

**W. Communication No. 1869/2009, *Sanjuán v. Spain*
(Decision adopted on 26 July 2010, ninety-ninth session)***

<i>Submitted by:</i>	Mario Alfonso Sanjuán (represented by counsel, Joaquín Ruíz-Giménez Aguilar and Máximo-Rafael Blázquez Aldana)
<i>Alleged victims:</i>	The author
<i>State party:</i>	Spain
<i>Date of communication:</i>	13 January 2009 (initial submission)
<i>Subject matter:</i>	Evaluation of evidence and scope of the review of criminal cases on appeal by Spanish courts
<i>Procedural issue:</i>	Failure to substantiate claims
<i>Substantive issue:</i>	Right to have the conviction and sentence reviewed by a higher tribunal according to law
<i>Article of the Covenant:</i>	14, paragraph 5
<i>Article of the Optional Protocol:</i>	2

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

Meeting on 26 July 2010,

Adopts the following:

Decision on admissibility

1.1 The author of the communication, dated 13 January 2009, is Mario Alfonso Sanjuán, a Spanish national, who claims to be a victim of a violation by Spain of article 14, paragraph 5, of the Covenant. The Optional Protocol entered into force for Spain on 25 April 1985. The author is represented by counsel, Joaquín Ruíz-Giménez Aguilar and Máximo-Rafael Blázquez Aldana.

1.2 On 7 May 2009, the Rapporteur on New Communications and Interim Measures, acting on behalf of the Committee, decided that the admissibility of the communication should be considered separately from the merits.

* The following members of the Committee participated in the consideration of the present communication: Mr. Prafullachandra Natwarlal Bhagwati, Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Mahjoub El Haiba, Mr. Ahmad Amin Fathalla, Mr. Yuji Iwasawa, Ms. Helen Keller, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Mr. Michael O'Flaherty, Mr. José Luis Pérez Sánchez-Cerro, Mr. Rafael Rivas Posada, Mr. Fabián Omar Salvioli and Mr. Krister Thelin.

Factual background

2.1 On 30 April 2004, the Provincial High Court of Zaragoza sentenced the author to four years' imprisonment, a fine and disqualification for the offence of fraud related to the sale of works of art.

2.2 The author filed an appeal in cassation against the decision with the Second Division of the Supreme Court on the following grounds: refusal to admit documentary evidence, violation of the right to be presumed innocent, errors of fact in the evaluation of the evidence and improper application of articles 248, 250 and 74 of the Spanish Criminal Code. In a judgement issued on 20 February 2006, the Supreme Court rejected the appeal and upheld the sentence in its entirety.¹

2.3 On 3 May 2006, the author submitted an application for *amparo* to the Constitutional Court, citing the right to an effective legal remedy and the right to have the conviction and sentence reviewed by a higher tribunal as established in article 14, paragraph 5, of the Covenant. The Constitutional Court rejected the application on 21 July 2008.

The complaint

3. The author alleges a violation of his right to have the conviction and sentence submitted to and reviewed by a higher tribunal, in accordance with article 14, paragraph 5, of the Covenant. The author argues that the Supreme Court did not conduct a full and effective review of the facts that had been declared proven by the Provincial High Court.

State party's observations on admissibility

4.1 In its observations issued on 3 May 2009, the State party indicates that the scope of the Spanish remedy of cassation has been expanded, and is not therefore limited to a review of the law applied. The State party refers to the Committee's case law,² in which the remedy of cassation is considered sufficient for the purposes of article 14, paragraph 5, of the Covenant.

4.2 The State party further maintains that the sentence handed down by the Supreme Court addresses all the grounds of appeal raised by the author, in particular those relating to the dismissal of evidence in the first instance proceedings. It points out that the Supreme Court provided a specific and substantiated explanation of the reasons why the evidence submitted was ruled to be unnecessary and to serve no exculpatory purpose. It adds that the Supreme Court conducted a thorough review of the sufficiency of the evidence for prosecution and gave a detailed and reasoned response to the author's objections. The State party asks for the communication to be declared inadmissible on the grounds that it is not sufficiently substantiated and constitutes an abuse of the purpose of the Covenant.

¹ With regard to the violation of the presumption of innocence (second ground of appeal), the Supreme Court indicated that: "The review in cassation performed by this Court covers: (a) whether there is sufficient evidence obtained and submitted to the proceedings without violating constitutional or ordinary law; (b) whether or not, in its explanation, which must be presented in a reasoned and substantiated manner, as to how it arrived at its decision, the lower court diverged from the guidelines derived from general experience, rules of logic or principles or rules of any other nature."

² Including communications No. 1389/2005, *Bertelli Gálvez v. Spain*, decision of 25 July 2005; No. 1399/2005, *Cuartero Casado v. Spain*, decision of 25 July 2005; and No. 1323/2004, *Lozano Araez et al. v. Spain*, decision of 28 October 2005.

Author's comments on the State party's observations

5. The author submitted his comments on the State party's observations on admissibility on 26 June 2009. He provides a summary of Spanish case law concerning the scope of the review of criminal cases on appeal and reiterates that, in his case, there was no proper second hearing allowing for a review of the facts and of his conviction. He adds that, had a second hearing actually taken place, either the Supreme Court or the Constitutional Court would have been able to examine all the evidence submitted by the author's counsel and unduly dismissed by the trial court, and to review and modify the facts erroneously declared proven.

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 the communication is admissible under the Optional Protocol to the Covenant.

6.2 The Committee notes that the State party has not submitted any information suggesting the non-exhaustion of domestic remedies, and therefore considers there to be no impediment to examining the communication under article 5, paragraph 2 (b), of the Optional Protocol.

6.3 The Committee takes note of the author's arguments in support of his assertion that the remedy of cassation does not constitute a full review as required under article 14, paragraph 5, of the Covenant. It also notes the State party's claims that the Supreme Court conducted a full review of the Provincial High Court's ruling. The Committee observes that the Supreme Court's decision of 20 February 2006 indicates that the Court considered each of the author's grounds of appeal, and reviewed the Provincial High Court's assessment of the sufficiency of the evidence. Consequently, the Committee considers that the author's complaint has not been sufficiently substantiated for purposes of admissibility, and must therefore be declared inadmissible in accordance with 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;
- (b) That this decision shall be communicated to the State party and to the authors.

[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.]