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Michael and Brian Hill v. Spain, Communication No. 526/1993, U.N. Doc. CCPR/C/59/D/526/1993 (2 April 1997).

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HUMAN RIGHTS COMMITTEE

Fifty-ninth session

24 March - 11 April 1997

VIEWS

Communication No. 526/1993

Submitted by: Michael and Brian Hill

Victims: The authors

State party: Spain

Date of communication: 1 October 1992 (initial submission)

Date of adoption of Views: 2 April 1997

On 2 April 1997, the Human Rights Committee adopted its Views under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 526/1993. The text of the Views is appended to the present document.

[ANNEX]

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ANNEX*

Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights

- Fifty-ninth session -

concerning

Communication No. 526/1993**

Submitted by: Michael and Brian Hill

Victims: The authors

State party: Spain

Date of communication: 1 October 1992 (initial submission)

Date of decision on admissibility: 22 March 1995

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

Meeting on 2 April 1997,

Having concluded its consideration of communication No. 526/1993 submitted to the Human Rights Committee by Messrs. Michael and Brian Hill 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 authors of the communication and the State party,

Adopts the following:

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

1. The authors of the communication are Michael Hill, born in 1952, and Brian Hill, born in 1963, both British citizens, residing in Herefordshire, United Kingdom of Great Britain and Northern Ireland. They claim to be victims of violations by Spain of articles 9 and 10 and article 14, paragraphs 1, 2 and 3(b) and (e), of the International Covenant on Civil and Political Rights. Michael Hill also invokes article 14, paragraph 3(d), of the Covenant. The Covenant entered into force for Spain on 27 August 1977, and the Optional Protocol on 25 April 1985.

The facts as submitted by the authors

2.1 The authors owned a construction firm in Cheltenham, United Kingdom, which declared bankruptcy during the detention of the authors in Spain. In July 1985, they went on holiday to Spain. The GandÌa police arrested them on 16 July 1985, on suspicion of having firebombed a bar in GandÌa, an accusation which the authors have denied since the time of their arrest, claiming that they were in the bar until 2.30 a.m. but did not return at 4 a.m. to set fire to the premises.

2.2 At the police station, the authors requested the police to allow them to contact the British Consulate, so as to obtain the aid of a consular representative who could assist as an independent interpreter. The request was denied, and a young, unqualified interpreter, a student interpreter, was called to assist in the interrogation, which took place without the presence of defence counsel. The authors state that they could not express themselves properly, as they did not speak Spanish, and the interpreter's English was very poor. As a result, serious misunderstandings allegedly arose. They deny having been informed of their rights at the time of their arrest or during the interrogation and allege that they were not properly informed of the reasons for their detention until 7 or 8 hours, respectively, after the arrest.

2.3 The authors further state that they were confronted with an alleged eyewitness to the crime during a so-called identification parade made up of the authors, in handcuffs, and two uniformed policemen. The witness, who initially could not describe the authors of the crime, eventually pointed them out.

2.4 They also complain that their new camper, valued at 2.5 million pesetas, as well as all their money and other personal effects, were confiscated and not returned by the police.

2.5 On 19 July 1985, the authors were formally charged with arson and causing damage to private property. The indictment stated that the authors, on 16 July 1985, had left the bar at 3 a.m., driven away in their camper, returned at 4 a.m. and thrown a bottle containing petrol and petrol-soaked paper through a window of the bar.

2.6 On 20 July 1985, they appeared before the examining magistrate (GandÌa No. 1) in order to submit a statement denying their involvement in the crime.

2.7 After having been held in police custody for 10 days, for five of which they were allegedly left without food and with only warm water to drink, they were transferred to a prison in Valencia.

2.8 On 29 July 1985, a lawyer was assigned to them for the preliminary hearing; this lawyer allegedly told the authors that, if they could pay a certain amount of money, they would be released. It is not clear from the authors' submissions how the preliminary hearing proceeded. It would appear, however, that they claim that confusion and misunderstandings were common, due to the incompetence of the interpreter. In this context, it is submitted that the police records stated that their camper operated on ApetrÛleo" (diesel). When asked by the examining magistrate (who was also under the impression that the camper ran on diesel) what substance their spare container contained, they replied to him that it was filled with petrol, which was translated as ApetrÛleo" by the interpreter. The judge then said that they were lying. The authors attempted to explain that their camper ran on petrol, and that in the back of the vehicle they had a spare four-litre container filled with petrol. According to them, the judge must have seen or smelled from a sample that the container was indeed filled with Agasolina" (petrol), and since he believed that the camper ran on diesel, he must have thought that there was a container with petrol for manufacturing the Molotov cocktail.

2.9 Upon conclusion of the preliminary hearing, the authors were informed that the trial would take place in November 1985. However, the trial was delayed, reportedly on the ground that some documents could not be found. On 26 November 1985, the authors were summoned to court to sign some papers, whereupon the judge told them that he would contact their lawyer in order to set a new date for the trial. On 10 December 1985, the authors informed the legal aid lawyer that his services were no longer required, as they were not satisfied with his conduct of the case.

