



Analysis

ECtHR: Spain guilty of not investigating allegations of torture in incommunicado detention

Yasha Maccanico
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On 5 May 2015, the third section of the European Court of Human Rights (ECtHR) in Strasbourg unanimously found Spain guilty of violating the procedural aspects of article 3 of the European Convention on Human Rights (ECHR). Arratibel Garciandia applied to the ECtHR on 6 September 2013, complaining about the failure by Spain's internal jurisdiction to effectively investigate allegations that he was subjected to ill-treatment following his arrest at 3 a.m. on 18 January 2011 in his home in Etxarri Aranz (Navarre). He was placed in incommunicado detention until 22 January and transferred to the *Guardia Civil's* general directorate in Madrid, after his fingerprints and a DNA sample were taken in the Pamplona *audiencia provincial* (province court) in the Navarre region.

Allegations and chronology

The applicant was arrested in the context of an operation against EKIN (a youth organisation that was deemed to be part of ETA), and both his home and workplace were searched. His allegations of ill-treatment during the period he spent in incommunicado detention included:

- on the day of the arrest, during his transfer to Madrid, he was handcuffed, hooded and threatened;
- while in detention, he was repeatedly interrogated and claimed he was threatened, insulted, had a foamlike material wrapped around his legs and arms, was strapped to a chair and subjected to six or seven sessions of air deprivation with a plastic bag over his head, struck on the testicles, enveloped in material wrapped with masking tape, thrown onto a mattress and subjected to further sessions of air deprivation sessions with a plastic bag over his head, for hours;

- on the night of 19 January, he had his ankles strapped and was forced to do push-ups, was stripped naked and threatened that electrodes would be attached to his testicles, and had his penis inserted in a plastic bottle filled with water;

- following his medical visit on 20 January, he underwent mock interrogations to learn what he was instructed to say in his statement to the police by heart. The statement was taken at 2:40 a.m. on 21 January in front of a duty lawyer and two *Guardia Civil* officers. He signed it by writing the Basque word for “help” (“laguntza”), back to front: “Aztnugal”.

The plaintiff’s incommunicado detention ended after his appearance before the *Audiencia Nacional* on 22 January 2011, after which he was placed in temporary custody for a year and a half until his release on bail, on 26 July 2012. He underwent various medical visits from the moment of his arrest to the end of his incommunicado detention. On the morning of his arrest in Pamplona, the doctor noted he had a bruised fist and was told that his right shoulder ached because he was handcuffed; upon his arrival in the general directorate of the *Guardia Civil* in Madrid, he denied suffering physical or psychological ill-treatment and refused a medical examination; he was examined twice on 19 January 2011, and the doctor’s report states that he claimed he had a headache and that his face and neck hurt, but refused to answer when asked if he had been subjected to ill-treatment, as well as refusing a medical examination during the second visit; he was examined twice on 20 January 2011, claiming he was not feeling well, that his eyes, jaw and neck hurt and that he had not slept well and had heard screaming, without answering questions about possible ill-treatment. He was examined during the first visit and refused examination during the second visit. On the two occasions when the legal doctor visited him on 21 January, Arratibel Garciandia claimed he was not feeling well and had not slept much, without answering questions about possible ill-treatment or requesting an examination.

He appeared before a judge in the third section of the central instruction court in the *Audiencia Nacional* on 22 January and claims that he reported the ill-treatment he allegedly underwent, in the presence of the duty lawyer who had witnessed the taking of his statement. Once Arratibel Garciandia was in provisional custody in Pamplona, on 11 March 2011, he filed a complaint regarding the ill-treatment he experienced during incommunicado detention, with the assistance of a lawyer of his choice. He asked to be heard by a judge, for the legal doctor’s reports and his statements to the *Guardia Civil* and the *Audiencia Nacional* to be examined alongside any recordings from the cameras operating in the facilities in which he was held incommunicado, and for the officers who intervened during his incommunicado detention to be identified and heard by a judge, as well as the legal doctors who examined him and the duty lawyer. He also asked to undergo physical and psychological tests to establish whether he experienced any injuries or psychological after-effects. The plaintiff testified by video-conference from the prison in Pamplona where he was held. The medical reports from the visits he underwent between 18 and 21 January 2011 in Pamplona and Madrid were sent to the Pamplona court on 22 February 2012. On 27 February, the judge ruled that the medical reports did not indicate that the ill-treatment that he alleged had effectively occurred, and dismissed the claim. His appeal, dated 6 March 2012, was dismissed by the Pamplona province court on 29 June

2012. A final appeal before the Constitutional Court, dated 15 October 2012, was deemed inadmissible on 6 March 2013.

The parties' arguments before the court

In his complaint before the ECtHR, Arratibel Garciandia alleged that the internal jurisdiction failed to effectively investigate his complaint that he had been mistreated during his incommunicado detention, stressing the vulnerability that this form of detention entails. The court deemed his application admissible.

