United Nations CCPR/C/129/D/R.3305/2019

International Covenant on Civil and Political Rights

Distr.: Restricted
20 October 2020

Original: English

Human Rights Committee

Decision adopted by the Committee under the Optional Protocol, concerning communication No. 3305/2019*, **, ***

Communication submitted by:	Apostolos Ioannis Mangouras (represented by counsel, Antonio Quirós)
Alleged victim:	The author
State party:	Spain
Date of communication:	8 November 2018
Document references:	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 6 February 2019 (not issued in document form)
Date of adoption of decision:	23 July 2020
Subject matter:	Fair trial of ship's captain convicted of crime against the environment
Procedural issue:	Same matter examined under another procedure of international investigation or settlement
Substantive issues:	Right to a fair trial; equality of arms; right to review by a higher court
Articles of the Covenant:	14 (1), (2), (3) and (5)
Articles of the Optional Protocol:	3 and 5 (2) (a)

1.1 The author of the communication is Apostolos Ioannis Mangouras, a national of Greece born in 1935. He claims that the State party has violated his rights under article 14 (1), (2), (3) and (5) of the Covenant. The Optional Protocol entered into force for the State party on 25 April 1985. The author is represented by counsel.

1.2 On 6 February 2019, pursuant to rule 92 (5) of its rules of procedure, the Committee, acting through its Special Rapporteurs on new communications and interim measures, requested the State party to submit observations relating only to the question of admissibility.

* Reissued for technical reasons on 21 September 2023; previously issued under document symbol CCPR/C/129/D/R.3305/2018.

** Adopted by the Committee at its 129th session (29 June–24 July 2020).

*** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Yadh Ben Achour, Arif Bulkan, Ahmed Amin Fathalla, Furuya Shuichi, Christof Heyns, Bamariam Koita, Duncan Laki Muhumuza, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Hélène Tigroudja, Andreas Zimmermann and Gentian Zyberi. Pursuant to rule 108 of the Committee's rules of procedure, Photini Pazartzis did not participate in the examination of the communication.

1.3 On 11 June 2020, the Special Rapporteurs on new communications and interim measures did not grant the request for third party intervention submitted by France.

The facts as submitted by the author

Context: the sinking of the Prestige

2.1 The author was captain of the *Prestige*, an oil tanker which, on 13 November 2002, was caught in a storm off the coast of Galicia and sank six days later, releasing an estimated 63,000 tons of oil. The wreckage resulted in extensive pollution to the coasts of Spain and France. The *Prestige* was the property of a Liberian shipping company that sailed under the flag of the Bahamas. It was operated by Universe Maritime Limited, based in Greece and insured by the London Steam-Ship Owners' Mutual Insurance Association Limited. The ship had annual inspections and extensive special surveys every five years (the last one in 2001) carried out by the American Bureau of Shipping, one of the leading classification societies.[1]

2.2 On 13 November 2002, a large wave hit the *Prestige*, causing it to list dangerously, at which point fuel began to leak from the cargo tanks. Given the perilous conditions, the author notified the authorities and requested the evacuation of 24 crewmembers, who were later airlifted from the ship. The author, the Chief Officer and the Chief Engineer voluntarily stayed on board in an attempt to save the vessel and avoid further pollution. The Spanish authorities ordered that the damaged ship be distanced from the Spanish coast. The author was then requested to secure a towline through tugs and, after making contact with the shipowners, he confirmed he was ready to accept it. The three members of the crew made seven attempts throughout the night to secure a line to the Spanish tugs in treacherous conditions, as the deck was covered in a film of oil.

2.3 On 14 November 2002, five members of the *Prestige* crew were returned to the ship by helicopter, along with Spanish personnel, to assist with the securing of a tug. A towline was finally secured and the Spanish authorities ordered the *Prestige* to be towed in a north-westerly direction towards an approaching storm. A Maritime Inspector instructed the author to start the ship's engine to accelerate the speed at which the vessel would be towed. The author opposed that decision, concerned that the *Prestige* would suffer further structural damage from the vibrations and break in half. At the insistence of the Maritime Inspector, the engines were started. When the author realized the tugs were headed further out to sea and towards more severe weather, he sought permission to bring the *Prestige* to safe harbour with a view to saving the ship and minimizing pollution. His request was rejected by the Spanish authorities. On 15 November 2002, a salvage company made the same request to the Spanish authorities; that request was also rejected. The weather conditions deteriorated and the Salvage Master ordered the evacuation of the ship. The *Prestige* continued to be towed until it finally sank on 19 November 2002.

Legal proceedings against the author

2.4 On 15 November 2002, the author was arrested on charges of disobeying the authorities and of offences against natural resources and the environment. The next day, legal proceedings were initiated against the author, the Chief Officer, the Chief Engineer and the civil servant who had ordered the *Prestige* to be towed out to sea towards a storm, refusing it safe harbour in Spain. Corcubión Court of Investigation No. 1, in Spain, set bail of €3 million; the author remained in pretrial detention for 83 days until that amount was lodged with the Court of Investigation on 7 February 2003.[2]

[1] The author explains that on 24 May 2001, the American Bureau of Shipping issued a certificate valid until 31 March 2006, and that on 19 July 2001, the French company Bureau Veritas issued the *Prestige* with a safety management certificate valid until 20 June 2006.

