HUMAN RIGHTS COMMITTEE

Griffin v. Spain

Communication No. 493/1992

4 April 1995

CCPR/C/53/D/493/1992*

VIEWS

Submitted by: Gerald John Griffin

Victim: The author

State party: Spain

Date of communication: 13 January 1992 (initial submission)

Date of decision on admissibility: 11 October 1993

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

Meeting on 4 April 1995,

Having concluded its consideration of communication No. 493/1992 submitted to the Human Rights Committee by Gerald John Griffin under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and the State party,

Adopts its

Views under article 5, paragraph 4, of the Optional Protocol

Facts as submitted by the author

1. The author of the communication is Gerald John Griffin, a Canadian citizen born in 1948.

At the time of submitting his communication, he was detained at a penitentiary at Vitoria, Spain. He claims to be the victim of violations by Spain of articles 7; 9, paragraphs 1 and 2; 10; 14; 17 and 26 of the International Covenant on Civil and Political Rights.

2.1 In March 1991, the author and an acquaintance, R. L., started a pleasure journey through Europe. Upon arrival in Amsterdam, they rented a camper. R. L. suggested paying the rent with the author's credit card, as his own account was limited, and said that he would later reimburse the author. In Amsterdam, R. L. introduced the author to another Canadian, I. G, with whom he went off to bars on several occasions, leaving the author behind. One day R. L. and I. G. returned with a different camper, claiming that the first one had broken down.

2.2 I. G. suggested meeting again at Ketama, Morocco, where they could stay at a friend's place. The author and R. L. then drove to Morocco, where they spent five days; the camper was parked in a garage.

2.3 On 17 April 1991, on their way back to the Netherlands, the author and R. L. were arrested by the police of Melilla, Spain. It transpired that R. L., I. G. and his Moroccan friend had concealed 68 kilograms of hashish in the camper. R. L. allegedly confessed his guilt and told the police that the author was innocent. It is submitted that, during the interrogation, the police did not seek the assistance of an interpreter, although the author and R. L. did not speak Spanish and the investigating officers did not speak English. The statements were taken down in Spanish.

2.4 On 18 April 1991, the author and R. L. were brought before an examining magistrate. Upon entering the court room, the interpreter allegedly told the author that R. L. had confessed and had said that the author was innocent. The examining magistrate allegedly stated that if the author had no criminal record over the past five years, he would be released within a few days. The author admitted that, in 1971, he had been convicted for possession of 28 grams of hashish and sentenced to six months suspended imprisonment.

2.5 The author was incarcerated at Melilla. Through the mediation of a prisoner who spoke a little English, the author obtained the services of a barrister and a solicitor. He states that the barrister asked for large sums of money, promising on several occasions that she would return with all the documents pertaining to his case and with an interpreter, so as to prepare his defence in consultation with him. The author notes that she tricked him constantly, assuring him and his relatives that he would be released soon. In spite of her promises, she did not prepare his defence. In this context, the author adds that, two days before the start of the trial, she came to the prison, again without an interpreter. With the assistance of a prisoner who spoke broken English, she told the author to reply with "yes" or "no" to all questions posed during the trial.

2.6 On 28 October 1991, the author and R. L. were tried before the Audiencia Provincial (Sector de Malaga) at Melilla. The author states that the court interpreter spoke only a little English and translated into French, but that neither he nor R. L. had any substantial knowledge of French. The barrister, however, did not raise any objections. During the trial, the judge asked the author whether he had always been accompanying R. L. when he drove

the camper. Owing to poor translation of the question, the author misunderstood it and answered in the affirmative.

2.7 The author was sentenced to imprisonment for eight years, four months and one day. He requested his barrister to appeal on his behalf; she first refused, then again requested a large sum of money, upon which the author filed a complaint against her with the bar (Colegio de Abogados) of Melilla.

