



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE
Eighty-third session
14 March- 1 April 2005

DECISION

Communication No. 1356/2005

<u>Submitted by:</u>	Mr. Antonio Parra Corral (represented by counsel Mrs. Encarnación Caballero Oliver.)
<u>Alleged victim:</u>	The author
<u>State party:</u>	Spain
<u>Date of communication:</u>	12 December 2004 (initial communication)
<u>Date of decision:</u>	29 March 2005

Subject matter: Extent of the review on appeal by Spanish courts

Procedural issues: Non- exhaustion of domestic remedies, failure to substantiate claims

Substantive issues: Right to have the sentence and conviction reviewed by a higher tribunal according to law

Articles of the Covenant: 14, paragraph 5, and 26.

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

[ANNEX]

* Made public by decision of the Human Rights Committee.

ANNEX

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

Eighty-third session

concerning

Communication No. 1356/2005**

Submitted by: Mr. Antonio Parra Corral (represented by
counsel Mrs. Encarnación Caballero Oliver.)

Alleged victim: The author

State party: Spain

Date of initial communication: 12 December 2004

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

Meeting on 29 March 2005

Adopts the following:

Decision on admissibility

1. The author of the communication dated 12 December 2004 is Antonio Parra Corral, a Spanish citizen born in 1945. He claims to be a victim of violations by Spain to article 14, paragraph 5, and article 26 of the Covenant. The Optional Protocol entered into force for Spain on 25 April 1985. The author is represented by counsel (Mrs. Encarnación Caballero Oliver).

Factual background

2.1 On 9 December 2001 the Second Chamber of the Provincial Court of Almería (*Audiencia Provincial de Almería*) sentenced the author to seven and a half years of

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

imprisonment for destruction of property, attempt to commit homicide and manufacturing of illegal explosives, and to one year imprisonment for continuous threats.¹

2.2 The author filed an appeal in the Supreme Court (*Tribunal Supremo*) alleging violations of procedural guarantees and substantive rights. On 12 September 2002, the Supreme Court declared the appeal inadmissible. The author then appealed (*amparo*) to the Constitutional Court (*Tribunal Constitucional*), which dismissed his appeal on 20 October 2004.

The complaint

3.1 The author's complaint concerns primarily the right to an effective appeal against conviction and sentence. He argues that the Spanish Criminal Procedure Act (*Ley de Enjuiciamiento Criminal*) violates articles 14, paragraph 5, and 26 of the Covenant because those charged with the most serious crimes have their cases heard by a single judge (*Juzgado de Instrucción*) who conducts all the pertinent investigations and, once he considers the case ready for trial, refers it to the Provincial Court (*Audiencia Provincial*), where a panel of three judges conducts the trial and decides the case. Their decision is subject to judicial review proceedings only on very limited legal grounds. There is no possibility of a re-evaluation of evidence by the Supreme Court, as all factual determinations by the lower court are considered final. By contrast, those convicted of less serious offences for which sentences of less than six years' imprisonment may be imposed have their cases investigated by a single judge (*Juzgado de Instrucción*) who, once the case is ready for trial, refers it to a single judge *ad quo* (*Juzgado de lo Penal*), whose decision may be appealed before the Provincial Court (*Audiencia Provincial*), thus ensuring an effective review not only of the application of the law, but also of the facts.

3.2 The author claims that, as the Supreme Court does not re-evaluate evidence, the Spanish system does not guarantee the right to have his conviction and sentence reviewed by a higher court according to law (article 14, paragraph 5, of the Covenant). According to the author, the Supreme Court dismissed the appeal on formal and procedural grounds, without having re-examined the weighing of the evidence by the lower court. In its judgment, the Constitutional Court stated that it was not in its remit to review the weighing of the evidence done by the trial court, or to review the conclusions of the Supreme Court.

Consideration of admissibility

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

4.2 The Committee recalls its jurisprudence according to which the requirement of exhaustion of domestic remedies, which allows the State party to remedy an alleged violation before the same issue is raised before the Committee, oblige authors to raise the substance of

¹ According to the judgment, the author and a co-accused threatened a commercial partner who refused to transport livestock for them. They put a package with explosives in front of the victim's home and provoked an explosion, which caused severe damage to the premises. The evidence against the author consisted in testimonies about the threats and experts' affidavits on the type of explosives used by the accused and the extent of the damage caused to the victim's premises.

the issues submitted to the Committee before domestic courts. Noting that the author has failed to raise in substance before domestic courts the alleged violation of the principle of non-discrimination (article 14, paragraph 5, in conjunction with article 26 of the Covenant), the Committee decides that this part of the communication is inadmissible pursuant to article 5, paragraph 2 (b) of the Optional Protocol.

4.3 The Committee notes that the remaining allegation concerning article 14, paragraph 5 - the alleged failure of Spanish courts to re-examine the weighing of evidence-, is contradicted by the text of the judgments of the Supreme Court and the Constitutional Court in the author's case. Both courts thoroughly addressed the author's allegation that circumstantial evidence was insufficient to convict him, and disagreed with his account, developing extensive arguments to conclude that the evidence, though circumstantial, was sufficient to warrant the author's conviction. In the present case, the Committee concludes the author has failed properly to substantiate his claim under article 14, paragraph 5, and decides that this part of the communication is inadmissible pursuant to article 2 of the Optional Protocol.

5. The Human Rights Committee therefore decides:

- (a) That the communication is inadmissible pursuant to articles 2 and 5, paragraph 2 of the Optional Protocol;
- (b) That this decision shall be communicated to the author and, for information, to the State party.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]
