L. Communication No. 1550/2007, *Brian Hill v. Spain* (Decision adopted on 28 July 2009, Ninety-sixth session)[*]

Submitted by:	Brian Anthony Hill (not represented by counsel)
Alleged victim:	The author
State party:	Spain
Date of communication:	19 January 2006 (initial submission)
Subject matter:	Detention of the author, who had been released on parole, to serve his full sentence
Procedural issues:	Lack of substantiation; non-exhaustion of domestic remedies
Substantive issues:	Arbitrary detention; torture; lack of a review by a higher tribunal; interference with a person's privacy and family
Articles of the Covenant:	2, paragraphs 2 and 3; 7; 9, paragraph 1; 14, paragraphs 5 and 7; and 17, paragraphs 1 and 2
Articles of the Optional Protocol:	2; 5, paragraph 2 (b)

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

Meeting on 28 July 2009,

Adopts the following:

Decision on admissibility

1.1 The author of the communication, dated 19 January 2006, is Brian Anthony Hill, a British citizen born in 1963. He claims to

[*] The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Mohammed Ayat, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Ahmad Amin Fathalla, Mr. Yuji Iwasawa, Ms. Helen Keller, Mr. Rajsoomer Lallah, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Mr. Michael O'Flaherty, Mr. José Luis Pérez Sanchez-Cerro, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabián Omar Salvioli, Mr. Krister Thelin and Ms. Ruth Wedgwood.

be the victim of violations by Spain of article 2, paragraphs 2 and 3; article 7; article 9, paragraphs 1, 2, 3 and 4; article 10, paragraph 1; article 14, paragraphs 1, 3 (a), 5 and 7; and article 17, paragraphs 1 and 2, of the Covenant. The Optional Protocol entered into force for the State party on 25 April 1985. The author is not represented by counsel.

1.2 On 23 July 2007, the Rapporteur on New Communications and Interim Measures, acting on behalf of the Committee, agreed to the State party's request that the admissibility of the communication should be considered separately from the merits.

The facts as submitted by the author

2.1 In 1986, the author and his brother were sentenced to six years in prison by the Provincial High Court of Valencia for setting fire to a bar. In 1988, they were granted parole after serving half of their respective sentences. In 1992, they submitted a communication to the Committee claiming that their rights under the Covenant had been violated with respect to their detention and trial. In 1997, the Committee adopted Views concluding that there had been violations of article 9, paragraph 3; article 10; and article 14, paragraphs 3 (c) and (d) and 5. The Committee also concluded that the Hill brothers were entitled to an effective remedy entailing compensation.[1]

2.2 With a view to obliging the State party to take measures to follow up on the Views of the Committee, the author filed a complaint invoking the financial responsibility of the State for the failings of the justice system, which was rejected by the Ministry of Justice in a decision of 2 November 2002. The author then filed an administrative appeal with the National High Court on 19 February 2003.

2.3 At the same time, the author requested an annulment of the proceedings leading to the verdict of 20 November 1986. This request was dismissed by a decision of the National High Court on 12 November 1999 on the grounds that it was time-barred. In response to this dismissal, the author submitted an application for *amparo*. The Constitutional Court declared it inadmissible in a decision of 13 November 2000, deeming that *amparo* was not the right procedure for annulling a criminal conviction and that the appropriate remedy was a judicial review, as provided for in the Code of Criminal Procedure.

2.4 Accordingly, the author filed an application for judicial review before the Supreme Court. This resulted in a decision of

[1] Communication No. 526/1993, *Hill v. Spain*, Views of 2 April 1997. The case remains open in accordance with the procedures for follow-up to the Committee's Views.

25 July 2002, which annulled the proceedings subsequent to the submission of the appeal in cassation against the verdict of the trial court. Consequently, the author lodged an appeal in cassation, invoking the Committee's Views and claiming, inter alia, that his right to a fair trial, and in particular to the presumption of innocence, had been violated. The Court re-examined, inter alia, the police record, the record of the identification parade and the testimony of the primary witness. Finding no irregularities in the evaluation of the evidence by the trial court, it rejected the appeal on 11 September 2003. On 5 November 2003, the Provincial High Court of Valencia upheld the original sentence and announced that proceedings would be brought against the author and his brother with a view to obliging them to serve it in full.

2.5 In response to the decision in cassation, the author submitted an application for *amparo* on 30 October 2003, invoking the violation of the right to effective legal protection and to a defence, because there was no effective interpretation from English to Spanish during the testimony given in the pretrial phase; the right to a fair trial, because the identification proceedings by which he was identified as the person who started the fire were not carried out in accordance with due process of law; and, lastly, his right to be presumed innocent, because he was convicted without sufficient evidence. The Constitutional Court concluded that the decision in cassation did not violate those rights and declared the application inadmissible on 27 March 2006.