2.8 On 26 November 1991, riots broke out in the prison of Melilla. Prisoners set fire to the patio and climbed on to the roof. The author explains that as he has a lame leg he could not climb up and, because the guards had locked the door to the main building, he was nearly caught in the fire. He states that,only because he helped to carry a man who appeared to suffer from a heart attack, he was allowed by the guards to leave the patio. After the police intervened with teargas and rubber bullets, and the prison authorities promised improvements in the conditions of detention, the situation calmed down. On 28 November 1991, the author was transferred to a prison at Seville.

2.9 On 10 January 1992, the author was informed that a legal aid lawyer had been assigned to him and that an appeal was being filed on his behalf. He states that he made numerous unsuccessful attempts to obtain information about the identity of the lawyer and the date of the hearing of the appeal. On 7 March 1992, he started a hunger strike to enforce his right to a fair trial. He was subsequently transferred to the infirmary of a prison at Malaga. At the end of June 1992, he learned from another lawyer that the Supreme Court had dismissed the appeal on 15 June 1992. According to the author, the Supreme Court did not give reasons for its decision.

2.10 The author states that his health is poor and that he suffers from extreme depressions because of his unfair treatment by the Spanish authorities. He lost 21 kg because of his hunger strike and developed pneumonia. In September 1992, he resumed eating, as his hunger strike had not had any effect upon the Spanish authorities.

2.11 Finally, the author submits that he has exhausted all available domestic remedies. In this context, he states that he wrote letters to several instances in Spain, including the Constitutional Court, the Ombudsman (Defensor del Pueblo), the judge and public prosecutor and the Prosecutor General (Fiscal General del Estado). The Constitutional Court reportedly replied that it was unable to assist him, but that his case would be passed on to the Prosecutor General. The latter never replied to the author's letters. The Ombudsman reportedly replied that he could not be of any assistance to him because he was awaiting trial. The author questions the effectiveness of this remedy, as the Ombudsman replied to an inmate of the prison that he was unable to assist him because he (the inmate) had already been sentenced. By a letter of 3 March 1992, the prosecutor informed the author that he would look into the claim of absence of a competent interpreter, but he never received any reply.

The complaint

3.1 The author claims that he has been subjected to cruel, inhuman and degrading treatment and punishment during his incarceration at the prison of Melilla. The living conditions in this prison are said to be "worse than those depicted in the film 'Midnight Express'"; a 500-yearold prison, virtually unchanged, infested with rats, lice, cockroaches and diseases; 30 persons per cell, among them old men, women, adolescents and an eight-monthold baby; no windows, but only steel bars open to the cold and the wind; high incidence of suicide, selfmutilation, violent fights and beatings; human faeces all over the floor as the toilet, a hole in the ground, was flowing over; sea water for showers and often for drink as well; urinesoaked blankets and mattresses to sleep on in spite of the fact that the supply rooms were full of new bed linen, clothes etc. He adds that he has learned that the prison has been "cleaned up" since the riots, but that he can provide the Committee with a list of witnesses and with a more detailed account of conditions and events in the said prison.

3.2 Concerning article 9, paragraphs 1 and 2, of the Covenant, the author claims that he was arbitrarily arrested and detained since there was no evidence against him. He submits that some people he met in prison and who were charged with a similar offence were either released or acquitted, whereas he was detained in spite of R. L.'s confession and the promise of the examining magistrate to release him if he had no criminal record. He further contends that, as there was no interpreter present at the time of their arrest, he was not informed of the reasons for his arrest and of the charges against him.

3.3 The author claims that, while awaiting trial, he was detained in a cell together with persons convicted of murder, rape, drug trafficking, armed robbery, etc. According to him, there is no distinction between convicted and unconvicted prisoners in Spain. Furthermore, he claims that the Spanish penitentiary system does not provide facilities for reformation and social rehabilitation. In this context, he submits that he, together with an inmate at the Melilla prison, tried to teach reading and writing to some prisoners, but that the prison director did not allow them to do so. Moreover, the prison authorities have ignored all his requests for Spanish grammar books and a dictionary. All this is said to constitute a violation of article 10.