2.10 The authors secured private legal representation on 4 December 1985. On 17 January 1986, the lawyer submitted an application to the court for the authors' release on bail, mainly on the ground that their construction firm was in a state of bankruptcy owing to their detention. Upon the advice of the public prosecutor, bail was denied on 21 February 1986. The authors complained that, although they had paid large sums of money to the lawyer, no progress was being made in their case, as he was ignoring their instructions. On 31 July 1986, they dismissed the lawyer. As the authors did not hear from him again, they assumed that the lawyer had notified the relevant authorities of their decision and that a legal aid lawyer would be assigned to them. However, it was not until 22 October 1986 that the lawyer notified the court of his withdrawal from the case.

2.11 On 1 November 1986, a new legal aid lawyer was assigned to the authors. The trial was scheduled to start on 3 November 1986. The first question from the public prosecutor was what fuel their camper used. The authors again replied that it ran on petrol, which this time was translated as Agasolina". After having given the same reply three times, the authors requested an adjournment of the trial, so that the prosecution could verify their claim. They also asked for an adjournment on the ground that they had had only a 20-minute interview with their defence lawyer since he had been assigned to their case. The trial was postponed for two weeks.

3.1 The authors complain that the legal aid lawyer did not make much effort to prepare their defence. They state that, when he visited them on 1 November 1986, he was accompanied by an interpreter who spoke barely any English; the lawyer did not even have the case file with him. After the trial was adjourned, the lawyer only visited them on 14 November 1986, for 40 minutes, again without the case file, and this time without the interpreter. The authors further claim that, although the lawyer was assigned and paid by the State party, he demanded 500,000 pesetas from their father for alleged expenses prior to the hearing.

3.2 With the assistance of two bilingual inmates, the authors prepared their own defence. They decided that Michael would defend himself in court and that Brian would leave it to the lawyer, to whom they provided all the relevant material.

3.3 On 17 November 1986, the authors were tried in the Provincial High Court of Valencia. Through the interpreter, Michael Hill informed the judge of his intention to defend himself in person, pursuant to article 6, paragraph 3(c), of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The judge asked him whether he spoke Spanish and whether he was a lawyer; when he replied in the negative, the judge told him to sit down and be quiet.

3.4 The prosecution's case was based solely on an alleged eyewitness, who had testified during the preliminary investigations that he had met with the authors prior to the incident and that their camper was parked in front of his house. At about 4 a.m., he had seen two youths resembling the authors throw a flaming bottle into the bar and leave in a grey camper. He had immediately called the police. The authors submit that the statements made by the witness during the preliminary investigations are contradictory in a number of respects and that, during the trial, the witness could not identify them. He was asked three times by the judge to take a look at the accused, and each time the witness said that Ahe could not remember the youths", that Ahe was an old man" and that Ait had happened 16 months ago". Furthermore, under cross-examination, he failed to give a clear description of the camper, and stated that Athe vehicle used by the perpetrators could have been British, Austrian or even Japanese".

3.5 The authors explain that, as the lawyer only asked the witness four irrelevant questions about the camper and did not take up the list of questions which they had prepared specially about the irregularities in the so-called identification parade, Michael Hill again requested the right to defend himself in person. He informed the judge that he wanted to cross-examine the prosecution witness and call a witness for the defence who was present in court. The judge allegedly replied that he would have the opportunity to do all those things on appeal, demonstrating clearly that at that point he had already decided to convict them in violation of their right to be presumed innocent. After a trial lasting barely 40 minutes, the authors were convicted as charged and sentenced to six years and one day of imprisonment and to the payment of 1,935,000 pesetas in damages to the owner of the bar.

3.6 The authors then wrote numerous letters to various offices, such as the British Embassy in Madrid, the Ministry of Justice, the Supreme Court, the King of Spain and the Ombudsman, and to their lawyer, complaining of an unfair trial and requesting information on how to proceed further. The lawyer replied that his legal aid services terminated upon the conclusion of the trial, and that if they required further assistance from him they would have to pay. The Ministry of Justice referred the authors to the court of first instance. By letter of 15 January 1987, they requested the High Court of Valencia for a retrial on the ground that their trial had been unconstitutional and in violation of the European Convention. In October 1987, they submitted for the sixth time a petition to the High Court of Valencia, complaining of unfair trial and this time requesting it to assign legal counsel to them. By note of 9 December 1987, the Court replied that their complaint was groundless and that it could not deal with the matter.