[2] The amount set for bail was contested before the European Court of Human Rights, which found no violation of the author's rights. See *Mangouras v. Spain* (application No. 12050/2004), Grand Chamber judgment of 28 September 2010.

2.5 On 16 June 2003, the insurers of the *Prestige* deposited with the Court of Investigation a Limitation Fund of €22.7 million, in accordance with the International Convention on Civil Liability for Oil Pollution Damage, 1992.

2.6 Some seven years later, on 30 July 2010, the Court of Investigation issued a decision to initiate oral proceedings before the First Section of the Provincial High Court of A Coruña. The trial began on 16 October 2012; it lasted nine months and involved 115 witnesses to the facts and 82 expert witnesses.

2.7 On 13 November 2013, the Provincial High Court concluded that the author was not guilty of recklessly committing an offence against the environment. According to the Court, it was impossible to determine the exact cause of the accident. In particular, while the ship had suffered from a structural failure, it had been impossible to determine the exact location or cause of the failure, and the author was not aware of any structural defects in the hull that could have caused the incident. The Court also noted that the ship had all the necessary certifications and mandatory documents required for lawful navigation, and that the author had been sailing slowly and safely. In addition, the author's actions after the incident had been described as correct, including by experts who defended Spanish interests, even noting bravery on his part. Nevertheless, the author was convicted for the offence of disobedience (for the delay in accepting a towline) and sentenced to nine months in prison. The Court found that none of the accused parties was liable under civil law to pay damages, and that the disobedience of the author did not cause the loss and the damage that resulted from the oil spill.

2.8 On 20 November 2013, the author appealed that decision before the Supreme Court. The appeal hearing was held on 29 September 2015 and lasted half a day. The Supreme Court did not hear any evidence.

2.9 On 14 January 2016, the Supreme Court overturned the author's acquittal, finding him guilty of an offence against the environment and sentencing him to two years in prison.[3] The author's conviction for disobedience was overturned because the same conduct was used to convict him for the offence against the environment and he therefore could not be declared guilty of both offences. The author contends that the Supreme Court modified the facts as found by lower court and made entirely new factual findings. Among them, the Court noted that there were defects in the machinery, in the automatic pilot and in the heating coils. Added to those defects was the excess weight implied by the excess draught, due to overloading, which the Supreme Court considered to have inevitably had an impact on the structure of the ship and its manoeuvrability. The Court found that the author put himself in a situation where he could not guarantee the safety of the ship when faced with a major setback. The structural damage, whatever the cause, could not be considered unlikely, especially in a ship of that age. Furthermore, both the Spanish company, Repsol, and the British company, BP, had advised against the ship's use. However, the author explains that those private vetting processes have no impact on the statutory certification of the ship, its class certification or its lawful navigation. In fact, other companies, like Chevron, had approved the use of the ship. The Supreme Court also found that, by allowing seawater into the tanks, the author increased the weight of the ship, hampering its salvage. In addition, according to the Supreme Court, the ship was drifting towards the coast and the author's failure to accept a tow increased the possibility of pollution. Lastly, the Court noted that, while the evacuation could have been appropriate to save lives, it was one of the reasons for the delay in getting the ship under control. Regarding civil liability, the Supreme Court reversed the Provincial High Court's finding that no party was liable under civil law to pay damages. In that regard, according to the Court, the actions were carried out recklessly and with the knowledge that damage would occur. Therefore, the author was found liable for all the damage caused.

2.10 The Supreme Court also found the insurers civilly liable, up to the limit of the insurance policy in place, namely $1 billion. The shipowners were also found civilly liable, with no limit on compensation, since the information available to the Court supported the

[3] Supreme Court of Spain, Criminal Court Chamber, sentence No. 865/2015, judgment of 14 January 2016.

logical inference that they knew about the structural defects that had caused the incident. The level of damages was to be quantified in proceedings before the Provincial High Court.

2.11 On 23 February 2016, the author filed an appeal on points of law before the Supreme Court, which was rejected on 11 April 2016. On 3 May 2016, the Provincial High Court ordered that the author's two-year prison sentence be suspended for three years.[4] The author submitted an *amparo* application to the Constitutional Court on 20 May 2017, which was rejected on 22 February 2017 on the basis that it did not raise an issue of special constitutional interest, relevance or importance. On 15 November 2017, the Provincial High Court issued a judgment determining the level of damages under civil law in the sum of €1.65 billion. The author was ordered to pay €1.57 billion to the State party and €61.3 million to France.[5] The author explains that the beneficiary of the Supreme Court decision was Spain.