3.4 The author claims that his rights under article 14 of the Covenant have been violated. With regard to unfair trial, he submits that the trial lasted only 10 minutes, that neither he nor R. L. understood what was going on, and that he was not allowed to give evidence or to defend himself. He points out that neither the judge nor the barrister objected to the incompetence of the interpreter, and that his conviction might be based on the discrepancy between his original statement to the examining magistrate (namely, that he was often left behind by R. L. and the other Canadian and that they once returned with a different camper) and his reply at the trial (his affirmation that he was always accompanying R. L. when the latter drove the camper). The author reiterates that there is no evidence against him. In support of his allegations, he encloses two affidavits of R. L, dated 28 January 1992, concerning the author's innocence and the inadequacy of the interpreter. The author further claims that he has been sentenced to a longer term of imprisonment than Spanish nationals normally are in similar cases.

3.5 As to the preparation of his defence, the author affirms that he has never received a

single document pertaining to his case. He notes that R. L. had admitted that he owned the camper, that in Canada he had prepared its roof to conceal the drugs, that it was then shipped to the Netherlands where he and I. G. forged the papers and licence plates using those of the camper rented in Amsterdam, and that he had invited the author to join him on the trip merely to make it appear less conspicuous. The author contends that the barrister did not make any efforts to obtain evidence about the veracity of R. L.'s confession, and that she never interviewed them in the presence of an interpreter.

3.6 With regard to the appeal, the author submits that the lawyer assigned to him never sought to contact him to discuss the case. It was not until September 1992, three months after the dismissal of the appeal, that he learned the name of the representative. Furthermore, the author submits that he was denied the opportunity to defend himself on appeal, as the hearing was held in his absence.

3.7 The author further contends that the Spanish authorities have interfered with his mail, in violation of article 17. He submits that on several occasions letters addressed to him by friends, family and his lawyer in Canada were either returned to the sender or simply disappeared.

3.8 Finally, the author claims that he is discriminated against by the Spanish authorities. In this context, he submits that he has not been treated in the same manner before the courts as Spanish nationals are treated, for example with regard to facilities to prepare the defence or length of term of imprisonment. He further submits that the prison authorities have refused to provide him with work (which makes it possible to have the sentence reduced by one day for every day of work), whereas Spanish prisoners are able to obtain work upon request.

State party's admissibility information and observations and author's comments

4.1 In its submissions dated 28 October 1992 and 22 March 1993, the State party argues that the communication is inadmissible under article 5, paragraph 2 (b), of the Optional Protocol, as the author has failed to apply for **amparo** before the Constitutional Court of Spain.

4.2 With regard to the claims of illtreatment in prison, the State party refers to the Ombudsman's 1991 report on illtreatment in Spanish prisons. It highlights the efforts made by the Director of Penitentiary Affairs, as well as by the prison officials, to eliminate instances of illtreatment in prison. The Ombudsman points out that his conclusions are based not only on complaints received or periodic visits to the penitentiaries, but also on the results of investigations into such complaints. He reports that, in 1991, his office received only a few sufficiently substantiated complaints about illtreatment; two of them were immediately investigated by the penitentiary administration. He concludes that the Director of Penitentiary Affairs has thoroughly cooperated in the investigation of complaints transmitted to his office by the Ombudsman, and that the penitentiary administration has always performed its duty rapidly and efficiently, by investigating the events complained of, adopting adequate remedies wherever the allegations could be proved, and adopting protective measures for disciplinary proceedings. The State party submits that the Ombudsman received several letters from the author, that each letter was examined by the

Ombudsman, and that on each occasion the author was informed about the Ombudsman's findings.

4.3 The State party notes that, on 31 March 1992, the author was transferred to a prison at Malaga, where he received the necessary medical attention, and where he had numerous interviews with the sociologist and legal adviser, who informed him on the possibilities of his defence. Furthermore, the medical report indicates that the author did not begin a genuine hunger strike but limited himself to selective nutrition, as a result of which he lost 7 kg, and that no serious complications arose. Finally, the State party points out that the author did not initiate proceedings with regard to the alleged inhuman conditions of detention.

