

**P.R. (name deleted) v. Spain, Communication No. 160/2000,
U.N. Doc. CAT/C/25/D/160/2000 (2001).**

Communication No. 160/2000

Submitted by: P.R. (name deleted) [represented by counsel]

Alleged victim: The author

State party: Spain

Date of the communication: 9 February 2000

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 23 November 2000,

Adopts the following decision:

1. The author of the communication is Mr. P.R., a Spanish national who claims to be the victim of violations by Spain of articles 12 and 13 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is represented by counsel. The Committee transmitted the communication to the State party, in accordance with article 22, paragraph 3, of the Convention, on 11 April 2000.

The facts as submitted by the author

2.1 The author claims that on the night of 29 October 1997, at about 3 a.m., as he was walking with two companions in Victoria Street in Murcia, he approached two local police officers to ask whether they knew of a bar that was open so that they could buy a few drinks. When one of the officers replied that it was not a proper hour for drinking, the author turned to his companions and made a disrespectful remark about the police. The two policemen immediately bore down on the author, punching him and hitting him with their truncheons, knocking him down and continuing to beat him on the ground. Other local police officers were called to the scene by the first two and joined in the beating. They then handcuffed him in a very painful way and took him to the police station in Correos Street, from which

he was later released. The injuries suffered by the author required medical attention at the Molina de Segura emergency unit.

2.2 On 31 October 1997, the author filed a complaint against the police officers with Investigating Court No. 1, which was on duty at the time, but no investigation was conducted.

2.3 The police officers who allegedly mounted the attack brought charges against the author that very day, 29 October 1997, accusing him of insulting officers of the law. In their charge, they claimed that at 4.55 a.m. the author of the communication had approached them to ask whether there were any bars open in the neighbourhood. The police officers had answered that there were none open at that hour and the author had responded with insults. They had asked for identification but he had refused, insulting them again. They had thereupon placed the author, who had offered resistance, in the police vehicle and had driven him to the police station for identification.

2.4 Investigating Court No. 6 of Murcia, before which the charges were brought, instituted a minor-offence procedure and summoned the parties to the oral proceedings on 25 November 1997. During the proceedings, the author stated that he had filed a complaint against the police officers with the court on duty. The judge thereupon suspended the proceedings and, on 27 November, requested Investigating Court No. 1 to transmit the author's complaint on the grounds that it had jurisdiction to undertake the relevant investigation. The judge finally pronounced judgement on 17 March 1998. He characterized the language used by the author to the police officers as a minor insult to an officer of the law and sentenced him to a fine and payment of the costs of the proceedings. The judgement mentioned that the author and the proposed witnesses had not appeared before the court and stated in one paragraph that the author had claimed to have been assaulted on the way to the police station. It stated in another paragraph, however, that, since neither the Office of the Public Prosecutor nor the author or his representative had brought charges during the proceedings and since no evidence had been adduced in support of the complaint, the police officers should be acquitted.

2.5 The author appealed against the judgement to the Provincial High Court on 21 April 1998, requesting that the judgement should be set aside and that the facts he had reported to the court on duty should be investigated as a possible offence as defined in articles 173 to 177 of the Criminal Code under the heading "Torture and other offences against the person". The author argued that the investigation would have required the opening of preliminary proceedings and the taking of statements from the alleged perpetrators, the victim and the witnesses. He further argued that his alleged offence should have been tried together with the facts stated in his

complaint, which were on no account prosecutable by a minor-offence procedure. Lastly, he claimed that the failure to investigate constituted a breach of article 12 of the Convention.

2.6 The Provincial High Court dismissed the appeal on 17 June 1998. According to the judgement, counsel for the author, at the oral proceedings on 25 November 1997, had merely requested that the complaint filed by his client should be joined to that before the court. The judge had acceded to that request, suspended the proceedings and set a new date for their resumption. The author had failed to appear for those proceedings without due reason. As he had thus failed to support his complaint at the appointed time, the judge had had no alternative but to reject it in the absence of evidence for the prosecution. The judgement concluded that the judicial proceedings had been terminated owing to the party's inaction.

2.7 The author rejects the arguments set forth in the judgement. He claims that he did attend the proceedings, although he arrived a few minutes late, and that the facts reported in his complaint should have been investigated automatically even if none of the parties had raised them in the proceedings, since they constituted circumstantial evidence of criminal conduct (a complaint having been filed and evidence submitted).

2.8 On 3 July 1998, the author filed an amparo application with the Constitutional Court, alleging violations of the following provisions: article 15 of the Constitution (right to physical integrity) and the corresponding articles of the Convention; the provision of article 24 of the Constitution concerning the right to an appropriate legal procedure, since the facts reported could not be dealt with in minor-offence proceedings but in ordinary criminal proceedings for more serious offences, which would not be prosecuted by an investigating judge; the provision of article 24 of the Constitution concerning the right to adversarial proceedings, since, despite the fact that the judgement by the Provincial High Court indicated that the Office of the Public Prosecutor objected to the appeal and requested confirmation of the initial judgement, the author had never been informed of the objection filed by the prosecutor and was thus denied the opportunity to challenge it; the jurisprudence of the Committee against Torture in respect of article 13 of the Convention. **(1)**

2.9 The Constitutional Court declared the appeal inadmissible in a resolution of 19 January 2000, stating, inter alia, that the contested judgements were constitutionally sound. It further stated that the author's procedural conduct had been the decisive factor because he had simply requested that his complaint against the officers of the Local Police should be joined to the subject matter of the proceedings, but without bringing charges against

them. The author's claim that his right to physical integrity had been violated was therefore completely unfounded.

