



**International covenant
on civil and
political rights**

Distr.
RESTRICTED*

CCPR/C/86/D/1102/2002
26 April 2006

ENGLISH
Original: SPANISH

HUMAN RIGHTS COMMITTEE
Eighty-sixth session
13-31 March 2006

DECISION

Communication No. 1102/2002

Submitted by: Semey Joe Johnson (not represented by counsel)

Alleged victim: The author

State party: Spain

Date of communication: 15 August 2001 (initial submission)

Document references: Special Rapporteur's rule 97 decision, transmitted to the State party on 5 August 2002 (not issued in document form)

Date of decision: 27 March 2006

Subject matter: Establishment of guilt of involuntary manslaughter by trial, right to a second hearing

Procedural issues: Insufficient substantiation of the alleged violations

Substantive issues: Right to due process, right to a second hearing, equality before the law

Articles of the Covenant: 14 and 26

Article of the Optional Protocol: 2

[ANNEX]

* Made public by decision of the Human Rights Committee.

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Annex

**DECISION OF THE HUMAN RIGHTS COMMITTEE UNDER THE
OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT
ON CIVIL AND POLITICAL RIGHTS (EIGHTY-SIXTH SESSION)**

concerning

Communication No. 1102/2002*

Submitted by: Semey Joe Johnson (not represented by counsel)

Alleged victim: The author

State party: Spain

Date of communication: 15 August 2001 (initial submission)

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

Meeting on 27 March 2006,

Adopts the following:

Decision on admissibility

1.1 The author of this communication of 15 August 2001 is Semey Joe Johnson,¹ a Canadian and Cameroonian citizen born in 1969, currently being held at the Torrendondo Penitentiary Centre in Madrid. The author claims to be a victim of violations by Spain of article 14, paragraphs 1, 2, 3 (e), and 5, and article 26 of the International Covenant on Civil and Political Rights. He is not represented by counsel.

1.2 The Optional Protocol entered into force for Spain on 25 April 1985.

* 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. Rajsoomer Lallah, 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.

Factual background

2.1 The author was tried for allegedly causing a traffic accident that took place on 21 February 1998, which resulted in one person's death. The driver of the vehicle that caused the accident had a false number plate and a false driving licence with the author's personal details. The driving licence was withheld by the police and the driver was allowed to recover his vehicle. During the trial, the author constantly denied any connection with the aforementioned events, alleging that his driving licence had been mislaid, and that someone had used his personal details to falsify the driving licence now in the court's possession.

2.2 On 19 June 2000, the Madrid Criminal Court No. 27 sentenced the author to three and one-half years' imprisonment for involuntary manslaughter, with a specific disqualification from the right to be elected during the time of his sentence and loss of driving licence for four years, and for two offences of falsification, with two years' imprisonment for each offence, with specific disqualification from the exercise of the right to be elected during the time of his sentence, and a 12-month fine to be paid in daily quotas of 200 pesetas (€1.20), subject to deprivation of liberty of one day for every two unpaid quotas.

2.3 The author lodged an appeal with the Madrid Provincial High Court alleging a violation of the right to presumption of innocence, an error in assessing the evidence - which allegedly contradicted the report based on the identity parade - and the absence of grounds for the sentence passed. On 5 October 2000, the Provincial High Court dismissed the appeal and upheld the sentence of the Criminal Court, on the grounds that both the evidence of the witnesses and the handwriting expert's report produced in the lower court were valid and sufficient to prove that the author was guilty of the offence with which he had been charged.

2.4 The author applied for special review by the Supreme Court, alleging new evidence in his favour, which he had obtained through a private investigation service he had hired subsequently to the judgements of the courts of first and second instance. The evidence consisted in a witness who could supposedly declare that at the approximate time of the accident the author was expected to take part in a radio programme. On 17 May 2001, the Supreme Court dismissed the application for judicial review considering that the proposed evidence did not reveal new facts or evidence that proved the author's innocence, and moreover referred to probative material that could have been available before the trial had taken place and the appeal had been lodged.

2.5 The author filed an application for *amparo* with the Constitutional Court, alleging a violation of the right to effective judicial remedy and due process. On 4 June 2001, the Constitutional Court dismissed the application, after considering that the sentences challenged contained sufficient grounds for the inadmissibility of the author's complaints and sufficient evidence against him on which to base the sentence.

The complaint

3.1 The author alleges that there was a violation of article 14, paragraph 1, arguing that the sentence was arbitrary since it was based merely on the identification procedure conducted during the oral proceedings, which contradicted the report based on the identity parade.

3.2 The author contends that the sentence was based merely on circumstantial evidence, and that there was not sufficient evidence against him to invalidate the presumption of innocence. The right to presumption of innocence enshrined in article 14, paragraph 2, was therefore allegedly violated.