4.4 With regard to the author's remaining complaints, the State party submits copies of the relevant documents and argues that:

> There was sufficient evidence against the accused for the police to arrest and detain them. In this context, the State party refers to the documents and photographs relating to the quantity of drugs found and their value and to the camper.
>
> Neither the author nor R. L. made any statements to the police. When arrested, they were informed of the charges against them and of their rights, under article 520 of the Code of Criminal Procedure. Although a lawyer was assigned to them, the author and R. L. indicated that they did not want to make any statements in the absence of an interpreter.
>
> While represented by a lawyer and assisted by an interpreter, the author made the following deposition during the preliminary hearing: "that he had no knowledge of the drugs which were hidden in the camper, that he was travelling with his friend, that they made a stop at Ketama where they stayed for five days, that the camper was parked in a garage near to the house, the camper from the other Canadian whom they had met in Amsterdam".
>
> R. L.'s deposition reads as follows: "that he went to Morocco with the intention to pick up the hashish and to transport it to Canada, that a third person had contacted him for this purpose, that he did not know this person's name, ..., that Gerald John Griffin did not know of the hashish, that he only accompanied him for the purpose of tourism, that they spent seven days in Ketama, doing sightseeing during those seven days, that they were lodged at the house of a Moroccan friend, who was a friend of his Canadian friend (I. G.), ...".
>
> Upon inquiry, the examining magistrate was informed by Interpol in Canada that the author had a prior criminal record for holding and distributing narcotics, for which he had been sentenced to six months' (suspended) imprisonment.
>
> Likewise, a letter, dated 9 October 1991, from the Solicitor General of Canada, addressed to the author's counsel in Canada, belonged to the documents bearing on the case; in that letter, counsel was informed that the author had been granted a

pardon under the provisions of the Criminal Records Act.

According to forensic experts at Melilla, drug traffickers generally claim that one of them is innocent. In evaluating the evidence in drug trafficking offences, the courts do not only consider the statements made by the accused, but also the quantity of drugs involved and the hiding-place.

The alleged inadequate preparation and conduct of the author's defence at the trial cannot be attributed to the State party, as the barrister was privately retained.

Besides, the State party submits, the barrister's professional skills are reflected in her letter of 22 November 1991, addressed to the Colegio de Abogados of Melilla. In that letter, the barrister states that, on 30 October 1991, she informed the author of his sentence, and of the possibility of appealing to the Supreme Court by way of request for cassation, either with the assistance of a solicitor and barrister assigned to him by the judicial authorities, or by retaining them privately. The author instructed her to prepare and file a petition for leave to appeal, which she set out to do on 2 November 1991. However, on 8 November 1991, the author informed her of his decision to retain another lawyer for the purpose of the appeal. By registered letter of 11 November 1991, she pointed out to the author that he had to grant power of attorney to any lawyer retained by him. She further informed him that she would forward all documents in his case to his representatives, once he had provided her with their names and addresses, and once he had paid the outstanding fees. On 21 November 1991, she was notified that the Audiencia de Malaga considered that the appeal had been prepared and that it summoned the defence to appear before the Supreme Court in 15 days. She then immediately called the author and again pointed out to him the urgency of empowering the solicitor and barrister who would represent him. Upon contacting the barrister who, according to the author, had agreed to represent him, she was told that he was not in charge of the appeal.

The State party points out that, subsequently, the author's barrister, concerned about the expiration of the statute of limitations and about the fact that the author had not taken any measures to secure legal representation, requested the Colegio to intervene.

Upon instructions of the Colegio, the author's solicitor requested the Supreme Court, on 29 November 1991, to assign legal assistance to the author and to stay the proceedings in the intervening period. The State party submits that it was only after this intervention that the author himself requested legal aid.

Both the accused made statements during the trial, while assisted by an interpreter and a lawyer. No complaints were ever received about the competence of the court interpreter who is assigned to the tribunals of Melilla.