3.7 In the meantime, and on 29 January 1987, they submitted notification of their intention to appeal. Subsequently they appointed a private lawyer to represent them. On 24 March 1987 the Supreme Court rejected the appointment of the private lawyer because he was not registered in Madrid. On 24 July 1987 the authors forwarded their grounds of appeal to the Supreme Court. Since the authors were not allowed to defend themselves in person, the Court appointed a legal aid lawyer on 17 December 1987. On 28 March 1988, the lawyer submitted to the Court that he did not find grounds for appeal, after which the Court appointed a second legal aid lawyer, on 12 April 1988, who also stated that he found no grounds for appeal. On 6 June 1988, the Supreme Court, in conformity with article 876 of the Code of Criminal Procedure of Spain, did not hear the appeal, giving the authors 15 days to find a private lawyer. The authors then wrote to the Bar Association (Colegio de Abogados), in September 1987, requesting it to assign a lawyer and a solicitor for their appeal; no reply was received, however.

3.8 In March 1988, the Ministry of Justice informed the authors that they could initiate an action for amparo before the Constitutional Court, since the rights which they claimed had been violated were protected by the Spanish Constitution.

3.9 On 6 July 1988, the authors (formally) petitioned the court of first instance for their release, pursuant to article 504 of the Code of Criminal Procedure, which provides that a prisoner may be released pending the outcome of his or her appeal when he or she has served one half of the sentence imposed. On 14 July 1988, the authors were released and returned to the United Kingdom, having informed the Spanish authorities of their address in the United Kingdom and of their intention to pursue the case.

3.10 The authors appealed (remedy of amparo) to the Constitutional Court on 17 August 1988. Upon their return to the United Kingdom, the authors made several attempts to contact the lawyer and solicitor in Spain, in order to obtain information on the status of their appeal and the court documents, to no avail. Finally, in April or May 1990, they were informed through the British Embassy in Madrid that the Constitutional Court had decided not to allow the appeal to proceed. With this, it is submitted, all available domestic remedies were exhausted.

The complaint

4.1 The authors, who proclaim their innocence, express their indignation at the judicial and bureaucratic system in Spain. According to them, it was likely that they were the victims of a swindle by the bar owner, who could have had a motive for setting the fire. They protest that the identification parade was not conducted in accordance with the law. They complain that the judge did not intervene when it became clear that the legal aid lawyer was not defending them properly. Moreover, by refusing to allow Michael Hill to conduct his own defence and to call a witness on their behalf, the judge violated the principle of equality of the parties. It is submitted that the use by the police investigating unit and the judge of Michael Hill's prior criminal record was unjust and prejudicial not only to Michael but also to Brian Hill.

4.2 As to article 14, paragraph 2, the authors claim that this principle was violated before, during and after the trial: before the trial, because of the judicial authorities' repeated refusal to grant bail; during the trial, when the judge told Michael Hill that he would have the opportunity on appeal to defend himself and to call a witness for the defence; and immediately after the trial, before the verdict had been pronounced, when the legal aid lawyer started to negotiate with their father about the handling of the appeal.

4.3 The authors claim that the lack of cooperation by the Spanish authorities, as a result of which they themselves had to translate every single document with the help of other, bilingual prisoners, the lack of information in prison on Spanish legislation and the lack of competent interpreters during the interrogation by the police and during the preliminary hearing, together with the inadequate conduct of the defence by the State-appointed lawyer, amount to a violation of article 14, paragraph 3(b), of the Covenant.

4.4 Article 14, paragraph 3(d), is said to have been violated in Michael Hill's case because, during the trial, he was twice denied the right to defend himself in person. As a consequence, article 14, paragraph 3(e), was also violated, as he was also denied the opportunity to examine a witness on the brother's behalf who was waiting outside the courtroom.

State party's information and observations

5.1 In its statement of 11 April 1993, the State party argues that the authors abused the right of submission and that the communication should be declared inadmissible in accordance with article 3 of the Optional Protocol. From the information provided by the State party, including the texts of judgments and other documents, it appears that the latter raises no objection with respect to the exhaustion of domestic remedies.

5.2 The State party summarizes the situation in this case as follows:

Concerning the detention:

> 1. On 16 July 1985, at around 4 a.m., two individuals, in a metallic grey camper with horizontal trim on the sides and rear and with a registration beginning with the letter A, arrived at the JM club, located in Grao de GandÌa, and, after preparing a Molotov cocktail, threw it into the club, breaking several panes of glass above the door, then immediately fled the scene, having thereby started a fire in the premises.
>
> 2. An eyewitness to the incident called the police.
>
> 3. The police arrived at the scene, together with the fire brigade, and, after listening to the eyewitness, located the camper, registration A811 JAB, inside which they discovered a partly-empty plastic container with some four litres of petrol, and arrested the occupants of the camper, Messrs. Brian and Michael Hill.
>
> 4. In the presence of an interpreter, the detainees were immediately informed of their rights.
>
> 5. In the presence of the interpreter and with the assistance, at their request, of the legal aid lawyer on duty, the detainees made a statement to the police. They said that they had been in the club in the early hours of the day on which they were making their statement and had drunk 5 or 6 beers there before leaving at around 2.30 a.m. They admitted that the camper and the petrol container belonged to them, but denied having started the fire, acknowledging that >they had in fact passed close by (the club) in the vehicle' after leaving the premises.
>
> 6. During the identification parade, the police showed several persons to the eyewitness, and the said eyewitness recognized Messrs. Hill as >the persons who had set fire to the JM club the previous night by throwing a flaming bottle against its door, and who had fled in a large camper with a foreign registration'."