International procedure before the European Court of Human Rights

2.12 On 28 July 2017, the author submitted an application to the European Court of Human Rights alleging a violation of article 6 (right to fair trial) of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) and article 1 of Protocol No. 1 to the Convention (protection of property). On 18 January 2018, the European Court, sitting in a single-judge formation, issued a decision declaring the author's application inadmissible because the matters complained of did not disclose any appearance of a violation of the rights and freedoms set out in the Convention.[6]

2.13 On 5 February 2018, the author sent a letter challenging that decision. He alleged that there had been a clear mistake, given the existence of other similar cases with findings of violations of fair trial guarantees when Spanish courts had overturned acquittals on appeal without having heard the evidence, or changed the facts found in order to convict an accused person who had previously been acquitted.[7] He also alleged that he was concerned about bias, given that the single judge was from Andorra, a country with close links to Spain and France, and that under the judgment, those countries were awarded an amount exceeding €1 billion.

2.14 On 26 March 2018, the author received a reply from the European Court of Human Rights stating that the Court did not provide any form of appeal against an inadmissibility decision, which was final.

2.15 On 17 April 2018, the author sent another letter to the European Court requesting that the case be put before an "appropriate judge" or that the Court confirm that there was no avenue to challenge an inadmissibility decision on the grounds of bias or appearance of bias. At the time of submission of the communication to the Committee, the author had not received a reply to that letter.

The complaint

3.1 The author alleges that he has exhausted domestic remedies and that the case has not been examined by another procedure of international investigation or settlement. He notes that the extremely limited reasoning contained in the letter from the European Court of Human Rights does not indicate that the single judge's examination included sufficient consideration of the merits. Therefore, the author invites the Committee to find that there is no obstacle to its examining the present communication under article 5 (2) (a) of the Optional Protocol, in accordance with the Committee's decision in *Achabal Puertas v. Spain*.[8] The author recalls that in that case, the application was declared inadmissible by a committee of

[4] The Provincial High Court allowed the suspension requested by the author since the prosecutors did not oppose it, the crime for which he was sentenced carried a prison sentence of less than two years and it was his first criminal conviction.

[5] The decision was appealed and its resolution was pending at the time of submission of the communication.

[6] No further reasoning was provided.

[7] The author cited nine European Court of Human Rights cases against Spain in that regard, including *Igual Coll v. Spain* (application No. 37496/04), judgment of 10 June 2009; *Marcos Barrios v. Spain* (application No. 17122/07), judgment of 21 September 2010; and *García Hernandez v. Spain* (application No. 15256/07), judgment of 16 November 2010.

[8] *Achabal Puertas v. Spain* (CCPR/C/107/D/1945/2010), para. 7.3.

three judges as opposed to the single judge in the present case, whose nationality raised concerns about bias. The author therefore claims that in the present case, there is even greater concern that the examination of the application did not include sufficient consideration of the merits.

3.2 The author alleges that the State party has violated article 14 (1), (2), (3) and (5) of the Covenant.

3.3 With regard to paragraphs 1 and 2 of article 14, the author argues that the Supreme Court's decision was unfair because it convicted the author on the basis of new factual conclusions, new theories regarding causation and new conclusions regarding the subjective elements of the offence.[9] Furthermore, the author had no opportunity to rebut those findings or put forward a defence on those matters since he was not heard in any proceedings before the Court and neither were any of the nearly 200 witnesses who gave evidence before the Provincial High Court. Additionally, the re-evaluation of the facts, without notice and due process, and contrary to the law governing appeals,[10] amounted to a denial of justice. According to the author, a defendant should be entitled to know the basis on which he may be convicted, whether the arguments and theories are put forward by the prosecution or are devised by the Court of their own volition.[11] Therefore, the author alleges that he was convicted without a trial. Citing jurisprudence of the European Court of Human Rights, the author invites the Committee to follow that jurisprudence and find that his right to a fair trial under article 14 (1) and (2) was violated.

3.4 The author also alleges a breach of his right to equality of arms, as protected under article 14 (3) because: (a) he was excluded from participating in the underwater investigations of the *Prestige* wreckage; and (b) not all of the results of the tests undertaken on behalf of the Government of Spain on the wreck were disclosed to him. The author alleges that the vessel's condition was central to the criminal allegations. Therefore, it was imperative for him to be placed on an equal footing with the prosecution and the State party in terms of the inspection of the wreckage and of access to all the results from the tests that were carried out. The author mentions the Committee's jurisprudence according to which the requirement that an accused person has adequate facilities for the preparation of his or her defence is an important element of the guarantee of the right to a fair trial.[12] According to the author, adequate facilities must include access to documents and all the materials that the prosecution plans to submit in court.

3.5 Lastly, the author alleges a breach of article 14 (5) because he was convicted for the first time of a crime against the environment by the Supreme Court, with no possibility of a

[9] Among them, the author states the following new findings by the Court:

(a) A causal link between the failure of the automatic pilot system, the excess draught of the vessel, the defects with the heating coils and the accident;

(b) The lack of compliance of the stern emergency towing equipment with the International Convention for the Safety of Life at Sea;

(c) A causal link between the author's refusal to accept a towline and the damage caused;

(d) The "likelihood" that the *Prestige* would suffer a severe structural defect.