It is noted that the judge asked R. L. and not the author whether he was always accompanied by the latter, whereupon R. L. answered "that the author accompanied

him during the whole trip". According to the State party, the judges concerned never directed any question to the author.

On 15 June 1992, the Supreme Court dismissed the author's appeal; the written judgement was issued on 3 July 1992. The State party submits that the author was adequately represented on appeal; in this context, it refers to the grounds of appeal. It further submits that the barrister who was assigned to the author and who filed the grounds ofappeal received a telephone call from another lawyer, who requested permission, on behalf of the Canadian Embassy, to conduct the author's defence before the Supreme Court. By a letter of 15 June 1992, the barrister granted permission.

4.5 The State party reiterates that the author has not applied for **amparo** before the Constitutional Court, although it was adequately explained to him how to proceed.

5. In his comments, the author reiterates that he has exhausted domestic remedies and encloses letters addressed to him by the Ombudsman, and the Registrars of the Supreme Court and the Constitutional Court. The Ombudsman, by letters of 11 December 1991 and 7 April 1992, informed the author of his right to legal representation and that he could not be of any assistance to him while the judicial proceedings were still pending in his case. By a letter of 5 February 1992, the Registrar of the Constitutional Court informed the author about the requirements for the recourse of **amparo**, among which were:

enclosure of a copy of the decision from which leave to appeal is sought;

exhaustion of all remedies available concerning the protection of the constitutional rights invoked;

the request for **amparo** should be made within 20 days following the notification of the decision which allows no further appeal;

representation by a solicitor and barrister; a request for legal aid should be accompanied by a detailed report of the facts on which the recourse of **amparo** is based.

The author was further informed that his letter would be sent to the Prosecutor General who would take action in his case, if deemed necessary.

The Committee's decision on admissibility

6.1 At its forty-ninth session, the Committee considered the admissibility of the communication. It noted the State party's contention that the communication was inadmissible because the author had failed to apply for **amparo** before the Constitutional Court, and had not fulfilled the procedural requirements that must be met if he wanted to avail himself of this remedy. It noted the author's allegation, which remained uncontested, that, after two years of imprisonment, he had not received any of the court documents in his

case, which are a requisite for an appeal to the Constitutional Court. The Committee further observed that the Supreme Court had dismissed the author's appeal on 15 June 1992, that he was informally notified of that decision at the end of June 1992, and that the lawyer who had been appointed to him had not contacted him to date. In the circumstances of the case, the Committee did not consider that a petition for **amparo** before the Constitutional Court was a remedy available to the author. Furthermore, taking into account the fact that the statutory limits for filing a petition for **amparo** had expired, this remedy was no longer available. It was not apparent that the responsibility for thissituation was attributable to the author. Therefore, the Committee did not find itself precluded from considering the communication under article 5, paragraph 2 (b), of the Optional Protocol.

6.2 The Committee considered that the author had failed to substantiate, for purposes of admissibility, his claims under article 9, paragraph 1, and articles 17 and 26 of the Covenant. Accordingly, the Committee found this part of the communication inadmissible under article 2 of the Optional Protocol.

6.3 The Committee noted that the author had invoked article 7 in respect of his allegations concerning the events and conditions of the prison of Melilla. It found, however, that the facts as described by the author fell rather within the scope of article 10.

6.4 On 11 October 1993, the Committee declared the communication admissible in so far as it appeared to raise issues under article 9, paragraph 2, and articles 10 and 14 of the Covenant.