2.6 Then, on 7 April 2005, the Provincial High Court ordered the author's detention. In response, the author lodged an application for reconsideration on 13 April with the Court claiming that, owing to the time that had elapsed since the conviction, the crime was time-barred. The Court declared the appeal inadmissible on 20 April 2005, finding that no time-bar was applicable. In response, the author filed an action for annulment on 22 April 2005, which was dismissed on 10 May 2005. Subsequently, on 18 May 2005, he requested the suspension of his sentence, which was denied on 20 May 2005. Finally, the author submitted an application for *amparo* before the Constitutional Court, which was declared inadmissible on 1 March 2006 on the grounds that it was submitted after the legal deadline. Regarding the request for suspension of the sentence, the Court indicated that the judicial remedy preceding such a request had not been exhausted, because, when the suspension of a sentence is denied, it is possible to lodge an application for reconsideration with a higher court.

2.7 On 8 October 2005, the author was arrested at Lisbon airport under a European arrest warrant issued at the request of the Provincial High Court. On 14 November 2005, he was handed over to the Spanish authorities at Badajoz. He states that he was not informed of the reasons for his arrest and that when he asked for an interpreter and a lawyer to be assigned to him he was told that they were not necessary. After spending two hours in a police station, he was transferred to the Badajoz jail. He states that when he appeared before a judge two days later, he declared that he had been granted parole in 1988 in due form and that he had informed the relevant authorities of his address in the United Kingdom.

2.8 The day after he was handed over to the Spanish authorities, he filed a habeas corpus petition. By a decision of 17 November 2005, the investigating judge (No. 2 of Badajoz) declined to initiate the proceedings, on the grounds that the author was under the authority of the Provincial High Court of Valencia and that his case had none of the elements of an illegal detention. On 27 December 2005, he wrote to the prison warden for information on his situation. By way of reply, he received a spreadsheet detailing the sentence served and that remaining to be served. The author believed that the calculation was incorrect, and therefore submitted a complaint to the Prison Supervision Court on 29 December 2005.

2.9 On 1 February 2006, he was placed under a grade 2 regime, which meant that he must remain in prison for six months. The author contested this decision before the prison warden. On 19 February 2006, he received a document from the Provincial High Court of Valencia which set out in detail the portion of his sentence as yet unserved. The author wrote to the Court to say that he did not agree with the calculation. He also made a request to the deputy warden to place him under a grade 3 regime, which would allow him to be released conditionally as a foreign offender. On 28 February 2006, he was placed under the grade 3 regime. However, he was not conditionally released until 11 April 2006, despite repeated requests to be released sooner on the grounds that his father was seriously ill. His father died in the United Kingdom on 7 April 2006.

The complaint

3.1 The author claims that the legal remedies and procedures needed to comply with the Committee's Views do not exist in Spain. He maintains that the failure to recognize the validity of the Views is a violation of article 2, paragraph 2, of the Covenant. Furthermore, the decisions of the Provincial High Court of Valencia and the European arrest warrant issued against

him are contrary to the Committee's Views and constitute a violation of article 2, paragraph 3, of the Covenant.

3.2 The author also maintains that his arrest in 2005 contravenes article 9, paragraph 1, of the Covenant, since under Spanish law the statute of limitations for the crime of which he was convicted expired in 2003, 15 years after the decision in cassation of 6 July 1988 upholding his conviction. Furthermore, his arrest was contrary to the Committee's Views and, when it took place, there was still an application for *amparo* pending before the Constitutional Court.

3.3 The Supreme Court could argue that its decision of 25 July 2002, annulling the proceedings subsequent to the submission of the appeal in cassation against the verdict of the trial court, interrupted the 15-year period. However, article 116 of the Criminal Code stipulates that the time-bar period begins to run on the date of the enforceable judgement or of a violation of the terms of his sentence, if the sentence has begun. According to the State party, the author did not fully serve his sentence, and therefore violated its terms, which caused the Provincial High Court of Valencia to order his arrest on 1 March 1989. The period of 15 years therefore began on 1 September 1988 (the date on which, as a condition of parole, the author had to appear before the court but failed to do so, since at the time of his previous appearance they had told him it was not necessary) and ended on 1 September 2003. The author attaches a note of 20 December 1988 from the Supreme Court to the Embassy of the United Kingdom, in which it declares that the appeal in cassation against the verdict of the trial court was dismissed on 6 July 1988, and that therefore the judgement of the Provincial High Court was enforceable. Furthermore, the Criminal Code of 1995 lowered the time-bar period from 15 to 10 years, and the author might well have benefited retroactively from that change.