3.3 He further alleges that the Supreme Court did not allow the witness proposed by him to appear during the application for review, which violated article 14, paragraph 3 (e).

3.4 The author adds that there was a violation of article 14, paragraph 5, since the Provincial High Court did not reassess the circumstantial evidence on the basis of which he had been sentenced by the court of first instance.

3.5 Lastly, the author considers that there is a violation of the right to equality before the law under article 26, since he was not offered due process, and the taking of evidence during the oral proceedings was not in keeping with the principles of a fair hearing and adversarial procedure.

State party's observations and author's comments

4.1 In its observations of 10 September 2002, the State party contests the admissibility and merits of the communication, noting that both the Provincial High Court and the Constitutional Court had examined the author's allegations and had dismissed them, stating their reasons and motives. The State party adds that the author cannot seek to replace the logical and reasoned assessment of evidence arrived at by the judicial bodies by his own assessment.

4.2 The State party also observes that the Supreme Court gave clear reasons for dismissing the application for special review, noting that the appellant did not reveal new facts or evidence which would prove his innocence and which moreover he could have obtained before the trial was held.

5. On 25 March 2003, the author contested the State party's arguments, reiterating his initial allegations. He points out that his criminal record is not sufficient grounds for justifying the inadmissibility of his communication or as evidence of his responsibility for the offences with which he was charged in the case at hand.

Issues and proceedings before the Committee

6.1 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.

6.2 In accordance with article 5, paragraph 2 (a), the Committee has ascertained that the matter is not being examined under another procedure of international investigation or settlement.

6.3 The Committee has also ascertained that the author has exhausted all domestic remedies, pursuant to article 5, paragraph 2 (b), of the Optional Protocol.

6.4 With regard to the alleged violation of article 14, paragraphs 1 and 2, the Committee recalls its jurisprudence to the effect that it is for the courts of States parties to assess the facts and evidence, unless the assessment is manifestly arbitrary or constitutes a denial of justice.² The Committee considers that the author has failed to substantiate, for purposes of admissibility, that the conduct of the courts of the State party amounted to arbitrariness or a denial of justice and therefore declares both claims inadmissible under article 2 of the Optional Protocol.

6.5 With regard to the author's allegation of a violation of article 14, paragraph 3 (e), on the grounds that the expert opinion presented at the review stage was rejected, the Committee recalls that the right referred to in the above provision is not absolute, in the sense that it does not allow for the submission of evidence at any time or in any manner, but is intended to guarantee "equality of arms" between the parties during the trial. The Committee takes note of the Supreme Court's argument that the author did not avail himself of the right to submit the evidence in question in the courts of first and second instance, although the evidence could have been obtained before the trial was held in the Criminal Court. Consequently, the Committee considers that this part of the communication is insufficiently substantiated for the purposes of admissibility and concludes that it is inadmissible under article 2 of the Optional Protocol.

6.6 With regard to the alleged violation of article 14, paragraph 5, the Committee considers that from the judgement of the Madrid Provincial High Court it is clear that that body carefully examined the Criminal Court's assessment of the evidence. In this respect, the Provincial High Court considered that the evidence submitted against the author was sufficient to counter the presumption of his innocence. Consequently, this part of the communication is insufficiently substantiated for the purposes of admissibility, and the Committee concludes that it is inadmissible under article 2 of the Optional Protocol.³

6.7 With regard to the violation of article 26 alleged by the author, in the sense that he did not enjoy equal treatment before the law, the Committee considers that the author has not shown any allegedly discriminatory treatment on the part of the domestic courts with respect to the aforementioned article. Consequently, the Committee considers that the allegations in question are insufficiently substantiated for the purposes of admissibility and that the part of the communication in question is inadmissible under article 2 of the Optional Protocol.

7. The Human Rights Committee therefore decides:

- (a) That the communication is inadmissible under article 2 of the Optional Protocol;
and
- (b) That this decision shall be communicated to the author of the communication and the State party.

[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.]

Notes

¹ Also known by the name “Joseph Semey”, by which he identifies himself in communication No. 986/2001, submitted on an earlier occasion to the Committee with regard to his sentence for another crime.

² Cf., inter alia, communications Nos. 811/1998, *Mula v. Republic of Guyana*, 867/1999, *Smartt v. Republic of Guyana*, 917/2000, *Arutyunyan v. Uzbekistan*, 927/2000, *Svetik v. Belarus*, 1006/2001, *Martínez Muñoz v. Spain*, 1084/2002, *Bochaton v. France*, 1138/2002, *Arenz v. Germany*, 1167/2003, *Ramil Rayos v. The Philippines* and 1399/2005, *Cuartero Casado v. Spain*.

³ Cf. communications Nos. 1399/2005, *Cuartero Casado v. Spain*, para. 4.4, and 1059/2002, *Carvallo Villar v. Spain*, para. 9.5.
