



**International covenant
on civil and
political rights**

Distr.
RESTRICTED*

CCPR/C/84/D/1399/2005
16 August 2005

Original: ENGLISH

HUMAN RIGHTS COMMITTEE
Eighty-fourth session
11 – 29 July 2005

DECISION

Communication No. 1399/2005

<u>Submitted by:</u>	Luis Cuartero Casado (not represented by counsel)
<u>Alleged victim:</u>	The author
<u>State party:</u>	Spain
<u>Date of communication:</u>	18 November 2004 (initial submission)
<u>Date of decision:</u>	25 July 2005

Subject matter: Evaluation of evidence and extent of the review of criminal case against complainant on appeal by Spanish courts

Procedural issues: Failure to substantiate claims

Substantive issues: Right to equal treatment before the courts and tribunals and right to have the sentence and conviction reviewed by a higher tribunal according to law.

Articles of the Covenant: 14, paragraphs 1, 3 (d) and 5.

Articles of the Optional Protocol: 2.

[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-fourth session

concerning

Communication No. 1399/2005*

<u>Submitted by:</u>	Luis Cuartero Casado (not represented by counsel)
<u>Alleged victim:</u>	The author
<u>State party:</u>	Spain
<u>Date of communication:</u>	18 November 2004 (initial submission)

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

Meeting on 25 July 2005

Adopts the following:

DECISION ON ADMISSIBILITY

1. The author of the communication, dated 18 November 2004, is Luis Cuartero Casado, a Spanish citizen born in 1960, previously sentenced in 1993 for sexual aggression to 17 years imprisonment, and who was on prison leave at the time of the events. He claims to be a victim of a violation by Spain of article 14, paragraphs 1, 3 (*d*) and 5, of the Covenant. He is not represented by counsel. The Optional Protocol entered into force for Spain on 25 April 1985.

Factual background

2.1 On 24 October 1999, two complaints for sexual aggression were filed by two young women staying at Hotel Terra Brava in Lloret de Mar – Platja de Frenals (Girona):

* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Alfredo Castillero Hoyos, 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, Sir Nigel Rodley, Mr. Ivan Shearer, Mr. Hipólito Solari-Yrigoyen, Ms. Ruth Wedgwood and Mr. Roman Wieruszewski.

a) The first complaint was filed at 9:30 am by a young Englishwoman, who had visited a pub in Platja Frenals the night before and was walking back to the hotel, when a man in a car stopped her, dragged her inside the vehicle and took her to a wood nearby, where he raped her. She then ran away and returned to the hotel. The following morning she denounced the attack and identified the author's photograph from a list made available by the police.

b) The second complaint was filed at 12:30 pm by a young German woman, who had visited a pub in Lloret de Mar the night before and was walking back to the hotel when a man attacked her, placed a knife to her throat, took her to a deserted street, covered her face with a jacket and attempted to rape her. She grabbed the knife in her aggressor's pocket and stabbed him in the back, cutting his jacket. As she started to shout and kick, the aggressor ran away and his car keys fell on the floor, which she kept.

2.2 On 28 October 1999, the Court of First Instance No. 3 of Blanes (Girona), ordered a search of the author's house in Lloret de Mar, where a jogging suit similar to the one described by the victims was found. The author's car was also searched and a hairgrip, a woman's wallet and a blanket were found. All these items were recognised by the victims.

2.3 On 28 March 2001, the Provincial Court of Girona indicted the author for a crime of sexual aggression with intercourse and for attempted sexual aggression with intercourse, aggravated by the use of a knife, and sentenced him to eleven years and to nine years and six months imprisonment respectively.

2.4 The author appealed to the Supreme Court, alleging errors in the assessment of the evidence and violation of the right to be presumed innocent, based on the allegedly contradictory testimonies of the victims. On 22 February 2002, the Supreme Court dismissed the author's appeal and confirmed the sentence of the Provincial Court.

The complaint

3.1 The author claims to be a victim of a violation of article 14, paragraphs 1 and 3 (*d*), of the Covenant. Both claims are based on an allegedly erroneous assessment of the evidence by the Spanish Courts, which did not take into account alleged contradictions in the testimonies, and a violation of his right to be presumed innocent.

3.2 The author further claims to be a victim of article 14, paragraph 5, of the Covenant, because he could not get a proper re-evaluation of the evidence in his case.

Issues and proceedings before the Committee

Consideration of the Committee

4.1 Pursuant to rule 93 of its Rules of Procedure, before considering any claim contained in a complaint, the Human Rights Committee must determine whether it is admissible under the Optional Protocol to the Covenant on Civil and Political Rights.

4.2 The Committee has ascertained, as required under article 5, paragraph 2(a), of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

4.3 With regard to the alleged violation of article 14, paragraphs 1 and 3 (d), the Committee recalls its constant jurisprudence that it is not competent to reevaluate findings of fact or reevaluate the application of domestic legislation, unless it can be ascertained that the decisions of domestic courts were arbitrary or amounted to a denial of justice¹. 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.

4.4 With regard to the alleged violation of article 14, paragraph 5, it transpires from the text of the judgment of the Supreme Court that the Court did deal extensively with the assessment of the evidence by the court of first instance. In this regard, the Supreme Court considered that the elements of proof presented against the author were sufficient to outweigh the presumption of innocence, according to the test established by jurisprudence to ascertain the existence of sufficient evidence for the prosecution in certain types of crimes such as sexual aggressions. The claim regarding article 14, paragraph 5, therefore, is insufficiently substantiated for purposes of admissibility. The Committee concludes that this claim is inadmissible under article 2 of the Optional Protocol.

4.5 The Human Rights Committee therefore decides:

- a) That the communication is inadmissible under article 2;
- b) That the decision be transmitted to the State party and to the author.

[Adopted in English, French and Spanish, the English 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.]

¹ Cases 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* and 1167/2003, *Ramil Rayos v. The Philippines*.