[10] The author explains that as a matter of Spanish law, pursuant to article 849.2 of the Criminal Procedural Act, a lower court's error in the interpretation or assessment of the evidence can amount to a breach of law which may be the subject of a cassation appeal before the Supreme Court. That would have allowed the Supreme Court to conduct a limited revision of the facts declared proven by the Provincial High Court. However, that ground of appeal would not have allowed the Supreme Court to overturn the acquittal or to aggravate the conviction. In the present case, the Supreme Court expressly rejected the appeals based on errors in the interpretation or assessment of the evidence by the Provincial High Court and the appeal only proceeded, pursuant to article 849.1 of the Criminal Procedural Act, on the basis of a breach of the substantive provisions of the law – provisions of the Criminal Code regarding the offence against the environment. Accordingly, the Supreme Court was bound, because of its own decision, by the facts declared proven by the Provincial High Court.

[11] The author cites the Committee's general comment No. 32 (2007) and *Jansen-Gielen v. Netherlands* (CCPR/C/71/D/846/1999), para. 8.2, and *Äärelä and Näkkäläjärvi v. Finland* (CCPR/C/73/D/779/1997), para. 7.4.

[12] The author cites Human Rights Committee, *Smith v. Jamaica*, communication No. 282/1988, and communication Nos. 226/1987 and 256/1987, *Sawyers, McLean and McLean v. Jamaica*.

full review of his conviction. The *amparo* lodged before the Constitutional Court was rejected. The author explains that, according to the jurisprudence of the Committee in *Hachuel Moreno v. Spain*, "the absence of any right of review in a higher court of a conviction handed down by an appeal court, where the person was found not guilty by a lower court, is a violation of article 14, paragraph 5, of the Covenant".[13] The author explains that unlike his case, in *Hachuel Moreno*, the Constitutional Court had accepted the *amparo* application and the Committee nonetheless understood that the consideration by the Constitutional Court could not be said to meet "the standard set by article 14, paragraph 5, for a review of the conviction".[14] The author affirms that the State party has repeatedly acted in violation of that provision, citing both individual communications and the Committee's concluding observations.[15]

3.6 The author requests the Committee to recommend that the State party rescind the judgment of the Supreme Court and reinstate the judgment of the Provincial High Court, or require it to take other remedial action, as the Committee considers appropriate.

State party's observations on admissibility

4.1 In its observations of 6 June 2019, the State party maintains that the communication is inadmissible for lack of competence *ratione personae* and *ratione materiae*, and that it constitutes an abuse of the right to file a communication, all of which violate article 3 of the Optional Protocol. The State party also maintains the inadmissibility of the communication in the light of its reservation to article 5 (2) (a) of the Optional Protocol because the same matter has already been examined by the European Court of Human Rights.[16]

4.2 The State party affirms that neither the author nor the owner of the ship, Mare Shipping Inc., will pay the amount for which they have been found liable since they have both been declared bankrupt. Only a little more than €23 million was paid by the insurer, the London Steam-Ship Owners' Mutual Insurance Association Limited. Although the insurer is still liable for up to $1 billion, it refuses to pay voluntarily, which has prompted the State party to seek seizure of the insurer's assets for that amount before the courts of the United Kingdom of Great Britain and Northern Ireland.

4.3 The State party affirms that both the author and the insurer are represented by the same lawyer, and that the present communication does not have the purpose of protecting the author's rights, but rather is intended to establish barriers to the effective reparation of the harm caused by the environmental catastrophe. The State party argues that it is the insurer that is fraudulently using the individual communication procedure to avoid assuming its civil liability. For the State party, declaring the communication admissible would mean defrauding the human rights protection system and would cause grave harm to the human rights of the affected citizens, including the protection of the environment.

4.4 The State party alleges that the author has no interest in the present communication since the judicial decisions, which are now final, have no harmful effects on him either in terms of the criminal sentence or his civil liability. With regard to his criminal sentence, pursuant to domestic law, the author never had to go to prison since he was older than 70 by the time the Supreme Court decision was rendered. In fact, the author has lived in Greece since 2005 (more than 14 years). The State party alleges that it cannot be said that the criminal sentence affects his reputation, since the author's lawyers are requesting the reinstatement of the first instance judgment which, albeit under a different crime, also entailed a criminal sanction for his behaviour. Equally, since he has already retired, he has no need to continue

[13] *Hachuel Moreno v. Spain* (CCPR/C/90/D/1381/2005), para. 7.2.

[14] Ibid.

[15] The author cites *B.G.V. v. Spain* (CCPR/C/84/D/1095/2002/Rev.1); *García Sánchez and González Clares v. Spain* (CCPR/C/88/D/1332/2004); *Conde Conde v. Spain* (CCPR/C/92/D/1527/2006); *Hachuel Moreno v. Spain*; and CCPR/C/ESP/CO/6, para. 24.

