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HUMAN RIGHTS COMMITTEE
Ninety-sixth session
13-31 July 2009

VIEWS

Communication No. 1364/2005

Submitted by:	Antonio Carpintero Uclés (represented by counsel, Francisco Chamorro Bernal)
Alleged victim:	The author
State party:	Spain
Date of communication:	4 June 2003 (initial submission)
Document references:	Special Rapporteur's rule 97 decision, transmitted to the State party on 18 February 2005 (not issued in document form)
	CCPR/C/93/D/1364/2005, decision on admissibility adopted on 1 July 2008
Date of adoption of Views:	22 July 2009

* Made public by decision of the Human Rights Committee

Subject matter: Evaluation of evidence and scope of the review of a criminal case on appeal by Spanish courts

Procedural issues: Exhaustion of domestic remedies, insufficient substantiation of the alleged violations

Substantive issues: Right to have a conviction and sentence submitted to a higher court in accordance with the law

Article of the Covenant: 14, paragraph 5

Article of the Optional Protocol: 5, paragraph 2 (b)

On 22 July 2009, the Human Rights Committee adopted the annexed text as the Committee's Views, under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 1364/2005.

[ANNEX]

Annex

VIEWS OF THE HUMAN RIGHTS COMMITTEE UNDER ARTICLE 5, PARAGRAPH 4, OF THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Ninety-sixth session

concerning

Communication No. 1364/2005[*]

Submitted by:	Antonio Carpintero Uclés (represented by counsel, Francisco Chamorro Bernal)
Alleged victim:	The author
State party:	Spain
Date of communication:	4 June 2003 (initial submission)
Decision on admissibility:	1 July 2008

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

Meeting on 22 July 2009,

Having concluded its consideration of communication No. 1364/2005, submitted on behalf of Mr. Antonio Carpintero Uclés under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication, and the State party,

Adopts the following:

[*] The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Mohammed Ayat, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Ahmad Amin Fathalla, Mr. Yuji Iwasawa, Ms. Helen Keller, Mr. Rajsoomer Lallah, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Mr. Michael O'Flaherty, Mr. José Luis Pérez Sanchez-Cerro, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabian Omar Salvioli, Mr. Krister Thelin and Ms. Ruth Wedgwood.

The text on an individual opinion signed by Committee member Mr. Krister Thelin is appended to the present document.

Views under article 5, paragraph 4, of the Optional Protocol

1.1 The author of the communication dated 4 June 2003 is Antonio Carpintero Uclés, a Spanish citizen born in 1957, who is currently serving a sentence. He claims to be a victim of a violation by Spain of article 14, paragraph 5, of the Covenant. The Optional Protocol entered into force for the State party on 25 April 1985. The author is represented by counsel (Francisco Chamorro Bernal).

1.2 On 12 May 2005, the Special Rapporteur on new communications and interim measures, acting on behalf of the Committee, agreed to the State party's request to have the admissibility of the communication considered separately from the merits.

Factual background

2.1 In 1990, the author became acquainted with Ms. R.A., with whom he took up residence one year later. Ms. R.A. had two children from previous unions, and in 1992 she gave birth to the author's son. The couple separated sometime afterward and reconciled in 1996. However, the author's relationship with Ms. R.A. again deteriorated, and in February 2000 Ms. R.A. accused him of having forcibly compelled her to have sexual relations with him since 1997. The author was also accused of forcing Ms. R.A.'s daughter to engage in sex with him.

2.2 The author was detained and assigned a court-appointed lawyer, who submitted no evidence in the author's defence. Subsequently, a lawyer appointed by the author sought to submit evidence, but that evidence was rejected on the grounds that it was time-barred. On 31 May 2001, the Barcelona Provincial High Court sentenced the author to 14 and 10 years' imprisonment for two offences of continued sexual assault. The verdict was based on the testimony of Ms. R.A. and her children.