5.3 Concerning the appearance before the examining magistrate:

> 1. On 17 July 1985, the day after the incident occurred, the Hill brothers testified before the examining magistrate at GandÌa, assisted by the legal aid lawyer on duty, reiterating the statement they had made to the police the day before.
>
> 2. Magistrate No. 1 ordered that various proceedings be conducted including an appraisal of the damage caused, which amounted to 1,935,000 pesetas. The other parties who had appeared before the police, including the eyewitness, reiterated their statements.
>
> 3. On 19 July, Magistrate No. 1 of GandÌa issued an order to institute criminal proceedings against the Hill brothers for the crime of arson, ordering them to be imprisoned and bail to be set.
>
> 4. Further statements by the accused, an additional police file containing photographs and information provided by Interpol on the record of Michael John Hill, convicted in the United Kingdom for theft, breaking and entry, fraud, possession of stolen goods, forgery, traffic violations and arson.
>
> 5. Impoundment of the camper in connection with the civil liability imposed during the pre-trial proceedings.
>
> 6. Order terminating the pre-trial proceedings, issued by the court on 24 October 1985, and referral of the accused to the Provincial High Court of Valencia. Summons of the accused, who appointed a lawyer of their

own choosing to conduct their defence.

7. On 4 December 1985, the accused sent a statement to a subdivision of the Provincial High Court of Valencia, appointing Mr. Gunther Rudiger Jorda as their lawyer."

5.4 Concerning the oral proceedings:

1. The defence lawyer chosen freely by the accused called only one witness, the same witness as had been produced by the Public Prosecutor's Office, Mr. P., the eyewitness to the alleged crime.

2. On 22 October 1986, it was announced that the oral proceedings would take place on 3 November and the parties were duly notified.

3. On 28 October 1986, a representative of the defence lawyer communicated to the Chamber of the High Court hearing the case that, >as differences had arisen between the accused and the defence lawyer, he was withdrawing from the case'.

4. Court order for the accused to appoint a lawyer. The Hill brothers indicated that they wished to be assigned a legal aid lawyer.

5. Having been assigned a legal aid lawyer, they were informed on 31 October 1986 that the date of the trial would be 3 November 1986. Legal record of the trial on that day, in which the Chamber hearing the case, in view of the lack of time given to prepare the defence, agreed to adjourn the trial and reschedule it for 17 November 1986.

6. On 17 November 1986, oral proceedings took place. They opened with the defence submitting a statement by the accused on what had occurred, which was admitted by the Chamber; the direct opinion of the accused was thus made known. The trial was held, using the services of an interpreter, and the eyewitness was examined by both the prosecution and the defence.

7. On 20 November 1986, the Provincial High Court of Valencia handed down its judgment, noting that the accused did not have a criminal record, and after examining the facts sentenced the Hill brothers to six years and one day in prison for the crime of arson and imposed civil liability for the damage caused by the fire."

5.5 Concerning the appeal to annul the judgment of the High Court filed by the Hill brothers:

(a) Only Mr. Brian Anthony Hill appeared at the appeal proceedings. He appointed Mr. Gunther Rudiger Jorda as his lawyer, the same lawyer whom he and his brother had previously appointed and then dismissed five days before the trial;

(b) The two brothers submitted a statement to the Supreme Court which was included in their case file;

(c) As Mr. Rudiger Jorda could not represent the brothers in the Supreme Court, he requested that a legal aid lawyer be assigned to Brian Anthony Hill;

(d) A legal aid lawyer was assigned, but he did not find any grounds whatsoever to justify the appeal;

(e) A second legal aid lawyer, also appointed in accordance with article 876 of the Code of Criminal Procedure, did not find grounds for appeal either;

(f) Two lawyers in succession found that there were no legal grounds for appeal. The proceedings were then referred to the Public Prosecutor's Office, to see whether it could find grounds for appeal. The Public Prosecutor's Office did not find grounds for appeal either and referred the case back;

(g) An order was issued dismissing the appeal as not properly made and granting the appellant the right to appoint a lawyer of his choosing in order to put the appeal into proper legal form;

(h) After he had failed to do so within the required time period, the case was filed;

(i) During that time, the accused had violated the conditions of their conditional release by abandoning the address in Spain which they had given and fleeing the country."

5.6 Concerning the conditional release:

> On 14 July 1988, the Provincial High Court of Valencia, with the appeal to annual the judgment still pending, granted the Hill brothers a conditional release without bail and ordered them to appear on the first and fifteenth day of each month. The accused gave the British Embassy as their address, while they looked for an apartment."