The State party's submission on the merits and comments of the author

7.1 In its submission under article 4, paragraph 2, of the Optional Protocol, dated 31 May 1994, the State party indicates that, on 30 April 1993, the author was deported, under the 1983 Strasbourg Convention on the Deportation of Convicted Persons, to serve the rest of his sentence in Canada; he was released on parole on 8 August 1994. The State party refers to its earlier submissions and adds the following:

7.2 As to the claim under article 9, paragraph 2, the State party points out that the author and R. L. were arrested on 17 April 1991, at 11.30 p.m., after the police had searched their camper and discovered the drugs. The police reports (which were also signed by the lawyer who was assigned to the author and R. L. for purposes of an interrogation) reveal that the police refrained from taking statements from both men, because there was no interpreter present at the police station. The State party further points out that, the following morning, both the accused were brought before an examining magistrate; while represented by a lawyer and assisted by an interpreter, and having been informed of the charges against him and of his rights, the author made the deposition referred to in paragraph 4.4. above. On the same day (18 April 1991), the examining magistrate ordered the author's provisional detention. The State party concludes that the author was arrested in accordance with the law and benefited from all procedural guarantees, and that the depositions show the thoroughness with which the arrest was carried out, as well as the promptness with which the author was brought before a judge.

7.3 The State party submits that the author's claims under article 10 are unsubstantiated. In respect of the author's allegation that there is no distinction between convicted and unconvicted prisoners in Spain, the State party refers to articles 15 and 16 of the General Penitentiary Act, and submits that a distinction is made between accused and convicted persons and, within the category of convicted persons, between first offenders and recidivists. In particular, article 16 of the Act provides that, upon entering a penitentiary, prisoners will be immediately separated, taking into account sex, age,antecedents, physical and mental state and, when it concerns a convicted person, the requirements of the treatment.

7.4 The State party refers to the reports of two doctors who examined the author in the prison of Malaga, and who observed that the author did not begin a genuine hunger strike but limited himself to selective nutrition, as a result of which he lost 7 kg, and that no serious complications arose. It further refers to article 134 of the General Penitentiary Act in which the right of prisoners to complain about the treatment or about the prison regime in general is laid down, as well as the procedure and the persons to whom the complaint should be directed. The State party points out that there is no record of any complaint submitted by the author about his treatment in prison or the prison regime; on the contrary, it is submitted, the author has benefited from a reduction of his sentence by doing cleaning work, and he has received all necessary attention. The State party concludes that there is no evidence in support of the author's claims, and that he has failed to exhaust domestic remedies in respect of his claims under article 10 of the Covenant. It appears from the enclosures that, on 3 July 1993, a new penitentiary was opened at Melilla, and that the old prison, dating from 1885, was closed.

7.5 As to the author's claims under article 14, the State party reiterates that the Audiencia Provincial in Melilla has never received a complaint about the competence of Mr. Hassan Mohatar, the court interpreter. Furthermore, the State party points to the deposition which the author made on 18 April 1991 before the examining magistrate, and submits that he did not mention anything about the fact that he was left behind by R. L. and the other Canadian, or that they once returned with a different camper. It further reiterates that, during the trial, the author was not asked anything, and if there was any question from the judge, it was directed to R. L., who replied "that Gerald accompanied him all the time during the trip". a/

7.6 The State party submits that the decision of the Audiencia Provincial is based on applicable law, and that it is for the courts to evaluate the facts and evidence. It points out that the Supreme Court reviewed the author's case and came to the following conclusion: "... the facts are fully established during the trial hearing, which is accepted by the appellant himself, who admits that he was arrested by the Guardia Civil in the port of Melilla, when he was going, in the company of the other accused, in a vehicle which had 68 kg of hashish ... hidden in its roof, ... coming from Morocco. From this, and from the accused's statements and the examination of their passports, it can be deduced that they undertook the trip together and that they obtained [the drugs] in Morocco for the subsequent traffic .... Thus, evidence for the charge exists ..., which detracts from the presumption of innocence (invoked by the author). The appellant seeks to give his own evaluation of the evidence, which comes exclusively within the competence of the tribunal ...".