[16] In ratifying the Optional Protocol, the State party introduced the following reservation: "The Spanish Government accedes to the Optional Protocol … on the understanding that the provisions of article 5, paragraph 2 … mean that the Human Rights Committee shall not consider any communication from an individual unless it has ascertained that the same matter has not been or is not being examined under another procedure of international investigation or settlement."

his professional activity. With regard to his civil liability, the State party alleges that not only has he been declared bankrupt, but also under domestic law, his retirement pension cannot be seized. Therefore, although the author's communication refers to the "serious consequences" of the sentence, the truth is that the sentence has not had any direct consequences for the author, either in terms of his person or his property.

4.5 The State party alleges that the author failed to disclose the fact that the purpose of the communication is merely to keep open a claim for "discovery" before the courts of the United States of America. In May 2017, the author filed two discovery proceedings before the United States District Court for the Southern District of New York[17] in order to obtain State party documents relating to the accusation against him, all of which are protected under attorney-client privilege. Yet for the proceeding to go ahead, it was necessary for the author to prove that those documents would be used before a foreign tribunal, which is why the author kept sending letters to the European Court of Human Rights after its inadmissibility decision, even though it is well-known that the inadmissibility decisions of the European Court cannot be appealed and the European Court will not provide any further information. On 31 October 2018, the United States Court of Appeals for the Second Circuit required the parties to explain why the proceedings should still be open. By then, the European Court had already made clear that it would not provide any more information. Subsequently, on 8 November 2018, the author filed the individual communication before the Committee. The aim of the discovery request before the courts of the United States of America is to allow the insurer to access documents to try to prevent the execution of the sentence that the State party is attempting before the courts of the United Kingdom of Great Britain and Northern Ireland. Therefore, the sole purpose of the communication before the Committee is to keep the discovery proceedings alive to obtain documents that are protected under attorney-client privilege in an attempt to prevent the insurer from assuming its civil liability before the courts of the United Kingdom.

4.6 The State party therefore argues that the Committee lacks jurisdiction *ratione personae* because the communication is filed in the exclusive interest of a legal person who is also anonymous since it is not mentioned by the author. Equally, the Committee lacks jurisdiction *ratione materiae* since the actual interest to be protected by the communication is the insurer's property, a right which is not protected by the Covenant. That is clear from the facts that: (a) the claim before the European Court of Human Rights also alleged a violation of article 1 of Protocol No. 1 to the European Convention on Human Rights; and (b) the author requests that the Committee require that the State party take other remedial action, as the Committee considers appropriate. In addition, the communication is inadmissible as it constitutes an abuse of the right of submission insofar as the author has no interest whatsoever in the Committee's decision. The State party alleges that the communication was filed only in order to pursue the discovery proceedings in the United States courts, which would subsequently assist the insurer in its attempt to avoid the seizure of its assets before the courts of the United Kingdom.

4.7 With regard to the inadmissibility of the communication based on the State party's reservation to article 5 (2) (a) of the Optional Protocol, the State party affirms that an almost identical reservation has been issued by 25 other countries and is entirely compatible with the object and purpose of the Optional Protocol. In fact, the object of the reservation is to maximize the efficacy and coordination of the international, bilateral and regional systems of human rights protection with that of the United Nations.

4.8 The State party alleges that between 1973 and 2013, the Committee consistently interpreted the word "examined" as excluding cases that had been declared inadmissible solely on procedural grounds.[18] Only in *Achabal Puertas v. Spain* did the Committee partially distance itself from that jurisprudence, explaining that in the particular circumstances of that case, the limited reasoning contained in the succinct terms of the letter from the European Court of Human Rights did not allow the Committee to assume that the examination included sufficient consideration of the merits in accordance with the information provided to the

[17] Proceedings 17-MC-172 and 17-MC-186.

[18] The State party cites the dissent of six members of the Committee in *Achabal Puertas v. Spain*.

Committee by both the author and the State party.[19] In a more recent communication, the Committee explained that a similar decision of the European Court did not state that the appearance of a violation was not observed, but rather indicated simply that the application failed to meet admissibility requirements, without further explanation. Accordingly, the Committee considered that it was not precluded from examining that communication under article 5 (2) (a) of the Optional Protocol.[20] Yet in the author's case, according to the letter from the European Court, it "has examined the application as submitted … [and has found] in the light of all the material in its possession that the matters complained of do not disclose any appearance of violation of the rights and freedoms set out in the Convention or the Protocols thereto. Accordingly, these complaints are manifestly ill-founded".

4.9 The State party also alleges that in the Brussels Declaration of 27 March 2015, the Committee of Ministers of the Council of Europe welcomed "the intention expressed by the Court to provide brief reasons for the inadmissibility decisions of a single judge". In June 2017, the European Court of Human Rights began providing reasons that clearly show, in the light of its jurisprudence, whether the inadmissibility decision was based on the merits or on purely procedural grounds.