5.7 Concerning the remedy of amparo:

> On 16 August 1988, the Hill brothers initiated an action for amparo before the Constitutional Court, requesting that a legal aid lawyer be assigned to them. After a lawyer was appointed, the application for amparo was submitted. On 8 May 1989, the Constitutional Court issued a reasoned and substantiated ruling that the action for amparo was inadmissible."

5.8 Regarding civil liability, the State reports that the camper, valued at 2.5 million pesetas, was offered at a public auction but remained unsold. It was then handed over to the owner of the bar as compensation for the damage caused in the fire.

5.9 The State party notes:

> That the accused were granted a conditional release on 14 July 1988 and, following the judgment of the Supreme Court in which the appeal was dismissed, in violation of the conditions of their provisional release, the Hill brothers left Spain, and that, >according to the statement by the British Vice-Consul, the brothers, once they got out of prison in July or August last year, left Spain and were not residing with their parents, and were currently believed to be in Portugal'. On 1 March 1989, the Provincial High Court of Valencia therefore declared Michael John and Brian Anthony Hill to be in contempt and ordered that they be sought and taken into custody."

Authors' comments

6.1 In their comments of 6 July 1993, the authors maintain that they are innocent and attribute their conviction to a series of misunderstandings during the trial caused by the lack of proper interpretation.

6.2 The authors reiterate that their rights were violated, in particular the right to a fair trial with guarantees of adequate time and facilities for the preparation of the defence, and the right to defend oneself in person and to examine witnesses. The authors reject the State party's accusation that they fled Spain as soon as they were released, explaining that they fulfilled the conditions of their provisional release and then returned to their family in the United Kingdom, having informed the authorities of their address there and of their intention to pursue the case in order to prove their innocence. The Committee's file shows that the Hill brothers did in fact write to the Constitutional Court in February 1990 to inquire about the outcome of their appeal.

6.3 The authors reject the presumption of guilt arrived at by the State party on the basis of an Interpol report on Michael Hill. Firstly, the report refers to events which took place in the United Kingdom more than 14 years ago and to a previous criminal record which had been expunged and was therefore not admissible in court. The use of the record by the Public Prosecutor's Office was unfair and prejudicial and the authors had no opportunity to refute it at the oral proceedings, which lasted barely 40 minutes. They emphasize that Michael Hill was denied the right to defend himself in person against the presumption of guilt and that, furthermore, his legal aid lawyer failed to follow his instructions. For those reasons, no defence was put forward on the matter of the prejudicial presumption of guilt. Furthermore, the information which the legal aid lawyer failed to refute also had a very harmful effect on Brian Hill, who had no previous criminal record in the United Kingdom.

Committee's decision on admissibility

7.1 Before examining a complaint contained in a communication, the Human Rights Committee decides, pursuant to rule 87 of the its rules of procedure, whether or not it is admissible under the Optional Protocol to the Covenant.

7.2 The Committee ascertained, as required under article 5, paragraph 2(a), of the Optional Protocol, that the matter had not been submitted under another procedure of international investigation or settlement. Taking into account all the information submitted by the parties, the Committee concluded that the domestic remedies referred to in article 5, paragraph 2(b), of the Optional Protocol had been exhausted.

7.3 The Committee considered the statement by the State party arguing that the Hill brothers had abused the right of submission, but concluded that only an examination of the merits of the case could clarify whether the Hill brothers had abused that right and whether the State party had violated the Covenant.

7.4 The Committee considered that the allegations made under article 14 had been sufficiently substantiated for purposes of admissibility and, accordingly, should be examined on the merits. The facts submitted to the Committee also appeared to raise questions regarding articles 9 and 10 (see paras. 2.3 and 2.7 supra).

8. On 22 March 1995, the Human Rights Committee found the communication admissible.

Observations by the State party

9.1 In its statement dated 9 November 1995, the State party refers to its previous observations and to the documents already submitted, and reiterates that the complaint is unfounded. In its submission dated 30 May 1996, the State party contends that the communication should be declared inadmissible on account of abuse of the right of submission. It argues that the authors were placed on provisional liberty on 14 July 1988 on condition that they would appear before the Audiencia Provincial de Valencia on the first of every month. Instead of doing so, the Hill brothers left Spain and returned to England. Because of their breach of the conditions of release and violation of Spanish law, they are estopped from claiming that Spain has violated its commitments under international law.

9.2 As to the merits of the communication, the State party explains that the interpreter was not a person selected ad hoc by the local police but a person designated by the Instituto Nacional de Empleo (INEM) upon agreement with the Ministry of Interior. Interpreters must have satisfied professional criteria before being employed by INEM. The records indicate that Isabel Pascual was properly designated interpreter for the Hill brothers in GandÌa and include a statement from INEM with respect to the assignment of Ms. Pascual and Ms. Rieta.

9.3 As to the authors' desire to communicate with the British Consulate, the State party contends that the documents reveal that the Consulate was duly informed of their detention.

