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HUMAN RIGHTS COMMITTEE
Eighty-seventh session
10 -28 July 2006

DECISION

Communication No. 1444/2006

Submitted by:	José Zaragoza Rovira (represented by Mr. Marco Rodríguez-Farge Ricetti)
Alleged victim:	The author
State party:	Spain
Date of communication:	13 January 2006 (initial submission)
Date of adoption of decision:	25 July 2006

* Made public by decision of the Human Rights Committee.

Subject matter: Conviction allegedly based on evidence obtained illegally.

Procedural issue: insufficient substantiation of claim.

Substantive issue: Right not to be subjected to arbitrary or unlawful interference with his correspondence; right to a fair trial, right to be presumed innocent.

Articles of the Covenant: 14, paragraphs 1 and 2, 17.

Article of the Optional Protocol: 2.

[ANNEX]

ANNEX

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

Eighty-seventh session

concerning

Communication No. 1444/2006[*]

Submitted by:	José Zaragoza Rovira (represented by Mr. Marco Rodríguez-Farge Ricetti)
Alleged victim:	The author
State party:	Spain
Date of communication:	13 January 2006 (initial submission)

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

Meeting on 25 July 2006

Adopts the following:

DECISION ON ADMISSIBILITY

1. The author of the communication, dated 13 January 2006, is José Zaragoza Rovira, a Spanish national, currently serving a former sentence. He claims to be a victim by Spain of violations of articles 14, paragraph 1 and 2, and article 17 of the Covenant. The Optional Protocol came into force for the State party on 25 April 1985. The author is represented by counsel Marco Rodríguez-Farge Ricetti.

Factual background

2.1 According to the author, he was convicted and sentenced to 9 years' imprisonment for drug trafficking on the basis of evidence obtained illegally. Agents of Police Customs at Schiphol airport in Amsterdam, opened a parcel containing newspapers impregnated with cocaine, without having been authorized by any judicial authorities, and afterwards contacted police authorities in Spain alerting them that the parcel would arrive in Spain. Upon arrival in

[*] The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Maurice Glèlè Ahanhanzo, Mr. Edwin Johnson, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Ms. Elisabeth Palm, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Ivan Shearer and Mr. Hipólito Solari-Yrigoyen.

Spain, the parcel was opened in the presence of a judge and its content was analyzed, being 1,622 gr. of cocaine. The judge instructed the police that the parcel be delivered under surveillance, and the author was arrested while the delivery company was delivering the parcel to him.

2.2 According to the judgment of the Provincial Court of Barcelona (*Audiencia Provincial de Barcelona)* of 16 November 2001, prior to March 2000, the author created Ke-Ko-Kol S.L., a fictitious company, with the purpose of covering up his illegal activities. Pretending to be one Jordi Grau, he then contacted a delivery company with which he had made arrangements to receive packages. In March 2000, the Barcelona police received information from customs authorities at the Amsterdam airport, alerting them that a parcel addressed to Ke-Ko-Kol S.L, coming from a person in Ecuador and containing newspapers impregnated with cocaine, was in transit to Barcelona. The police asked the investigating judge (*Juzgado de Instrucción de Barcelona*) to authorize the seizure of the drugs and delivery of the parcel under surveillance to the addressee, which was granted. Upon arrival in Barcelona, the parcel was opened and 18 envelopes were seized, containing newspapers impregnated with cocaine. One envelope was found open. Afterwards, the parcel was sent to the delivery company. The author was arrested while attempting to receive the parcel at the address he had previously arranged with the delivery company.

2.3 The author states that Spanish judicial authorities should have ascertained whether or not the parcel was legally opened in the Netherlands, and that their failure to verify this aspect resulted in the author's conviction being based on illegal evidence, which allegedly made the trial null and void. The author affirms that the parcel was opened in the Netherlands. However, the Provincial Court of Barcelona, in its judgment, noted that there was no evidence that the parcel had in fact been opened; Dutch authorities had not provided any information on whether or not they had opened it. They had limited themselves to stating that the parcel contained between 20 to 25 newspapers impregnated with cocaine, but in fact there were only 18 newspapers. Had they opened the parcel, they would have provided accurate information on the number of papers. The fact that one envelope was open was of no relevance because Spanish authorities only confirmed that the envelope was already found open, not that it had signs of having been opened. Dutch authorities did not request their counterparts to carry out a delivery under surveillance, but limited themselves to informing them about a suspicion that they had for which they had reasonable proof. The information could have been obtained in other ways.