4.10 The State party provides a letter from the Registrar of the European Court of Human Rights, dated 15 May 2019, explaining the nature of single judge decisions.[21] According to the letter:

> Single judge decisions were initially notified to applicants by way of a decision letter, with minimal information setting out the ground of inadmissibility. However … in light of the invitation of the Contracting States in the Brussels Declaration of March 2015, the Court has adopted a new procedure, allowing more detailed reasoning to be given.
>
> From June 2017 decisions taken at the single judge level are no longer communicated by a letter from the Registry, but take the form of a reasoned decision signed by the single judge. The reasoning is expressed in standardised language, with a maximum of three reasons per application. Non-standard text may be used or added where necessary, as may references to relevant Convention case-law … In adopting the new approach the Court has had to strike a balance between addressing a legitimate concern about the lack of individualised reasoning and maintaining an efficient process for handling inadmissible cases so as not to divert too many resources from examining potentially well-founded cases. This is why elaborate or detailed reasons are not given.

Reasoned decision in the case of Mangouras v. Spain (Application No. 56424/2017)

> The decision in the present case, following the new practice introduced by the Court since June 2017, is a reasoned decision by Judge Pere Pastor Vilanova specifying the grounds of inadmissibility as "manifestly ill-founded" after a full analysis of the facts of the case within the meaning of Article 35 § 3 (a) of the Convention. The Court declares a complaint manifestly ill-founded for reasons relating to an examination on the merits of the complaint. The grounds for inadmissibility are therefore not procedural (for example, non-exhaustion of domestic remedies, non-compliance with the six-month time limit etc.). It is true that the use of the term "manifestly" in Article

[19] *Achabal Puertas v. Spain*, para. 7.3.

[20] *Lupiañez Mintegi v. Spain* (CCPR/C/125/D/2657/2015), para. 8.4.

[21] The State party had sent a letter to the European Court of Human Rights, dated 8 May 2019, explaining that the author had filed a communication before the Committee and requesting, among other things, that the Court send a certificate confirming that the Registry and the single judge had performed a thorough analysis of the merits of the case before they decided that the case was inadmissible. The State party also noted that a statement attesting to the impartiality of the judge and the utmost competence of the members of the Registry, which had been amply demonstrated over the years, would also be helpful. The State party would use those documents to support its claim that the communication submitted to the Human Rights Committee was inadmissible, in order to contradict the claimant's lawyer's clearly false assertion that the decision of the European Court had not been adopted in a serious manner and/or was biased.

> 35 § 3 (a) may cause confusion: if taken literally, it might be understood to mean that an application will only be declared inadmissible on this ground if it is immediately obvious to the average reader that it is farfetched and lacks foundation. However, it is clear from the settled and abundant case-law of the Convention institutions (that is, the Court and, before 1 November 1998, the European Commission of Human Rights) that the expression is to be construed more broadly, in terms of the final outcome of the case. In fact, any application will be considered "manifestly ill-founded" if a preliminary examination of its substance does not disclose any appearance of a violation of the rights guaranteed by the Convention, with the result that it can be declared inadmissible at the outset without proceeding to a formal examination on the merits which would normally result in a judgment (see the Court's Guide on Admissibility). Accordingly, there has been a consideration of the merits of this case.[22]

4.11 In the light of the above, the State party alleges that it is clear that the European Court of Human Rights has examined the author's communication in the terms required by article 5 (2) (a) of the Optional Protocol and the State party's reservation. That precludes the Committee from examining the matter and the communication should therefore be declared inadmissible.

State party's additional information

4.12 On 21 July 2019, the State party submitted additional information in the light of new facts. The State party explained that on 28 June 2019, the London Steam-Ship Owners' Mutual Insurance Association Limited objected to the enforcement of the Spanish final judgment before the courts of the United Kingdom. Many of the objections were made on the same alleged claims of violations of human rights that the insurer cannot directly claim before the Committee given that it is not an individual. It is therefore proven that the London Steam-Ship Owners' Mutual Insurance Association Limited is the party behind the submission of the author's communication before the Committee.

4.13 Furthermore, on 11 July 2019, the Provincial High Court stated that given that the suspension period of the author's sentence had passed without him committing any other crimes, his criminal liability was absolutely remitted. Therefore, the author did not spend a single day in prison after the sentence became final and he will not be required to do so. Equally, it still stands that he has already been exempted from surrendering his property given the lack of seizable assets.

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

5.1 On 20 September 2019, the author submitted comments on the State party's observations on admissibility. Firstly, the author observes that he filed the communication because he believes his right to a fair trial has been violated. Secondly, on the particular facts of the case, there was clearly the appearance of a violation of the author's right to a fair trial, since his acquittal was overturned by the Supreme Court, on appeal, without it hearing the evidence, and in a judgment in which it fundamentally changed the factual conclusions reached by the Provincial High Court. Thirdly, the decision of the European Court of Human Rights to declare the application inadmissible, without providing any reason for departing from its well-established case law, and dismissing the application in a pro forma letter, does not indicate that the single judge's examination included sufficient consideration of the merits. Fourthly, it is undeniable that the author was unable to appeal his conviction in a way that would meet the requirements of article 14 (5) of the Covenant. In fact, his conviction was not at any point subject to a second review. That breach of his rights was not mentioned in his application to the European Court, and it therefore cannot be said that the European Court examined that matter.