9.4 As to the identification parade, the State party rejects the authors' description of having been brought before the witness in handcuffs and next to uniformed policemen. The State party affirms that the procedural guarantees provided for in articles 368 and 369 of the Code of Criminal Procedure were duly observed. Moreover, the identification parade took place in the presence of the authors' attorney, Salvador Vicente MartÌnez Ferrer, whom the State party contacted and who, according to the State party's submission, rejects the authors' description of the events. A document sent by the State shows that the two other persons in the identification parade were Ainspectores" and formed part of the Superior Police Corps, where no uniform is worn.

9.5 The State party rejects the allegation that the Hill brothers had been kept for 10 days without food and encloses a statement from the chief of the GandÌa Police and receipts allegedly signed by the Hill brothers.

9.6 As to the duration of the criminal proceedings up to the oral hearing: from 16 July to 24 October 1985 investigations, including into Michael Hill's prior criminal record, were carried out. On 26 November the authors were notified and they designated their attorney. On 4 December 1985 the file was referred by the GandÌa Court to the Audiencia Provincial de Valencia. On 28 December the case was referred to the State attorney, who presented his report and conclusions on 3 March 1986. On 10 September the Court fixed the date for oral hearing on 3 November. On 22 October 1986 defence counsel withdrew. On 28 October the Hill brothers asked for a legal aid lawyer. On 30 October Mr. Carbonell Serrano was appointed as legal aid lawyer. On 3 and 17 November oral hearings took place. The State party concludes that this chronology indicates that there was no undue delay on the part of the Spanish authorities.

9.7 The State party submits that the duration of 16 months of pretrial detention was not unusual. It was justified in view of the complexities of the case; bail was not granted because of the danger that the authors would leave Spanish territory, which they did as soon as release was granted.

9.8 The State party contends that the authors had sufficient time and facilities to prepare their defence. First they had counsel of their own choosing, and when they dismissed him, legal aid counsel was appointed and the hearing postponed to allow the new counsel to familiarize himself with the case. It is not true that Mr. Carbonell, the legal aid attorney, demanded 500,000 pesetas from the authors before trial. He did demand 50,000 pesetas for the case that they would want to appeal to the Supreme Court, an amount that is altogether reasonable for counsel of one's choosing. The authors, however, did not use his services, but availed themselves of the services of two other legal aid lawyers. The State party denies the authors' claim that the documentation was not made available to them in English translation.

9.9 As to the oral hearing, it is stated that Ms. Rieta was a well qualified interpreter and that the authors' only witness, Mr. Pellicer, affirmed having recognized them and their pickup truck.

9.10 As to Michael Hill's right to defend himself, the records do not reveal that Michael Hill had demanded the right to defend himself and that this right was denied by the court. Moreover, Spanish law recognizes, pursuant to the Covenant and the European Convention, the right to defend oneself. Such defence should take place by competent counsel, which is paid by the State when necessary. Spain's reservation to articles 5 and 6 of the European Convention concern only a restriction of this right with respect of members of the Armed Forces.

9.11 As to the presumption of innocence, the authors admit their presence in the club and the number of beers consumed. In view of the evidence given by an eyewitness, there is no basis to claim that they were deemed guilty without evidence.

Authors' comments

10.1 By letters of 8 January and 5 July 1996 the authors contest the State party's arguments on admissibility and merits. As to the alleged abuse of the right of submission, the authors claim that the State party, in view of its manifold violations of their rights in the course of their detention and trial, does not come to the Committee with clean hands. They contend that they acted properly in leaving the territory of Spain, because they feared further violations of their rights. Moreover, they did not immediately leave Spanish territory upon their release from prison on 14 July 1988 but five weeks later, on 17 August, with no objection from the British Consulate at Alicante. They refer to the transcript of their visit to the Consulate on 12 August 1988 in order to obtain a temporary passport. Moreover, the State party had made no provision for them to remain in Spain after release and all the release documentation was in Spanish.

10.2 As to the interpreter, they maintain their contention that Ms. Isabel Pascual made crucial mistakes of interpretation, which ultimately led to their conviction. They have no criticism of the other interpreter, Ms. Rieta, other than the mistake concerning to the fuel used by their truck.

10.3 As to the identification parade, they reaffirm their allegation contained in their submission of 6 July 1993.

10.4 They reaffirm that they did not receive any food or drink for a period of five days and very little thereafter, because the allocation of funds specifically for this purpose were misappropriated. They point out that the State party's list does not refer to the first five days, when they allege to have been totally deprived of subsistence. The lists presented by the State refer to 11 days, and only two of these, the 21st and 24th July, show their signature.

10.5 As to the necessary time and facilities to prepare their defence, the authors maintain that they spent but two brief periods with their legal aid attorney, Mr. Carbonell. They maintain their allegation that Mr. Carbonell demanded half a million pesetas from their parents on 1 November 1986.

10.6 Concerning the right of Michael Hill to defend himself, it is said that the letter from the Pro Consul at Alicante, dated 12 March 1987, substantiates their claim that the right under the Spanish Constitution to defend oneself in court was emphatically denied by the judiciary on two occasions. Michael Hill made his desire to defend himself clear well in advance of the Court proceedings via the official interpreter, Ms. Rieta.