The complaint

3.1 The author claims that the facts amount to a violation by Spain of article 12 of the Convention because the judicial authorities failed to conduct a prompt and impartial investigation despite the fact that there were reasonable grounds to believe that acts of torture or ill-treatment had been committed. Neither the author nor the witnesses nor the doctor who had testified to the assault was questioned. Moreover, the procedure envisaged in domestic legislation for the crime of torture had not been followed.

3.2 The author does not share the view of the judicial authorities that it was his inaction that determined the outcome of the legal proceedings. He considers that there was a violation of article 13 of the Convention, according to which it is enough for the victim simply to bring the facts to the attention of an authority of the State. Article 13 does not require the formal lodging of a complaint (a step that had been taken in his case) or an express statement of intent to institute and sustain a criminal action arising from the offence.

The State party's observations concerning admissibility

4. In its statement of 8 June 2000, the State party notes that the author did not indicate at any stage that the procedure for serious offences was to be applied to his complaint. On the contrary, at the minor-offence proceedings his counsel requested that his complaint against the police should be joined thereto. That means that he consented to his case being dealt with in the context of minor-offence proceedings. Court No. 6 summoned the author to attend the minor-offence proceedings "as complainant and defendant". However, neither he nor his counsel turned up for the proceedings at which all the evidence and findings were to be presented. Responsibility for failure to support a complaint and to present a defence against charges therefore lies with the person who failed to appear. Following his failure to attend, the author neither entered a plea nor submitted a document challenging the minor-offence procedure. It was only on appeal that the author complained, for the first time, of the failure to apply the procedure for serious offences to his complaint. But that charge was inconsistent with his previous conduct and was also untimely, since it was not filed in time or in due form, although the author had enjoyed the assistance of counsel from the outset. The communication should therefore be declared inadmissible on the ground of failure to exhaust domestic remedies.

The author's comments

5.1 The author reiterates the fact that there was never a prompt, serious and impartial investigation as required by the Convention, although he had lodged a complaint with the judicial authorities together with a medical report confirming that he had received multiple blows and bruises. He explains that the Spanish Criminal Code makes clear distinctions in its definitions between the serious offence of torture (art. 174) and the minor offence of assault (art. 617). In particular, the offence of torture is punishable by a prison term of two to six years and disqualification of the official for two to four years, while the offence of assault is punishable only by detention for three to six weekends or a fine. According to the author, for the purposes of the Convention the serious, prompt and impartial investigation required should be conducted in respect of the offence of torture and not that of assault. Otherwise, the protection against torture that the Convention seeks to guarantee would be ineffective. He also notes that the procedure for serious offences is different from that for minor offences. In the former case, the investigation is carried out by investigating judges and the prosecution by criminal courts or provincial high courts, while cases involving minor offences are decided by the investigating judges themselves.

5.2 The author further states that the judgement of the Provincial High Court completely disregarded the Convention despite the fact that he had invoked it in his appeal. Moreover, the argument on which the judgement is based is incompatible with the Convention, which does not require the investigation to be conducted by the victim himself, especially when he has submitted a complaint, a document which, according to the Committee's jurisprudence, is not even necessary for the conduct of a prompt and impartial investigation. Lastly, the author contests the State party's argument about the untimeliness of the complaint, claiming that the appeal was an appropriate means of remedying the lack of a serious, prompt and impartial investigation. The Provincial High Court demonstrated a lack of impartiality by distorting the legal framework applicable to a criminal act which the organs of State are required *ex officio* to prosecute. The author concludes that all available legal remedies have been exhausted, including the amparo application to the Constitutional Court.

Issues and proceedings before the Committee

6.1 Before considering any claims contained in the communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement. The Committee notes

that the State party has objected to admissibility on the grounds of failure to exhaust domestic remedies.

6.2 It is a fact undisputed by the author of the communication that, at the hearing on 25 November 1997 of oral minor-offence proceedings in Investigating Court No. 6 in Murcia, before which the complaint against him had been lodged by the police officers on 29 October 1997, it was his own lawyer who requested the suspension of the proceedings on the ground of the existence of the complaint lodged by his client against the police officers. That complaint had been lodged before Murcia Investigating Court No. 1, which had been on duty on the day it had been lodged, namely 31 October 1997. In addition, he had requested "the relevant joinder". Consequently, the joinder of the author's complaint against the police officers to that lodged by the officers against the author, which was being dealt with in oral minor-offence proceedings, was expressly requested by the author.

6.3 Between the suspended hearing of 25 November 1997 and the new hearing for the continuation of the proceedings, convened by decision of 12 December 1997 for 17 March 1998, the author, who could not have been unaware of the fact that the proceedings were continuing in accordance with the oral minor-offence procedure, did not, although he could have done so, apply for the replacement of that procedure by the ordinary criminal procedure, which he is now invoking as a basis for the communication submitted to the Committee.

7. In the light of the foregoing, the Committee, in accordance with the provisions of rule 107, paragraph 1 (c), of its rules of procedure, declares the communication inadmissible as constituting an abuse of the right to submit a communication under article 22 of the Convention.

8. This decision shall be transmitted to the State party and to the author of the communication.

Notes

1. The author cites the Committee's views on communication No. 59/1996 (Blanco Abad v. Spain), which states in paragraph 8.6: "The Committee observes that article 13 of the Convention does not require either the formal lodging of a complaint of torture under the procedure laid down in national

law or an express statement of intent to institute and sustain a criminal action arising from the offence, and that it is enough for the victim simply to bring the facts to the attention of an authority of the State for the latter to be obliged to consider it as a tacit but unequivocal expression of the victim's wish that the facts should be promptly and impartially investigated, as prescribed by this provision of the Convention." (See Official Records of the General Assembly, Fifty-third session, Supplement No. 44 (A/53/44, annex X), Report of the Committee against Torture.)