2.3 The author lodged an appeal in cassation with the Supreme Court, in which he alleged, inter alia, a violation of article 14, paragraph 5, of the Covenant. He also challenged the weight given to the testimony of the alleged victims and the refusal to call an expert witness. In a decision issued on 6 March 2002, the Supreme Court rejected the appeal. The Supreme Court held that the refusal to allow expert testimony was correct since, in addition to the fact that the request was time-barred, the results of the expert testimony would have had no bearing on the final outcome. As to the fact that the victims' testimony was considered to constitute evidence, the Court maintained that the testimony constituted sufficient evidence and that its content was sufficiently incriminating to set aside the presumption of innocence in respect of the author. Lastly, with regard to the alleged violation of article 14, paragraph 5, of the Covenant, the Supreme Court stated that the Spanish remedy of criminal cassation met the requirements of that article, which did not require a second hearing as such but merely stipulated that a person who had received a criminal sentence should be allowed to appeal the sentence to a higher court, in accordance with the domestic legislation of the country in question. The Supreme Court notes, however, that in cassation proceedings it cannot reassess evidence that has been evaluated and argued by the trial court. When a violation of presumption of innocence is alleged, the

Supreme Court conducts a three-way review[1] of the evidence submitted at trial in order to determine that, as the lower court found, evidence does exist and that it is lawful and sufficient. It is this three-way review that allows the Supreme Court to assert that the remedy of cassation meets the requirements of article 14, paragraph 5, of the Covenant.

2.4 The author filed an application for *amparo* with the Constitutional Court on 13 June 2002. The application for *amparo* was denied because it was submitted after the deadline of 20 working days.

The complaint

3.1 The author alleges that his right to have his conviction and sentence reviewed by a higher court was violated. In his view, the Supreme Court denies any violation of article 14, paragraph 5, of the Covenant because it considers that the Spanish cassation procedure meets the requirements of the Covenant. The Court admitted that it could not re-evaluate evidence that had been assessed and argued by the court of first instance. As to the author's challenge regarding the weight given to the alleged victims' testimony, the Court stated that the credibility of testimony given at trial, having been assessed directly by the trial courts, could not be reviewed in the context of an appeal in cassation.

3.2 The author alleges that even though the Constitutional Court found his application for *amparo* time-barred, the remedy was not an effective one, given that the Constitutional Court had stated, in the wake of the Committee's Views in the *Gómez Vázquez* case,[2] that the Spanish remedy of cassation met the requirements of article 14, paragraph 5, of the Covenant.

State party's observations on the admissibility of the communication

4.1 In a note dated 20 April 2005, the State party submitted its observations on the admissibility of the communication. The State party cites the author's failure to exhaust domestic remedies, his application for *amparo* having been rejected as time-barred. It points out that the State party cannot be made to bear the adverse consequences of the author's failure to meet procedural requirements or responsibilities.

4.2 The State party also argues that the submission of an application for *amparo* to the Constitutional Court is now fully effective in cases such as that covered by the author's communication, since the case arose after the decision in *Gómez Vázquez* and the Constitutional Court is familiar with the arguments in that case. Consequently, it disagrees that there are any grounds for exemption from the obligation to exhaust domestic remedies.

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[1] According to the decision of the Criminal Chamber of the Supreme Court, this "three-way review" of evidence submitted in first instance involves: (a) ascertaining that there is inculpatory evidence against the accused (existence of evidence); (b) ascertaining that the evidence has been obtained and introduced into the proceedings in accordance with constitutional and procedural requirements (lawfulness of evidence); and (c) ascertaining that the evidence can reasonably be regarded as sufficient to warrant a conviction (sufficiency of evidence).

[2] Communication No. 701/1996, *Gómez Vázquez v. Spain*, Views adopted on 20 July 2000.

4.3 Moreover, the communication is inadmissible because it is not sufficiently substantiated, given that the author has exercised his right to review of his sentence, since the Provincial High Court's decision was reviewed by the Supreme Court and could have been reviewed by the Constitutional Court. Spain has a fully functioning system of effective review of convictions, as the European Court of Human Rights has recognized.[3] In the State party's view, the author's contention that there was no review of his sentence is unfounded because it is inconsistent with the facts and constitutes an abuse of the right to submit communications to the Committee.

4.4 The State party notes that the Committee's task is not to formulate a general opinion of the State party's judicial system but to make observations concerning the specific case covered by the communication. In this connection, it refers to the Supreme Court's decision and the three-way review it conducted to determine that there was evidence and that it was legal and sufficient.