10.7 With respect to the length of the hearings, the authors reiterate that the first hearing of 3 November lasted only 20 minutes, in which period the question as to what fuel was used by their vehicle was raised. There was no examination of the defendants or of the witness on this occasion. The second hearing on 17 November lasted 35 minutes, mainly devoted to formalities. Thus, the authors challenge the State party's assertion that the Court could properly examine both defendants and one witness, bearing in mind that every word had to be translated.

10.8 As to the presumption of innocence, they claim that not only at trial, but throughout the proceedings they were deemed to be guilty, although from the outset they always affirmed their innocence.

Examination of the merits

11. The Human Rights Committee has examined this 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.

12.1 With respect to the State party's allegation that the case should be declared inadmissible on account of abuse of the right of submission, because the authors had breached their conditions of release in violation of the Spanish law, the Committee considers that an author does not forfeit his right to submit a complaint under the Optional Protocol simply by leaving the jurisdiction of the State party against which the complaint is made, in breach of the conditions of his release.

12.2 With regard to the authors' allegations of violations of article 9 of the Covenant, the Committee considers that the authors' arrest was not illegal or arbitrary. Article 9, paragraph 2, of the Covenant requires that anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him. The authors specifically allege that seven and eight hours, respectively, elapsed before they were informed of the reason for their arrest, and complain that they did not understand the charges because of the lack of a competent interpreter. The documents submitted by the State party show that police formalities were suspended from 6 a.m. until 9 a.m., when the interpreter arrived, so that the accused could be duly informed in the presence of legal counsel. Furthermore, from the documents sent by the State it appears that the interpreter was not an ad hoc interpreter but an official interpreter appointed according to rules that should ensure her competence. In these circumstances, the Committee finds that the facts before it do not reveal a violation of article 9, paragraph 2, of the Covenant.

12.3 As for article 9, paragraph 3, of the Covenant, which stipulates that it shall not be the general rule that persons awaiting trial shall be detained in custody, the authors complain that they were not granted bail and that, because they could not return to the United Kingdom, their construction firm was declared bankrupt. The Committee reaffirms its prior jurisprudence that pre-trial detention should be the exception and that bail should be granted, except in situations where the likelihood exists that the accused would abscond or destroy evidence, influence witnesses or flee from the jurisdiction of the State party. The mere fact that the accused is a foreigner does not of itself imply that he may be held in detention pending trial. The State party has indeed argued that there was a well-founded concern that the authors would leave Spanish territory if released on bail. However, it has provided no information on what this concern was based and why it could not be addressed by setting an appropriate sum of bail and other conditions of release. The mere conjecture of a State party that a foreigner might leave its jurisdiction if released on bail does not justify an exception to the rule laid down in article 9, paragraph 3, of the Covenant. In these circumstances, the Committee finds that this right in respect of the authors has been violated.

12.4 The authors were arrested on 15 July 1985 and formally charged on 19 July 1985. Their trial did not start until November 1986, and their appeal was not disposed of until July 1988. Only a minor part of this delay can be attributed to the authors' decision to change their lawyers. The State party has argued that the delay was due Ato the complexities of the case" but has provided no information showing the nature of the alleged complexities. Having examined all the information available to it, the Committee fails to see in which respect this case could be regarded as complex. The sole witness was the eyewitness who gave evidence at the hearing in July 1985, and there is no indication that any further investigation was required after that hearing was completed. In these circumstances, the Committee finds that the State party violated the authors' right, under article 14, paragraph 3(c), to be tried without undue delay.

13. With respect to the authors' allegations regarding their treatment during detention, particularly during the first 10 days when they were in police custody (para. 2.7), the Committee notes that the information and documents submitted by the State party do not refute the authors' claim that they were not given any food during the first five days of police detention. The Committee concludes that such treatment amounts to a violation of article 10 of the Covenant.

14.1 With regard to the right of everyone charged with a criminal offence to have adequate time and facilities for the preparation of his defence, the authors have stated that they had little time with their legal aid lawyer and that when the latter visited them for only 20 minutes two days before the trial, he did not have the case file or any paper for taking notes. The Committee notes that the State party contests this allegation and points out that the authors had counsel of their own choosing. Moreover, in order to allow the legal aid lawyer to prepare the case, the hearing was adjourned. The authors have also alleged that even though they do not speak Spanish, the State party failed to provide them with translations of many documents that would have helped them to better understand the charges against them and to organize their defence. The Committee refers to its prior jurisprudence[1] and recalls that the right to fair trial does not entail that an accused who does not understand the language used in Court, has the right to be furnished with translations of all relevant documents in a criminal investigation, provided that the relevant documents are made available to his counsel. Based on the records, the Committee finds that the facts do not reveal a violation of article 14, paragraph 3(b), of the Covenant.