7.7 Furthermore, the Supreme Court rejected the author's complaint that the court of first instance had committed an error in the evaluation of the evidence on the basis of documents that were submitted in the proceedings; in this context, the author referred to his and his coaccused's depositions, to the letters they had addressed to the examining magistrate, and to the record of the trial hearing. In declaring the claim inadmissible, the Supreme Courtreiterated its jurisprudence that: "depositions of witnesses or accused are nothing else but personal documentary evidence, and therefore cannot serve to challenge in cassation an error of fact flowing from documents that answer for the trial judge's mistake; and the letters referred to, ..., are rather a statement ..., which lacks the guarantees of the presence of a judge, registrar and defence attorney; especially when a statement is given during the preliminary inquiry and subsequently during the [trial] hearing". The State party concludes that the author, advised by counsel, did not apply for **amparo** against the Supreme Court's decision.

8.1 The author affirms that, on 8 August 1994, he was released on parole in Canada. He states that he is still willing to stand a retrial in Spain to prove his innocence, provided that a competent lawyer, interpreter and impartial observers are present. For his comments on the State party's submissions, he refers to his previous letters in which he pointed out, **inter alia**, that pursuant to article 4, paragraph 2, of the Optional Protocol, the State party has the duty to investigate in good faith all allegations of violations of the Covenant made against it and its authorities.

8.2 In this context, he submitted that the State party did not address his specific complaints, but was refuting his allegations in a general manner, and that he could not be expected "as a prisoner illegally tried, imprisoned and convicted in the face of overwhelming evidence to my innocence, with no resources, to provide proof, most of which is in the hands of the very people and organisations I am denouncing". He challenged the State party to invite the Committee to visit the prison of Melilla, to provide the Committee with the interpreter's **titulo de interprete**, and the date of qualification. In this context, he reiterated that the interpreter himself had indicated that he had not been appointed to interpret in English, but in Arabic and French. The author further requested the State party to make available to him all court documents relating to his case.

Examination of the merits

9.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as provided for in article 5, paragraph 1, of the Optional Protocol.

9.2 With regard to the author's claim that, as there was no interpreter present at the time of his arrest, he was not informed of the reasons for his arrest and of the charges against him, the Committee notes from the information before it that the author was arrested and taken into custody at 11:30 p.m. on 17 April 1991, after the police, in the presence of the author, had searched the camper and discovered the drugs. The police reports further reveal that the police refrained from taking his statement in the absence of an interpreter, and that the following morning the drugs were weighed in the presence of the author. He was then

brought before the examining magistrate and, with the use of an interpreter, he was informed of the charges against him. The Committee observes that, although no interpreter was present during the arrest, it is wholly unreasonable to argue that the author was unaware of the reasons for his arrest. In any event, he was promptly informed, in his own language, of the charges heldagainst him. The Committee therefore finds no violation of article 9, paragraph 2, of the Covenant.

9.3 As to the author's claim of a violation of article 10, on account of his conditions of detention, the Committee notes that they relate primarily to his incarceration at the prison of Melilla, where he was held from 18 April to 28 November 1991. Mr. Griffin has provided a detailed account about those conditions (see para. 3.1 above). The State party has not addressed this part of the author's complaint, confining itself to his treatment in the prison of Malaga, where he was transferred after his detention at Melilla, and to setting out relevant legislation. This apart, it has merely indicated that the old prison of Melilla was replaced by a modern penitentiary in the summer of 1993. In the absence of State party information on the conditions of detention at the prison of Melilla in 1991, and in the light of the author's detailed account of those conditions and their effect on him, the Committee concludes that Mr. Griffin's rights under article 10, paragraph 1, have been violated during his detention from 18 April to 28 November 1991.

9.4 The Committee has also noted the author's claim that, while awaiting trial at Melilla prison, he was detained together with convicted persons. The State party has merely explained that relevant Spanish legislation (arts. 15 and 16 of the General Penitentiary Act) provides for the separation of accused and convicted persons (see para. 7.3 above), without making clear whether the author was in fact separated from convicted prisoners while awaiting trial. The Committee notes that the author has sufficiently substantiated this allegation and concludes that there has been a violation of article 10, paragraph 2, in his case.