Author's comments

5.1 On 7 July 2005, the author replied to the State party's observations. The author argues that the Constitutional Court's ruling that his application for *amparo* was time-barred was inconsistent with its own doctrine, given that criminal convictions must be notified in duplicate, once to the convicted person's counsel and once to the convicted person.[4] However, the decision was notified not to the author, who was in prison, but to his court-appointed counsel, who did not inform him of it. The author did not learn of the decision until 22 May 2002, through new counsel. Accordingly, the Constitutional Court's interpretation is unduly formalistic and does not respect the right to free and effective legal assistance.

5.2 Furthermore, the remedy of *amparo* was not effective because at the time the author submitted his application there had been no change in the Constitutional Court's doctrine to the effect that the Spanish system of remedies in connection with criminal sentences was consistent with article 14, paragraph 5, of the Covenant. The author maintains that, by definition, the Constitutional Court is limited to stating that the sentence in question does not infringe constitutional rights, but that does not constitute a full review of a conviction, as required under article 14, paragraph 5, of the Covenant.

5.3 Lastly, with regard to the Constitutional Court's alleged familiarity with the Committee's arguments in the *Gómez Vázquez* case, a review of the Court's decisions shows the opposite, as does the fact that the State party's judicial system required adaptation by legislative measures.

Additional comments by the parties

6. On 2 August 2005, the State party submitted its observations on the merits of the communication. The State party reiterates its arguments regarding the failure to exhaust domestic remedies and the unsubstantiated nature of the communication. In addition, it refers to the legal

[3] European Court of Human Rights, judgement of 30 November 2004 in respect of complaints Nos. 74182, 74186 and 74191 of 2001.

[4] The author refers to Constitutional Court judgement No. 88/1997 of 5 May 1997.

underpinnings of the Supreme Court decision and the Committee's decision in *Parra Corral*,[5] which it considers applicable to the present case.

7. On 19 October 2005, the author submitted his comments on the State party's observations, in which he reiterates that the Constitutional Court had been unduly rigorous in rejecting his application for *amparo* on the grounds that it was time-barred, thereby contradicting its own doctrine and undermining the effectiveness of the prisoner's free court-appointed counsel. He repeats that the review that the Constitutional Court may carry out does not constitute a full review within the meaning of article 14, paragraph 5, of the Covenant.

Decision by the Committee on the admissibility of the communication

8.1 At its ninety-third session, on 1 July 2008, the Committee considered the admissibility of the communication.

8.2 With regard to the State party's argument that the author had not exhausted domestic remedies, given that the remedy of *amparo* was denied on the grounds that the author's application was time-barred, the Committee considered, on the basis of its case law,[6] that the remedy of *amparo* before the Constitutional Court had no chance of succeeding in respect of the alleged violation of article 14, paragraph 5. It concluded that consequently domestic remedies have been exhausted.

8.3 The Committee considered that the author's complaint was sufficiently substantiated insofar as it raised relevant issues with respect to article 14, paragraph 5, and that those issues should be examined on the merits. It therefore declared that the communication was admissible.

State party's observations on the merits and author's comments

9.1 In its observations on the merits, dated 21 January 2009, the State party refers to its observations submitted on 2 August 2005 regarding the clearly unsubstantiated nature of the communication. The State party adds that the Supreme Court's decision gives a complete review of the factual aspects of the conviction and of the incriminating evidence. That decision also states explicitly that the remedy of cassation - if interpreted and applied with sufficient scope - meets the requirements of article 14, paragraph 5, of the Covenant.

9.2 The State party refers to the Committee's case law[7] in which the remedy of cassation was considered sufficient for the purposes of article 14, paragraph 5, of the Covenant.

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[5] Communication No. 1356/2005, *Parra Corral v. Spain*, decision adopted on 29 March 2005.

[6] See, for example, communications Nos. 511/1992, *Länsman et al. v. Finland*, Views adopted on 14 October 1993, para. 6.3; 1095/2002, 701/1996, *Gómez Vázquez v. Spain*, op. cit., para. 10.1; 986/2001, *Semey v. Spain*, Views adopted on 30 July 2003, para. 8.2; 1101/2002, *Alba Cabriada v. Spain*, Views adopted on 1 November 2004, para. 6.5; and 1293/2004, *Maximino de Dios Prieto v. Spain*, decision adopted on 25 July 2006, para. 6.3.