14.2 The Committee recalls that Michael Hill insists that he wanted to defend himself, through an interpreter, and that court denied this request. The State party has answered that the records of the hearing do not show such a request, and that Spain recognized the rights of Aauto defence" pursuant to the Covenant and the European Convention of Human Rights, but that Asuch defence should take place by competent counsel, which is paid by the State when necessary", thereby conceding that its legislation does not allow an accused person to defend himself in person, as provided for under the Covenant. The Committee accordingly concludes that Michael Hill's right to defend himself was not respected, contrary to article 14, paragraph 3(d), of the Covenant.

14.3 The Committee further observes that in accordance with article 876 of the Spanish Code of Criminal Procedure, the authors' appeal was not effectively considered by the Court of Appeal, since no lawyer was available to submit any grounds of appeal. Consequently, the authors' right to have their conviction and sentence reviewed, as required by the Covenant, was denied to them, contrary to article 14, paragraph 5, of the Covenant.

14.4 Given the Committee's conclusion that the authors' right to a fair trial under article 14 was violated, it need not deal with their specific allegations relating to the adequacy of their representation by a legal aid lawyer, the irregularities of the identification parade, the competence of the interpreters and the violation of the presumption of innocence.

15. The Human Rights Committee, acting in accordance with article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, finds that the facts before it reveal a violation of articles 9, paragraph 3; 10 and 14, paragraphs 3(c) and 5, of the Covenant, in respect of both Michael and Brian Hill and of article 14, paragraph 3(d), in respect of Michael Hill only.

16. Pursuant to article 2, paragraph 3(a), of the Covenant, the authors are entitled to an effective remedy, entailing compensation.

17. Bearing in mind that by becoming a party to the Optional Protocol, the State has recognized the Committee's competence 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 guarantee to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective

and enforceable remedy in cases where a violation has been established, the Committee requests the State party to provide, within 90 days, information on the measures taken to give effect to the Committee's 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 annual report to the General Assembly.]

A. Individual opinion by Committee member Nisuke Ando

I concur with the Committee's Views with respect to article 14. However, I am unable to concur with the Committee's finding with respect to article 10.

According to the authors, they were held in police custody for 10 days, for five of which they were allegedly left without food and with only warm water to drink (see para. 2.7). The State party rejects this allegation and encloses a statement from the chief of GandÌa Police as well as receipts allegedly signed by the authors (see para. 9.5). The authors assert that the allocation of funds specifically for food was misappropriated and that the State party's lists do not refer to the first five days, when they allege to have been totally deprived of subsistence (see para. 10.4).

Nevertheless, as the Committee itself recognizes (see para. 10.4), the lists refer to 11 days from 16 to 26 July 1985 and, contrary to the Committee's finding that the lists show the authors' signatures only for 21 and 24 July, the authors' names with signatures appear on the lists for all 11 days. All the signatures do not seem exactly identical and it may be that the warders in charge of food supply may have signed on the authors' behalf.

In any event, the authors have not presented any evidence to refute the existence and content of the lists: that they were left without food for the first five days of their police detention remains a mere allegation. Under the circumstances, I am unable to concur with the Committee's finding that the State party has not provided sufficient elements to refute the authors' allegation and that it is in violation of article 10 of the Covenant (see para. 13).

Nisuke Ando [signed]

[Original: English]

B. Individual opinion by Committee member Eckart Klein

I do not share the opinion expressed in paragraph 14.4 of the Views that the Committee need not deal with the authors' specific allegations relating to the adequacy of their representation by a legal aid lawyer, the irregularities of the identification parade, the competence of the court-appointed interpreters and the violation of the presumption of innocence.

The fact that the Committee found a violation of the authors' right to a fair trial under article 14 regarding certain aspects (article 14, paragraphs 3(c) and (d) and 5, of the Covenant) does not release the Committee from its duty to examine whether other alleged violations of the rights enshrined in article 14 of the Covenant have occurred. According to the authors, violations of article 14, paragraphs 1, 2 and 3(f), should have been considered.

The Committee is not in a position analogous to that of a national court which may and will, for grounds of time constraints, restrict itself to the most evident reasons that by themselves justify the nullification of the measure attacked. The authority of the Committee's Views rests, to a great extent, on a diligent examination of all allegations made by the authors and on a convincing ratio decidendi. The influence of the Committee's Views on State party behaviour will be strengthened only if all aspects of the matter have been thoroughly examined and all necessary conclusions have been argued clearly.

Apart from this objection of a general nature, I do not think that article 14 of the Covenant should be seen just as an umbrella provision of the right to a fair trial. It is true that all provisions of the article are connected with the issue. But the express formulation of the different aspects of the right to a fair trial is founded on many varied good reasons, based on historical experience. The Committee should not encourage any view that some rights enshrined in article 14 of the Covenant are less important than others.

I do not think that the facts presented by the authors in this case reveal a violation of Covenant rights beyond the findings of the Committee. But I feel obliged to make clear my own point of view on this matter of principle.

Eckart Klein [signed]

[Original: English]

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