations on admissibility and the merits

4.1 On 31 July 2019, the State party transmitted to the Committee two inadmissibility decisions of the European Court of Human Rights¹⁴ concerning two requests for compensation under the regulations on victims of terrorism that had been refused because of the applicants' links to terrorist organizations, and reiterates that, as regards the alleged violation of the principle of the presumption of innocence, the European Court of Human Rights noted that this principle operates in the criminal sphere with respect to persons who have been charged with a crime and that, outside that sphere, only the right to private and family life could offer protection against the attribution to a person of a criminal act.

4.2 On 25 September 2018, the State party submitted its observations on admissibility and the merits, in which it claims that there has been no violation of article 14 (2) of the Covenant. It also reiterates what is established in the Committee's general comment No. 32 (2007), which focuses on the application of the principle in the criminal sphere, to persons accused of a crime, not in the administrative sphere, to the refusal to pay compensation, and states that the communication should be declared inadmissible under article 2 of the Optional Protocol for failure to substantiate the claims made in relation to the violation of article 14 (2) of the Covenant.

4.3 The State party also claims that, as stated in the judgment of the National High Court, these are not criminal but administrative proceedings, and that the author's allegation concerning the lack of evidence against her and the assessment made of the police reports does not detract from the fact that she has not presented any evidence to the contrary that would allow the examination of the evidence by the domestic courts to be classed as arbitrary or that would imply a denial of justice.¹⁵

4.4 The State party also notes that the author focused her argument before the domestic courts on the dismissal of personal evidence and that, although she does not allege a violation of the Covenant in this regard, the State party claims that "insisting that she was never a member of two organizations that were outlawed because they supported the terrorist group ETA was not difficult".

4.5 The State party submits that the communication should be declared inadmissible for constituting a blatant abuse of the right of submission under article 3 of the Optional Protocol, as the author has submitted a communication based, in part, on the argument that "even if it was true" that she belonged to outlawed organizations, this would constitute a violation of articles 22 and 26 of the Covenant, since, in 1980, these organizations were legal. The State party argues that, although the organizations were not outlawed until the 2000s, the process of integrating them into ETA had been ongoing since the 1960s.¹⁶

4.6 The State party also requests that the communication be declared inadmissible for failure to exhaust domestic remedies, in relation to articles 22 and 26 of the Covenant, and claims that the author did not raise before the domestic courts a violation of the right to freedom of association or of the right to freedom from discrimination on political grounds, and reiterates the Committee's jurisprudence, according to which, "although there is no obligation to exhaust domestic remedies if they have no chance of being successful, authors

¹⁴ European Court of Human Rights, *Martínez Agirre and Otegi Martínez v. Spain* and *Ibarguren Astigarraga v. Spain*, Applications No. 75529/16 and No. 79503/16; and *Larrañaga Arando v. Spain*, Application No. 73911/16.

¹⁵ The State party cites *X and Y v. Kingdom of the Netherlands* (CCPR/C/117/D/2729/2016); and *J.P.D. v. France* (CCPR/C/115/D/2621/2015).

¹⁶ European Court of Human Rights, *Herri Batasuna and Batasuna v. Spain*, judgment of 30 June 2009; Supreme Court, judgment of 27 March 2003; and National High Court, Criminal Division, judgment No. 39/2008 of 15 September.

of communications must exercise due diligence in the pursuit of available remedies and that mere doubts or assumptions about their effectiveness do not absolve the authors from exhausting them”.¹⁷

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

5.1 On 2 October 2019, the author submitted her comments on the State party’s observations, reiterating that she has never belonged to Herri Batasuna or to Gestoras Pro Amnistía, that, in 1980, both organizations were legal for all intents and purposes, and that the judgments outlawing them do not refer to any retroactive effect.

5.2 The author also recalls that, in her *amparo* application, she reiterated that she has no criminal record, that she has never participated in any criminal act, that she has never been involved in organized crime or belonged to any group engaged in violent crime and that no judicial proceedings have ever been brought against her. She also reiterates her lack of access to effective judicial protection due to failure to provide an adequate statement of grounds, since the judgment in question did not address the fundamental question of whether she could be deprived of compensation as a victim of terrorism because of her alleged involvement in an organization that was legal at the time, and that the principles of legality and non-retroactivity would prevent the judgment from being applied restrictively against her. The author further states that the contested decision refuses her request based on the application of the European Convention on the Compensation of Victims of Violent Crimes, even though the organizations to which she allegedly belonged were legal, and that it cannot be inferred from her alleged membership of them that she belonged to the ETA group.

5.3 As for the violation of article 14 (2) of the Covenant, the author recalls that the refusal to pay compensation was based on the requirement, laid down in article 8 (2) of the aforementioned European Convention on the Compensation of Victims of Violent Crimes, for the victim or the applicant to have been involved in organized crime or for him or her to have been a member of an organization which engages in crimes of violence in order to deny or limit his or her right to compensation as a victim of terrorism. According to the author, this requirement incorporates the provision of the European Convention into criminal law, and she reiterates that, even though she was not convicted of any crime, she was deprived of compensation to which she is legally entitled. However, in its administrative judgment, the National High Court considers that her “membership” or “involvement” is proven, even though these facts were never the subject of criminal proceedings.

