United Nations CCPR/C/111/D/2037/2011

International Covenant on Civil and Political Rights

Distr.: General
30 October 2014

Original: English

Human Rights Committee

Communication No. 2037/2011

Decision under the Optional Protocol to the International Covenant on Civil and Political Rights, adopted by the Committee at its 111th session (7–25 July 2014)

Submitted by:	M.R.R. (represented by counsel, José Luis Mazón Costa)
Alleged victim:	The author
State party:	Spain
Date of communication:	30 September 2005 (initial submission)
Date of decision:	21 July 2014
Subject matter:	Scope of the review of a criminal conviction in cassation proceedings
Substantive issues:	Right to have the conviction and sentence reviewed by a higher tribunal
Procedural issues:	Insufficient substantiation of claims
Articles of the Covenant:	14 (para. 5)
Articles of the Optional Protocol:	2

GE.14-19426 (E)
1419426

Please recycle

Decision on admissibility*

1.1 The author of the communication is M.R.R., a Spanish national born on 9 August 1964, who claims to be victim of a violation by Spain of article 14, paragraph 5, of the Covenant. When the author lodged his initial submission, he was serving a term of imprisonment in the prison in Villena, Alicante. The author is represented by counsel.

1.2 On 8 April 2011, the Special Rapporteur on new communications and interim measures, acting on behalf of the Committee, determined that observations from the State party were not needed to ascertain the admissibility of the present communication.

Factual background

2.1 The author was the administrator and one of the owners of a company called Legumex S.L. At some point, he was accused of fraud against an oil cooperative (Cooperativa del Campo Santa Agueda de Escatrón), as Legumex S.L. had failed to pay debts contracted with suppliers between March and May 1996 totalling 11,517,480 pesetas.

2.2 On 20 February 2001, the author was convicted of fraud by the Provincial Court of Zaragoza (Audiencia Provincial de Zaragoza). He was sentenced to five years of imprisonment and a fine and was ordered to pay about 218,750 euros to the cooperative as compensation.

2.3 On 31 May 2001, the author lodged a cassation appeal (*recurso de casación*). He claimed, inter alia, that the court had relied on testimonies that were contradictory with respect to accounts and the facts. He also held that his requests for cross-examination and to provide additional witnesses and evidence were arbitrarily refused during the proceedings. As a result, he was unable to demonstrate that he was not the person who committed the acts of which he was accused.

2.4 On 28 April 2003, the Supreme Court rejected the author's cassation appeal. According to the judgement, the Court examined each of the author's allegations concerning the judgement of the Provincial Court of Zaragoza, including the alleged contradictions in the accounts and the facts considered by the Provincial Court as proved. The Supreme Court stated that the right to defence was not an absolute right, in the sense that a court could reject evidence and witnesses that were not considered pertinent, relevant, necessary and possible; that no documentary evidence submitted by the author was refused; and that the appearance of some witnesses requested by the author was considered unnecessary, as the facts had already been proved by other means. With regard to the assessment of witnesses' statements, it was considered that the evaluation of their credibility depended to a great extent on the direct perception of the first instance court, and, therefore, the credibility assessment could not, in general, be reviewed on appeal. However, the cassation court did examine other aspects of the witnesses' statements, in order to determine whether the assessment of the first instance court had been arbitrary. Finally, the Supreme Court took into consideration the other evidence submitted within the proceedings, including documentary evidence, and concluded that the participation of the author in the crime had been demonstrated.

* The following members of the Committee participated in the examination of the present communication: Yadh Ben Achour, Lazhari Bouzid, Cornelis Flinterman, Yuji Iwasawa, Walter Kälin, Zonke Zanele Majodina, Gerald L. Neuman, Sir Nigel Rodley, Víctor Manuel Rodríguez Rescia, Fabián Omar Salvioli, Dheerujlall Seetulsingh, Anja Seibert-Fohr, Yuval Shany, Konstantine Vardzelashvili, Margo Waterval and Andrei Paul Zlătescu.

2.5 The author lodged an application for legal protection (*amparo*) before the Constitutional Court. On 25 January 2005, the Constitutional Court declared the application inadmissible. In its decision, the Court took note of the judgements of the Provincial Court and of the Supreme Court and concluded that it was not the role of a constitutional court to re-evaluate or reconsider the evidence submitted within a criminal proceeding.

The complaint

3. The author claims to be victim of a violation of article 14, paragraph 5, of the Covenant, as he did not have access to an effective appeal against his conviction and sentences. Although he tried to challenge the credibility of witnesses and the evidence on the basis of which he was found guilty by the Provincial Court of Zaragoza, the Supreme Court refused to review that evidence and, in particular, stated that the credibility of witnesses could not be reviewed on appeal. This constitutes a violation of the right to have one's conviction and sentence reviewed by a higher court.

Issues and proceedings before the Committee

4.1 Before considering any claim contained in a communication, the Human Rights Committee must determine whether it is admissible under the Optional Protocol to the International Covenant on Civil and Political Rights.

4.2 The Committee takes note of the author's claim that the Supreme Court, through cassation proceedings, refused to re-evaluate the evidence that led to his conviction and that this constitutes a violation of his right under article 14, paragraph 5. The Committee, however, observes that in its judgement of 28 April 2003, the Supreme Court examined all grounds for cassation raised by the author, including the refusal of his requests for cross-examination and to provide further witnesses. The Supreme Court did not limit its examination to the formal aspects of the Provincial Court's judgement. On the contrary, it assessed all evidence submitted during the proceedings that led the Provincial Court to conclude that the author was guilty of the crime of fraud. Accordingly, the Committee considers that the author's claim under article 14, paragraph 5, of the Covenant has been insufficiently substantiated for the purposes of admissibility, and concludes that the communication is inadmissible under article 2 of the Optional Protocol.

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 of the communication.