3.4 The author claims that he is the victim of a violation of article 9, paragraphs 2 and 3, of the Covenant, since the Spanish authorities to whom he was handed over following his arrest in Portugal did not inform him of the reasons for his arrest, or bring him before a judge or any other officer authorized by law to exercise judicial power.

3.5 The author also claims that a violation of article 9, paragraph 4, occurred, since his habeas corpus petition was summarily dismissed and since, given the nature of the case, the judge should have consulted a higher authority. Furthermore, there was no remedy against the decision to dismiss the habeas corpus petition.

3.6 The author also claims that a violation of article 10, paragraph 1, occurred, since the letters he sent to various authorities (the Provincial High Court of Valencia, the Constitutional Court, the Prime Minister and the King) went unanswered; the actions taken by the British authorities were unsuccessful; the Provincial High Court took five months to give the author the documents setting out the balance of his sentence, which he needed in order to request his release; the judge of the Prison Supervision Court took three months to respond to his request for an urgent meeting; and on two occasions the prison authorities denied his request for special leave to visit his seriously-ill father solely because his father lived abroad.

3.7 The author also claims that a violation of articles 7 and 17, paragraphs 1 and 2, of the Covenant occurred. In his view, the fact that he has spent 21 years seeking recognition of the injury inflicted on him by the State party; that he was arrested in Lisbon in front of his wife and daughter and spent six months in prison in deplorable conditions; that he lost his job in the United Kingdom as a result, and that he was unable to visit his seriously-ill father, constitutes torture as well as interference with his privacy and his family.

3.8 The author also claims that a violation of article 14, paragraph 1, of the Covenant occurred, since while he was detained he was not granted a public hearing or a fair trial. He contends that article 14, paragraph 3 (a), of the Covenant was violated, since he was not informed promptly, in a language he understood, of the nature and cause of the charge against him. He also states that article 14, paragraph 5, of the Covenant was violated, since the Supreme Court denied him the right to judicial review, the only remedy that would allow a proper consideration of all aspects of the case, in particular new facts and evidence.

3.9 Lastly, the author claims that article 14, paragraph 7, of the Covenant was violated, since he was punished again for a crime for which he had already been convicted, served his sentence, and discharged his criminal responsibility.

State party's observations on admissibility

4.1 In a note verbale of 23 May 2007, the State party states that the communication should be considered inadmissible. It points out that it has, on various occasions, informed the Committee about proceedings brought by the author in which he invoked the Committee's Views. In particular, it recalls that the Supreme Court, in a decision of 25 July 2002 arising from the judicial review, annulled the proceedings subsequent to the submission of the appeal in cassation against the verdict of the

trial court. Subsequently, on 11 September 2003, the Supreme Court confirmed the verdict of the Provincial High Court, a decision which was fully substantiated and which paid special attention to all questions raised by the author.

4.2 Contrary to what was stated by the author, the terms of his parole in 1988 required him to appear before the court on the first and fifteenth day of every month. The author stated that he had given his address as the British Embassy because he was looking for accommodation, and that, as soon as he found some, he would forward the address. The State party attaches a copy of a note of 9 January 1989 from the Directorate-General of the Civil Guard to the Provincial High Court, which indicates that on their release from prison the author and his brother, whose last known address was the British Embassy in Madrid, had left Spain and gone to Portugal. In a decision of 1 March 1989, the Provincial High Court declared that the author had violated his parole.

4.3 Once the judgement of 11 September 2003 had upheld the original sentence, there was nothing irregular in adopting timely measures for its enforcement, including the issuance of an international arrest warrant, which was later executed by the Portuguese authorities. The documents provided by the author himself demonstrate that on his arrest by those authorities he was promptly informed of his rights and he even challenged the reasons for his arrest. Subsequently, within the context of the habeas corpus procedure, the public prosecutor issued a report in which it was stated that the author was under the authority of the Provincial High Court of Valencia for the enforcement of his sentence and that there was an international arrest warrant against him. In response to the judge's decision that the author's detention was not illegal, the author filed no appeal of any kind, not even an application for *amparo*; therefore domestic remedies have not been exhausted in this respect. The alleged violations of various provisions of article 9 are irrelevant, since they are contradicted by the documents provided by the author himself, regarding both his appearance before the Portuguese court and the outcome of the habeas corpus procedure.