5.4 The author claims that she has exhausted the available domestic remedies in relation to articles 22 and 26 of the Covenant and that, both in her application for an annulment of proceedings and in her application for *amparo*, following the allegation of a violation of the right to effective protection, she argued that, even if it was true that she had been a member of or had been involved in Herri Batasuna and Gestoras Pro Amnistía in 1980, this would not have any legal consequence because both organizations were legal at the time.

5.5 The author also states that, with regard to article 22 (2) of the Covenant, although the State party itself points out that the judgments outlawing Herri Batasuna and Gestoras Pro Amnistía were issued well after 1980, it fails to state why the outlawing of those organizations would retroactively restrict the rights of individuals, such as the right to freedom of association, since to do so would violate the principle of non-retroactivity of criminal laws that are unfavourable or that restrict individual rights.

5.6 Lastly, the author states that a person’s political ideology and his or her lawful acts and omissions should not have any relevance in legal terms when it comes to restricting rights. According to the author, to claim otherwise discloses a politically motivated violation of article 26 of the Covenant.

¹⁷ *V.S. v. New Zealand* (CCPR/C/115/D/2072/2011), para. 6.3.

Issues and proceedings before the Committee

Consideration of admissibility

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

6.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.¹⁸

6.3 The Committee takes note of the author's allegation that she was deprived of her right to receive compensation as a victim of a terrorist attack under article 8 (2) of the European Convention on the Compensation of Victims of Violent Crimes because of her alleged membership of a terrorist organization or her involvement in organized crime, without her membership or involvement having been proved or having resulted in a prior criminal conviction. The Committee notes that several international bodies have commented on the lack of precision of the legislation criminalizing collaboration with terrorists in the State party, which entails a risk of extending the crime of terrorism to conduct unrelated to any type of violent activity.¹⁹

6.4 Moreover, the author maintains that, even if her membership of the organizations Herri Batasuna and Gestoras Pro Amnistía, which were legal at the time of the events, had been proven, this could in no way have been equated to her being a member of a terrorist organization or her involvement in organized crime within the meaning of the aforementioned Convention and in the light of the case law of the National High Court itself.²⁰ The Committee notes that the National High Court did not expound the scope of the author's "involvement" in or "membership" of a criminal organization.²¹ However, the Committee considers that these matters relate primarily to the application of the law by the domestic court and to the author's right to equal access to justice under article 14 (1) of the Covenant, which was not invoked by the author, and not to her right to be presumed innocent, which is a right reserved for persons accused of a crime under article 14 (2) of the Covenant. In this regard, the Committee notes that the author was not charged with any crime as required by article 14 (2) of the Covenant and that the administrative proceedings for compensation initiated by the author do not examine the author's criminal culpability or challenge any criminal proceedings by which the author might have been charged with a crime. Therefore, in the present case, the Committee considers that, in accordance with article 3 of the Optional Protocol, the author's claim based solely on article 14 (2) of the Covenant is incompatible *ratione materiae* with the provisions of the Covenant.

6.5 The Committee takes note of the State party's objection that the author has not exhausted all available domestic remedies and, in particular, that the author did not raise before the domestic courts a violation of the right to freedom of association or the right to freedom from discrimination on political grounds, recognized in articles 22 and 26 of the Covenant. The Committee takes note of the author's argument that, both in her application for an annulment of proceedings and in her application for *amparo*, following the allegation of a violation of the right to effective protection, she submitted that, even if it was true that she had been a member of or been involved in Herri Batasuna and Gestoras Pro Amnistía in 1980, this would not have any legal consequence because both organizations were legal at the time. The author also claims that, in her specific case, the Constitutional Court failed to explain why the outlawing of Herri Batasuna and Gestoras Pro Amnistía would retroactively restrict the rights of individuals, such as the right to freedom of association. The Committee notes that, based on the information in the case file, the author did not raise before the domestic courts, either formally or in substance, a violation of the right to freedom of

¹⁸ European Court of Human Rights, *Ijurco Illarramendi and others v. Spain*, Application No. 9295/17, 11 March 2011.

¹⁹ [A/HRC/10/3/Add.2](#), para. 9; and [A/HRC/45/27](#), para. 15.

²⁰ Judgment of 24 June 2015, Administrative Litigation Division, Fifth Section of the National High Court, Appeal No. 0000045/2014.

²¹ *Ibid.*

association or the question of discrimination. The Committee also notes that the author did not explain the reasons that would have prevented her from pursuing a remedy before the competent national authorities for the violation of the rights recognized in articles 22 and 26 of the Covenant. Accordingly, the Committee considers that it is precluded by article 5 (2) (b) of the Optional Protocol from considering the present communication.

7. The Committee therefore decides:

- (a) That the communication is inadmissible under articles 3 and 5 (2) of the Optional Protocol;
 - (b) That the present decision shall be communicated to the State party and to the author.
-