2.4 The author argues that all domestic remedies are exhausted. On 11 June 2003, the Supreme Court (*Tribunal Supremo*) dismissed his appeal (*cassation*) against the judgment of the lower court. On 4 July 2005, the Constitutional Court (*Tribunal Constitucional*) rejected his appeal (*amparo*) as inadmissible, since he had merely reproduced the allegations he had made in lower courts, which had been duly addressed by the latter, instead of challenging the Supreme Court's *ratio decidendi* when it dismissed his appeal (*cassation*).

The complaint

3.1 The author alleges a violation of article 17 of the Covenant, because he was convicted on account of evidence obtained illegally. According to him, that Dutch authorities had informed their Spanish counterparts that the parcel contained newspapers impregnated with cocaine, and that one of the envelopes was found open proves that the parcel was indeed

opened by Dutch custom officers. This circumstance, had it been properly interpreted, should have led the Spanish courts to conclude that a presumption in favour of the author applied, i.e., that the parcel had been illegally opened in the Netherlands. The author acknowledges that the parcel was opened in Spain in accordance with Spanish law, with prior judicial authorization. However, he claims that Spanish courts should have verified the above-mentioned alleged irregularity, and accordingly acquitted him. He refers to article 11.1 of the Law on the Judicial Branch (*Ley Orgánica del Poder Judicial*), under which evidence obtained illegally, either directly or indirectly, cannot support a guilty verdict. The author also invokes General Comment on article 17 and the Committee's Views on communication No. 453/1991 (*Coeriel and Aurik v. The Netherlands* [1]) to recall the Committee's interpretation of notions such as "arbitrariness" and "reasonableness". He claims that article 17 has been violated because his private correspondence was arbitrarily and unreasonably interfered with by Spanish courts.

3.2 The author claims to be a victim of a violation of article 14, paragraph 1, because Spanish courts disregarded his motion to declare void and null the evidence obtained illegally. He alleges that the Constitutional Court specifically contributed to this violation by dismissing his appeal (*amparo*) on simple admissibility grounds and declining to examine its merits. He also alleges a violation of article 14, paragraph 2, because Spanish courts should have declared null and void the evidence against him.

Issues and proceedings before the Committee

Consideration of admissibility

4.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its Rules of Procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

4.2 The Committee has noted the author's allegation that the parcel was opened by Dutch authorities, a claim that is contradicted by the findings of Spanish courts. The Committee considers that the issue of whether or not the parcel might have been opened in the Netherlands, with or without judicial authorization, clearly relates to issues of evaluation of facts; it recalls its jurisprudence that it is generally for the courts of States parties to the Covenant to evaluate facts and evidence in a particular case, unless it can be ascertained that the evaluation was clearly arbitrary or amounted to a denial of justice[2]. The material before the Committee does not show that the proceedings in the State party suffered from any such defects. Thus, the Committee considers that the author has failed sufficiently to substantiate his claims, for purposes of admissibility, and it concludes that the communication is inadmissible under article 2 of the Optional Protocol.

[1] Adopted 8 July 1993, para. 10.4.

[2] See for example Communications No. 1188/2003, *Riedl-Riedenstein v Germany*, para 7.3; No. 886/1999, *Bondarenko v. Belarus*, para 9.3; No. 1138/2002, *Arenz et al. v. Germany*, admissibility decision, para. 8.6; No. 541/1993, *Errol Simms v. Jamaica*, Inadmissibility decision adopted on 3 April 1995, paragraph 6.2.

5. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under article 2 of the Optional Protocol;

(b) That this decision shall be transmitted to the State party and to the author, for information.

[Adopted in English, French and Spanish, the English 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.]