4.4 The alleged violations of article 14, paragraphs 1, 3 (a) and 7, are also irrelevant, because the detention resulted from the enforcement of a sentence upheld by the Supreme Court and not from new proceedings or from a punishment for a new offence for which he had been convicted. It was simply a matter of enforcing a sentence.

4.5 Article 2, paragraph 2, of the Covenant does not bestow a right on the author. As for paragraph 3, the author makes a

general reference, with no substantiation, to the issuance of a European arrest warrant, which bears no relation per se to the right to an effective remedy. Regarding the alleged violation of article 17, the matter was not raised in the domestic courts, and is totally unfounded.

4.6 The only clearly identifiable claims in the communication refer to the lack of an effective remedy, the lack of an effective review of the verdict and the punishment, and the time-bar supposedly applicable to the sentence. Regarding the review of the sentence, the Supreme Court, taking into consideration the Committee's Views, annulled the decision that had been made in cassation and conducted a new appeal in cassation, reaching a decision on 11 September 2003. This decision unquestionably constitutes a review of the verdict and the punishment, not only examining the legal questions but also decisively reviewing the evidence. There was therefore no violation of article 14, paragraph 5, of the Covenant.

4.7 Finally, the main thrust of the communication seems to concern the alleged time-bar applicable to the sentence after 15 years had elapsed. However, the decisions of the Provincial High Court which rejected the application for annulment on that basis were not appealed in a timely way. Therefore, the author did not exhaust domestic remedies with respect to that matter.

Author's comments on the State party's submission

5.1 On 12 September 2007, the author provided his comments on the observations of the State party. He indicates that, in order for the Committee to consider the key aspects of his communication, he wishes to withdraw his complaints regarding a possible violation of article 9, paragraphs 2, 3 and 4, article 10, paragraph 1, and article 14, paragraphs 1 and 3 (a), even though the facts as presented raise questions in relation to those provisions.

5.2 According to the author, the Supreme Court, in its decision of 25 July 2002, offered only a partial response to the author's application for a judicial review, offering instead an appeal in cassation. That remedy did not allow for a full review of the conviction and sentence. Nor did it take into consideration new facts, or the validity of the evidence on which the conviction was based. Therefore, it cannot be stated that the author had access to all the remedies available under Spanish law. He nevertheless maintains that he has exhausted all the remedies to which he had access.

5.3 The author states that, although his communication refers to a specific fact, namely his return to detention, the detention cannot be considered separately from the events dating back to 1985.

After the Committee issued its Views in 1997, the author lodged an appeal for annulment before the Provincial High Court of Valencia, three applications for *amparo* before the Constitutional Court, an application for judicial review before the Supreme Court and a second appeal in cassation, also before the Supreme Court. Furthermore, his lawyer filed an application for reconsideration against the decision of the Provincial High Court to issue a European arrest warrant, claiming that the author's criminal responsibility had been extinguished in 2003 under the statute of limitations. When that application was rejected, the author submitted an application for annulment before the same Court, followed by a request for the suspension of his sentence. When he was arrested in October 2005, he had an application for *amparo* pending, which was ruled upon on 1 March 2006, after he had spent several months in prison. The author states that he does not know what other remedies were available. Were there any, they would not have been effective, since he was extradited and detained while appeals were still pending. In any case, the processing of those appeals was delayed in a deliberate and unreasonable manner by the State party.

5.4 In the view of the author, the parole granted in 1988 has already been examined by the Committee, and therefore is not germane to the question of admissibility.

5.5 With respect to the decision dismissing the habeas corpus petition, the author recalls that it cannot be appealed, according to the regulatory law. The State party suggests that the author could have submitted an application for *amparo*. However, at that time the author had two *amparo* applications pending, one of which was related to the European arrest warrant. Given the time it takes to complete the *amparo* procedure, such a remedy could not have achieved the goal of putting an immediate end to a violation related to arbitrary detention.

5.6 In the view of the author, none of the many violations of which he was a victim, as set out by the Committee in its Views, have been redressed, in spite of the remedies sought.

5.7 With respect to the time-bar for the crime of which he was convicted, the author reiterates that on 1 August 2003, 15 years had passed since his release, and that, consequently, this was the date on which his criminal responsibility was extinguished. The author rejects the argument of the State party that domestic remedies were not exhausted, and recalls that his lawyer raised the matter of the time-bar when he contested the Provincial High Court's decision to issue the European arrest warrant.

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Human Rights Committee must decide, in accordance with rule 93 of its rules of procedure, whether the communication is admissible under the Optional Protocol to the Covenant.