5.2 With regard to the facts of the case, the author notes that he was arrested after he left the *Prestige* and remained imprisoned for 83 days, with bail set at €3 million. He then complained to the European Court of Human Rights about the amount of the bail, in a

[22] The Registrar's letter also addresses the questions about the impartiality of the Judge and of the Registry's lawyers dismissing them in their entirety.

different application from the one mentioned above, and was represented in that matter by counsel from the United Kingdom. The application concerning the amount of the bail was made considerably before the Supreme Court overturned the author's acquittal for the offence against the environment in January 2016. Therefore, the author started seeking justice and redress for the violations of his human rights considerably before the Supreme Court sought payment of $1 billion from the shipowners' insurers. Equally, his complaint to the Committee concerns the fairness of the process in which the acquittal handed down by a court after a trial of more than nine months, in which the author was personally able to give evidence, was overturned. Neither he nor his legal advisers are on trial in the context of the present communication; the Committee should focus on the fairness of the State party's legal system, in particular, the appeal that led to his conviction.

5.3 The author notes that when he was acquitted, the London Steam-Ship Owners' Mutual Insurance Association Limited was not liable beyond the Limitation Fund of €22.7 million that was deposited with the Court of Investigation in May 2003, in accordance with the International Convention on Civil Liability for Oil Pollution Damage, 1992. In order to access the insurance policy and make the insurer liable for $1 billion, the author's acquittal had to be overturned. The author believes he has been made a scapegoat and that his right to a fair trial was violated for that purpose.

5.4 The author also explains that the proceedings involving the insurers before the courts of the United Kingdom are completely unrelated to the communication. Although the insurers argue that the Supreme Court's judgment was obtained in breach of the author's human rights, that argument is made because the insurers (and the author) believe that the Supreme Court acted contrary to the basic principles of justice. Those arguments would be made regardless of the proceedings before the Committee and are for the courts of the United Kingdom to decide upon, since it is they that have jurisdiction to determine what contravenes public policy in that State.

5.5 The author also explains that it is incorrect to suggest that his communication was made to support a discovery application before the courts of the United States of America. On the contrary, the proceedings were initiated to support the author's application before the State party's courts, the European Court of Human Rights, and now the Committee. The insurers are not a party to the proceedings in the United States. In fact, the author alleges that the insurers could have made a discovery application in the United States to support their proceedings in the United Kingdom if they had so wished. Those proceedings are ongoing in the United States and are for the courts of the United States to determine. The Committee is not the correct forum in which to dispute that decision and the State party's submissions in that respect are wholly irrelevant to the matters before the Committee.

5.6 As to the purpose of the complaint, the author submits that the State party repeatedly violates the Covenant. Firstly, the State party's courts usually overturn acquittals on appeal, make changes to the factual findings of the lower courts, and/or reach conclusions about subjective elements of the offence without hearing evidence from the accused and/or the relevant witnesses. Secondly, the State party fails to offer a proper avenue of appeal for those acquitted by the lower courts, but convicted in the Supreme Court. The author alleges that the purpose of the communication is to have those issues considered as they apply in his case.

5.7 With regard to the decision of the European Court of Human Rights, the author notes that the letter submitted by the European Court to the State party merely suggests, in a generic fashion, that single judges consider the merits of applications when reaching the decision that an application does not disclose the appearance of a violation. It is undisputable that the Supreme Court overturned the author's acquittal and replaced it with a conviction, without having heard evidence from him in person or from any of the other almost 200 witnesses who gave evidence at the trial. Furthermore, the Supreme Court did make new factual findings and reached conclusions about the subjective elements of the offence without having heard that evidence, which is contrary to a long list of consistent judgments from the European

Court of Human Rights.[23] It is therefore inexplicable why the judge declared the application inadmissible, with no explanation as to why the well-established principles should not be applied in that case. According to the author, it must be an indication that there was insufficient examination of the merits.

5.8 The author affirms that it is indisputable that the allegation that he was denied an appeal, in violation of article 14 (5), was not a part of his complaint to the European Court of Human Rights. Therefore, there is no issue regarding admissibility.

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 it is admissible under the Optional Protocol.

6.2 The Committee notes the State party's reservation to article 5 (2) (a) of the Optional Protocol, which excludes the Committee's competence in relation to cases where the same matter has been or is being examined under another procedure of international investigation or settlement. The Committee must therefore decide whether the application before the European Court of Human Rights entailed the same matter as the present communication, and whether it can be considered that the European Court has examined the application.