The Spanish government argued that the effectiveness of an appeal does not necessarily require that the officers involved be punished. Further, the allegations were not presented in a credible and defensible way, without adequate evidence to prove their truthfulness. In reference to the Constitutional Court's ruling issued on 28 January 2013, the government noted that Arratibel Garciandia had only provided two pieces of evidence, his testimony before the judge and the submission of certain documents, without any further elements of proof. The legal doctors' reports had been examined, the plaintiff had been assisted by a duty lawyer, his statement contradicted his claims of ill-treatment, and it had taken him nearly two months to file his complaint. Hence, the Pamplona investigating magistrate's decision not to proceed, confirmed by the Pamplona province court, was deemed by the government to comply with the duty to investigate torture allegations laid out by article 3 of the ECHR.

The plaintiff argued that the secret detention regime which he was subjected to makes it difficult for victims of ill-treatment to obtain evidence, meaning that his allegations should have been treated as credible. He also referred to the numerous complaints issued by bodies including the Council of Europe's Committee for the Prevention of Torture (CPT) and the ECtHR in its case law, which he argued were evidence of the systematic failure to investigate allegations of ill-treatment during incommunicado detention.

The court's assessment

The ECtHR found that credible allegation of ill-treatment by individuals require an effective official investigation which must be liable to identify and punish the responsible parties. Not doing so would undermine the effectiveness of the general prohibition of torture in practice, allowing state agents to disregard the rights of people subjected to their control, because they would enjoy "semi-impunity" (point 35). The plaintiff was placed in incommunicado detention, without being able to inform a person of his choice about his detention or being assisted by a lawyer of his choice.

The plaintiff complained in a precise and detailed way of his subjection to ill-treatment during detention on 11 March 2011 before the Pamplona court, and he also declared having done so during his hearing in the *Audiencia Nacional* in Madrid on 22 January 2011, although the transcription of his statement was not included in the case file, in spite of his request for its inclusion. The court deemed his complaint acceptable from the viewpoint of article 3, recalling that the notion of an effective remedy implies an in-depth

investigation which may lead to the identification and, if applicable, punishment of the culprits.

The third court of instruction in Pamplona examined the legal doctors' reports and the plaintiff's statement taken by video-conference. Yet, Arratibel Garciandia had also asked for copies of his statements to the Guardia Civil and to the central court of instruction during his incommunicado detention to be examined, alongside recordings from surveillance cameras, and he asked for the *Guardia Civil* officers who intervened during his detention to be identified and heard by the judge. He had also asked for the medical doctors and the duty lawyer who witnessed the taking of his statement to be heard, and to undergo physical and psychological exams with a view to establishing whether he had suffered any harm or sequels. These requests were not granted by the Pamplona court.

In the light of the above, the ECtHR found that the investigation was not sufficiently in-depth and effective to comply with requirements under the ECHR's article 3. An effective investigation is particularly important in cases involving detention in a situation in which communication with the exterior is not permitted, which require a special effort by the state's internal authorities. Seeking additional sources of evidence such as those suggested by the plaintiff may have contributed to clarifying the nature of the events in question. The court also insisted that the measures recommended by the CPT to improve the quality of the legal-medical examinations which people detained in an incommunicado regime undergo, and those that follow, and that the vulnerability of people subjected to this form of detention require additional jurisdictional supervision to prevent abuses and protect detainees' physical integrity. These observations were also part of the sentence in the case of journalist Otamendi Eiguren (point 41, pp.15-16), in which the ECtHR found Spain to have failed to effectively investigate allegations of torture during incommunicado detention in its definitive judgement issued on 16 January 2013.

The court also seconded the CPT's recommendations, reiterated by the Council of Europe's Commissioner for Human Rights on 9 October 2013, concerning safeguards that must be provided in similar cases in which Spanish legislation allows secret detention. Concerning the failure to adequately and effectively investigate the applicant's credible allegations, the court ruled that Spain had violated the procedural aspects of article 3.

Sources

European Court of Human Rights, third section, [Case: Arratibel Garciandia vs. Spain \(Application no. 58488/13\), Judgement](#), Strasbourg, 5 May 2015, [pdf]:

European Court of Human Rights, third section, [Case: Otamendi Eiguren vs. Spain \(Application no. 58488/13\), definitive Judgement](#), Strasbourg, 16 January 2013, [pdf]

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