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

6.3 In his initial communication, the author claimed that he was the victim of violations of article 2, paragraphs 2 and 3; article 7; article 9, paragraphs 1, 2, 3 and 4; article 10, paragraph 1; article 14, paragraphs 1, 3 (a), 5 and 7; and article 17, paragraphs 1 and 2, of the Covenant by Spain arising from his arrest in October 2005 under the arrest warrant issued by the Provincial High Court of Valencia. Subsequently, in his comments on the State party's observations, the author withdrew his claims regarding the possible violation of article 9, paragraphs 2, 3 and 4; article 10, paragraph 1; and article 14, paragraphs 1 and 3 (a). The Committee shall therefore only consider the facts in relation to article 2, paragraphs 2 and 3; article 7; article 9, paragraph 1; article 14, paragraphs 5 and 7; and article 17, paragraphs 1 and 2, of the Covenant.

6.4 The author claims that his arrest on 8 October 2005 and his subsequent stay in prison until 11 April 2006, under an order issued by the Provincial High Court of Valencia for the purpose of having him serve the full sentence imposed on him in 1986, gave rise to several violations of the Covenant. He invokes article 2, paragraphs 2 and 3, on the grounds that the State party did not recognize the validity of the Committee's Views of 2 April 1997, and that the arrest warrant contravened those Views. The Committee recalls its jurisprudence under which the provisions of article 2 of the Covenant, which set out the general obligations of States parties, cannot, in themselves, give rise to a complaint in a communication submitted under the Optional Protocol. The Committee therefore finds that the author's claims in this regard are inadmissible under article 2 of the Optional Protocol.[2]

6.5 The author claims that the fact that he has spent 21 years seeking recognition of the injury inflicted on him by the State party and that, as a result of his most recent arrest, which took place in front of his family, he spent six months in prison in deplorable conditions, lost his job and was unable to visit his seriously-ill father, constitutes torture and consequently entails a

[2] Communication No. 802/1998, *Rogerson v. Australia*, Views of 3 April 2002, para. 7.9.

violation of article 7 of the Covenant. The Committee considers, however, that these complaints have not been sufficiently substantiated for purposes of admissibility, and are therefore inadmissible under article 2 of the Optional Protocol.

6.6 With regard to the facts referred to in the preceding paragraph, the author claims that they also constitute a violation of article 17, paragraphs 1 and 2, of the Covenant. The Committee notes the assertion by the State party that the matter was not raised in the domestic courts, and the absence from the file of any indication that it was. Consequently, the Committee considers that the author failed to exhaust domestic remedies with regard to this part of the communication, in accordance with article 5, paragraph 2 (b), of the Optional Protocol.

6.7 The author asserts that his arrest violated article 9, paragraph 1, and article 14, paragraph 7, of the Covenant because, when it occurred, the offence was time-barred. The author declares that he had filed, with the Provincial High Court of Valencia, an application for reconsideration regarding the arrest warrant, invoking the existence of a statute of limitations, and then an appeal for annulment. He also requested a suspension of his sentence. Subsequently, he submitted an application for *amparo*, which was pending when he was arrested. The State party argues that the decisions of the Provincial High Court denying the appeal for annulment were not challenged in a timely manner. The Committee points out that, although the author filed an application for *amparo*, it was inadmissible because it was filed after the legal deadline had passed. The Committee also points out that the author did not explain his reasons for not complying with this legal requirement and therefore finds that domestic remedies were not exhausted, as required by article 5, paragraph 2 (b), of the Optional Protocol, with respect to this part of the communication.[3]

6.8 The author claims that there was a violation of article 14, paragraph 5, of the Covenant, because the Supreme Court denied him the right to a judicial review, the only remedy allowing for a legitimate examination of all aspects of the case. The Committee notes, however, that it is evident from the rulings of the Constitutional Court on 27 March 2006 and of the Supreme Court on 11 September 2003 that the latter court examined, during the appeal in cassation, the grounds for appeal submitted by the author, in particular the alleged infringement of his right to a fair trial and his right to be presumed innocent, and concluded that the evidence was sufficient to outweigh the presumption of

[3] Communication No. 1003/2001, *P.L. v. Germany*, decision of 22 October 2003, para. 6.6.

innocence. The Committee therefore finds that the claim related to article 14, paragraph 5, is insufficiently substantiated for the purposes of admissibility, and is therefore inadmissible under article 2 of the Optional Protocol.[4]

7. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under article 2 and article 5, paragraph 2 (b), of the Optional Protocol;

(b) That this decision shall be communicated to the author and to 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 present report.]

[4] Communications No. 1490/2006, *Pindado v. Spain*, decision of 30 October 2008, para. 6.5, and No. 1441/2005, *García v. Spain*, decision of 25 July 2006, para. 4.3.