9.5 The Committee notes that the author claims that he did not receive a fair trial because of the incompetence of the court interpreter and the judge's failure to intervene in this respect, and that he was convicted because of poor translation of a question, as a result of which his statement during the trial differed from his original statement to the examining magistrate. The Committee notes, however, that the author did not complain about the competence of the court interpreter to the judge, although he could have done so. In the circumstances, the Committee finds no violation of article 14, paragraph 3 (f), of the Covenant.

9.6 The author further claims that there was no evidence against him. The Committee recalls that it is generally for the appellate courts of States parties to the Covenant to evaluate the facts and evidence in a particular case. It is not, in principle, for the Committee to review the facts and evidence presented to, and evaluated by, the domestic courts, unless it can be ascertained that the proceedings were manifestly arbitrary, that there were procedural irregularities amounting to a denial of justice, or that the judge manifestly violated his obligation of impartiality.

9.7 The Committee notes that the author was assisted by a lawyer and interpreter when he made the statement to the examining magistrate set out in paragraph 4.4 above. It further notes that the author has signed the statement, which makes no reference to the fact that he was often left behind by R. L. and the other Canadian and that they once returned with a different camper. Furthermore, it transpires from the Acta del Juicio that the author merely stated during the trial hearing that he had no knowledge of the drugs concealed in the camper, and that, as submitted by the State party, R. L. testified that the author accompanied him during the whole trip. In the Committee's opinion, the author's claim that he was not allowed to give evidence or that he had inadequate interpretation during the hearing is not sufficiently substantiated. He was given the opportunity to make a statement, and it was R. L. and not the author himself who made the disputed affirmation.

9.8 As to the author's complaint about inadequate preparation and conduct of his defence at trial, the Committee notes that the barrister was privately retained by R. L. and the author, who granted power of attorney to her on 26 April 1991. It further notes from the information submitted by the author, that he was in constant contact with his lawyer in Canada and with the Canadian Embassy in Madrid, and that he had been assigned an attorney for the purpose of the preliminary hearing. If the author was dissatisfied with the performance of the barrister, he could have requested the judicial authorities to assign a lawyer to him, or he could have requested his Canadian lawyer to assist him in obtaining the services of another lawyer. Instead, the author continued to retain the services of the said barrister after his trial and conviction, until 8 November 1991. The Committee considers that, in the circumstances, any complaints, whether verified or not, about the author's barrister's conduct prior to or during the trial cannot be attributed to the State party. Accordingly, the Committee finds no violation of article 14 of the Covenant in this respect.

9.9 The Committee has taken note of the information submitted by the State party about the efforts made by the author's barrister, solicitor and the Colegio de Abogados of Melilla in respect of the author's appeal to the Supreme Court, and of the author's ambivalent attitude in spite of having been informed about the requirement of legal representation and the statute of limitations. It notes that the author had a legal representative, and this legal representative had access to the relevant court documents. This raises doubts about the veracity of his claim that he has never received a single document in his case. The Committee observes that the author was assigned legal representation for the purpose of his appeal, that grounds of appeal were argued on his behalf, and that his appeal was heard by the Supreme Court on the basis of a written procedure (**sin celebración de vista**), in conformity with article 893 **bis** (a) of the Code of Criminal Procedure. In the circumstances, and taking into account the fact that the case has been reviewed by the Supreme Court, the Committee finds no violation of article 14 in respect of the author's appeal.

10. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, finds that the facts before it disclose a violation of article 10, paragraphs 1 and 2, of the Covenant.

11. The Committee is of the view that Mr. Griffin is entitled, under article 2, paragraph 3 (a), of the Covenant, to a remedy, including appropriate compensation, for the period of his

detention in the prison of Melilla.

12. Bearing in mind that, by becoming a State party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, and to provide an effective and enforceable remedy in case a violation has been established, and while welcoming the State party's information that the old prison of Melilla was closed and replaced by a new penitentiary in 1993, the Committee wishes to receive from the State party, within 90 days, information about the measures taken to give effect to its views.

[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.]

Notes

*/ Made public by decision of the Human Rights Committee.

a/ In this context, the State party refers to the handwritten annotations on the Acta del Juicio (Oral).