

Human Rights Committee finds Spain in violation of its obligation to provide an effective remedy

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Achabal Puertas v. Spain (Communication No. 1945/2010, CCPR/C/107/D/1945/2010)

Summary

In March 2013, the Human Rights Committee was asked to consider whether Spain had violated its obligations under the International Covenant on Civil and Political Rights in permitting conditions of incommunicado detention in police custody and thereby allowing alleged acts of torture to be committed by police.

The communication was submitted by a Spanish national under the Optional Protocol to the Covenant.

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Background

On 18 October 2000, the author of the communication, María Cruz Achabal Puertas, filed a criminal complaint with the First Instance Criminal Court in Madrid claiming that she had been tortured whilst in police custody from 7 to 9 June 1996. This treatment allegedly caused her to suffer from chronic post-traumatic stress disorder that had been diagnosed by various state-employed doctors. On 26 August 2002, the judge dismissed the case before it proceeded to trial on the basis that there were no objective grounds in the factual record for determining whether the alleged wrongful treatment had taken place.

On 11 October 2002, the author's subsequent petition to the Court to reverse its decision was rejected. The author then applied for permission to appeal before the Provincial Courts. On 21 May 2003, the Provincial Court of Madrid denied her petition and confirmed the decision at first instance. On 23 June 2003, the author filed a complaint with the Constitutional Court claiming that there had been sufficient factual basis to merit the case as lodged with the First Instance Criminal Court proceeding to trial. The Constitutional Court rejected the author's complaint on 12 January 2005.

On 2 November 2010, having exhausted all domestic remedies, the author filed this communication with the Committee under the Optional Protocol to the Convention. The author claimed that Spain had violated its obligation to treat all persons deprived of their liberty with humanity and respect for the inherent dignity of the human person under article 10(1) of the Convention by permitting incommunicado detention and thereby allowing the alleged torture by the State's police to take place.

The Committee's decision

In considering the complaint's admissibility, the Committee noted that the author had filed a complaint in relation to the same facts before the European Court of Human Rights (ECHR), which the ECHR had declared inadmissible in May 2008 on the grounds that there was no suggestion that Spain had violated the rights and freedoms guaranteed under the Convention. The Committee observed that article 5(2)(a) of the Optional Protocol precluded the Committee from considering issues that have been, or are being, examined under another procedure of international investigation or settlement. The Committee's jurisprudence also suggested that where the ECHR had based a declaration of admissibility on the merits of the case, the Committee should

treat the issue as having been decided for the purposes of article 5(2)(a). In the present circumstances however, the Committee decided (by a narrow majority) that the limited reasoning given by the ECHR indicated that it had not sufficiently considered the merits of the case for the purposes of article 5(2)(a). As the author's domestic remedies had been exhausted for the purposes of article 5(2)(b), the Committee therefore declared the communication to be admissible.

On the merits, the Committee considered that the issue raised by the author's complaint was whether the investigation by the domestic courts was sufficient to provide the author with the right to an effective remedy, and whether the facts revealed a violation of the right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment under article 7 of the Covenant (rather than article 10(1) as claimed by the author), either by itself or together with article 2(3).

In addressing this issue, the Committee noted Spain's general legal obligation, as a party to the Covenant, to ensure that its competent authorities investigate any allegations of torture promptly, thoroughly and impartially and take appropriate action against any persons found guilty. In the present case, the Committee considered that the investigatory case file, which had served as the basis for the case not proceeding to trial, did not meet the level of detail required by a complaint of torture.

Given the author's condition, the Committee also considered that the steps taken at the pre-trial stage were not sufficient to allow for an adequate examination of the facts relating to the complaint and, in particular, the supporting medical reports. Where there are difficulties in proving the existence of torture and ill-treatment due to the absence of physical evidence, the Committee considered that the State's investigation must be exhaustive. In addition, the physical or psychological harm caused to a person in detention, and especially incommunicado detention, should lead to a presumption of fact in favour of the victim.

The Committee therefore concluded that Spain was under an obligation, in accordance with article 2(3)(a) of the Covenant, to provide the author with an effective remedy. On that basis, the Committee recommended that Spain take steps to provide the author with:

- (a) a complete, impartial and effective investigation of the facts;
- (b) full reparations, including adequate compensation and the prosecution of any persons responsible;
and
- (c) specialist medical assistance.

The Committee further observed that Spain was under an obligation to prevent similar violations in the future. As such, the Committee recommended that Spain take the necessary measures, including by passing legislation, to prohibit incommunicado detention save in exceptional circumstances, and to recognise the right of all persons in police custody to choose their own legal counsel.

Spain must now submit its written response within six months of the Committee's decision, including any information on the action taken in light of the Committee's recommendations, and ensure that the Committee's decision is published widely.

Sam Hunter Jones is an international lawyer, based in Paris.