[7] Including communications Nos. 1389/2005, *Bertelli Gálvez v. Spain*, decision adopted on 25 July 2005; 1399/2005, *Cuartero Casado v. Spain*, decision adopted on 25 July 2005; No. 1323/2004, *Lozano Araez et al. v. Spain*, decision adopted on 28 October 2005.

10.1 In his reply of 9 March 2009, the author reiterates previously submitted arguments and denies that the Supreme Court conducted a full review of the conviction and incriminating evidence of the case. The author recalls that the Supreme Court itself admits that it is unable to conduct such a review owing to the nature of the remedy of cassation.

10.2 The author adds that the only review available to the Supreme Court is an external review of the logical reasoning, which must abide by the lower court's findings of fact. He argues that a review which is as limited, external and extraordinary as that of the presumption of innocence in the Spanish cassation procedure does not meet the requirements of a full review, under the terms of article 14, paragraph 5, of the Covenant.

Issues and proceedings before the Committee

Consideration of the merits

11.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as provided for under article 5, paragraph 1, of the Protocol.

11.2 With respect to article 14, paragraph 5, of the Covenant, the author argues that he was not granted a full review of his conviction, and especially of the incriminating evidence, as required by that provision. In this regard, the Committee notes that the Supreme Court itself has stated that in cassation proceedings "it cannot reassess evidence that has been evaluated and argued by the trial court", despite which the Court considers that it may review decisions of Provincial High Courts "with sufficient scope" to meet the requirements of the provisions of the Covenant.

11.3 The Committee recalls that, although a retrial or new hearing are not required under article 14, paragraph 5,[8] the court conducting the review must be able to examine the facts of the case,[9] including the incriminating evidence. As noted in paragraph 11.2 above, the Supreme Court itself stated that it could not reassess the evidence evaluated by the trial court. The Committee concludes that the review conducted by the Supreme Court was limited to a verification of whether the evidence, as assessed by the first instance judge, was lawful, without assessing the sufficiency of the evidence in relation to the facts that would justify the conviction and sentence imposed. It did not, therefore, constitute a review of the conviction as required by article 14, paragraph 5, of the Covenant.

12. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it disclose a violation of article 14, paragraph 5, of the Covenant.

13. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is required to furnish the author with an effective remedy which allows a review of his conviction by a higher

[8] Communications Nos. 1110/2002, *Rolando v. Phillipines*, Views adopted on 3 November 2004, para. 4.5; 984/2001, *Juma v. Australia*, Views adopted on 28 July 2003, para. 7.5; 536/1993, *Perera v. Australia*, Views adopted on 28 March 1995, para. 6.4.

[9] See general comment No. 32, *Article 14. Right to equality before courts and tribunals and to a fair trial*, CCPR/C/GC/32, para. 48.

tribunal. The State party also has an obligation to take steps to ensure that similar violations do not occur again in future.

14. In becoming a party to the Optional Protocol, Spain recognized the competence of the Committee to determine whether there has been a violation of the Covenant. Pursuant to article 2 of the Covenant, the State party has undertaken to guarantee to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to furnish them with an effective and applicable remedy should it be proved that a violation has occurred. The Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the Committee's Views.

[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.]

APPENDIX

Individual opinion of Committee Member Mr. Krister Thelin (dissenting)

The majority has found a violation of article 14, paragraph 5, of the Covenant.

I respectfully disagree.

Article 14, paragraph 5, does not require a retrial or a new hearing, but at a minimum that the court conducting the review itself sufficiently examines the facts presented at the lower court. (footnote ref to GC 32, para. 48 and the committee's views in Piscioneri).

In this case it is clear from the reading of the Supreme Court' s judgment, that it did not merely accept the findings of the Provincial High Court but did, indeed, appraise itself the relevant evidence brought before the lower court.

That being so, no violation of article 14, paragraph 5, of the Covenant has been disclosed.

[*signed*] Mr. Krister Thelin

[Done in French, English 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.]