6.3 The Committee recalls its jurisprudence according to which the "same matter" within the meaning of article 5 (2) (a) must be understood as relating to the same author, the same facts and the same substantive rights.[24] The Committee observes that application No. 56424/2017 was submitted to the European Court of Human Rights by the same author, was based on the same facts and related, at least in part, to the same substantive rights as those raised in the present communication, given that article 6 of the European Convention on Human Rights is similar in scope and content to article 14 of the Covenant.[25] The Committee takes note of the author's argument that the allegations relating to article 14 (5) of the Covenant (right to review of a conviction by a higher court) were not raised before the European Court. The Committee notes that the right set forth in article 14 (5) of the Covenant is similar in scope and content to that set forth in article 2 of Protocol No. 7 to the European Convention. However, given that the author made no such allegations in his application to the European Court, the Committee finds that the State party's reservation to article 5 (2) (a) of the Optional Protocol does not constitute an obstacle to the examination of the author's claims under article 14 (5) of the Covenant.

6.4 The Committee must also determine whether the author's other claims under article 14 (1), (2) and (3), which constitute the "same matter" submitted before the European Court of Human Rights, can be considered to have been "examined" by that court. The Committee recalls its jurisprudence according to which when the European Court has based a declaration of inadmissibility not solely on procedural grounds but on reasons that include a certain consideration of the merits of the case, however limited, then the same matter has been "examined" within the meaning of the respective reservations to article 5 (2) (a) of the Optional Protocol.[26] The Committee takes note of the author's argument according to which the succinct European Court decision does not indicate that the single judge's examination included sufficient consideration of the merits. However, the Committee notes that the ground put forward by the European Court inevitably implies a certain, albeit limited, consideration of the merits of the case. The Committee takes note of the letter from the Registrar of the European Court, dated 15 May 2019, indicating that there had been

[23] The author cites again the jurisprudence of the European Court of Human Rights supporting its position, and explaining that the jurisprudence of the European Court cited by the State party does not overrule or change the principles established in those relied upon by the author.

[24] *Petersen v. Germany* (CCPR/C/80/D/1115/2002), para. 6.3.

[25] Ibid.

[26] *Bertelli Gálvez v. Spain* (CCPR/C/84/D/1389/2005), para. 4.3; *Wdowiak v. Poland* (CCPR/C/88/D/1446/2006), para. 6.2; *Alzery v. Sweden* (CCPR/C/88/D/1416/2005), para. 8.1; and *Quliyev v. Azerbaijan* (CCPR/C/112/D/1972/2010 and Corr.1), para. 8.2.

consideration of the merits of the case. The Committee is therefore satisfied that the European Court went beyond an examination of purely procedural admissibility criteria when declaring the author's application inadmissible, because it did "not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols".[27]

6.5 The Committee therefore finds that the author's claims under article 14 (1), (2) and (3) are inadmissible in accordance with article 5 (2) (a) of the Optional Protocol.

6.6 The Committee notes the author's uncontested argument that he was convicted on appeal of a crime against the environment by the Supreme Court the highest judicial instance with no possibility of a full review of his sentence and conviction. It also notes that, following the dismissal of the nullity application before the Supreme Court, the author filed an application for *amparo* before the Constitutional Court, which was unsuccessful. The Committee thus finds that the author has exhausted domestic remedies and that there are no obstacles to the admissibility of the communication based on article 5 (2) (b) of the Optional Protocol.

6.7 The Committee takes note of the observations of the State party according to which the communication should be declared inadmissible insofar as the Committee lacks jurisdiction *ratione personae* and *ratione materiae*. However, the Committee finds no obstacles to its jurisdiction in this sense, insofar as the author is identified and presents claims of a violation of his own rights enshrined in the Covenant.

6.8 The Committee also takes note of the State party's argument according to which the communication constitutes an abuse of the right of submission, given the author's lack of interest in the Committee's potential views. The Committee considers, however, that the information available in the file does not allow it to conclude that the author's claims, which have been sufficiently substantiated and consistent throughout the procedures at the national and international levels, would amount to an abuse of his right to petition. In this regard, the Committee notes that, under article 14 (5) of the Covenant, the author has an individual interest in overturning a criminal conviction to a prison sentence. Equally, it is not for the Committee to judge the intentions of third parties who might have shared interests in the outcome of a communication before it. Consequently, the Committee sees no obstacle to the admissibility of the communication under article 3 of the Optional Protocol.

7. Therefore, the Committee decides:

(a) That the communication is admissible insofar as it raises issues with respect to article 14 (5) of the Covenant;

(b) That, in accordance with article 4 (2) of the Optional Protocol and rule 101 (2) of the Committee's rules of procedure, the State party is requested to submit to the Committee, within six months of the date of transmittal to it of the present decision, written explanations or statements clarifying the matter and indicating the measures, if any, that may have been taken by the State party;

(c) That any explanation or statement received from the State party shall be communicated to the author under rule 101 (3) of the Committee's rules of procedure, with the request that any observation he may wish to make thereon should reach the Committee, care of the Office of the United Nations High Commissioner for Human Rights, within six weeks of the date of transmittal;

(d) That the present decision shall be transmitted to the State party and to the author.

[27] For example, *Wallmann et al. v. Austria* (CCPR/C/80/D/1002/2001), para. 8.5.