

Complaint No. 453/2011 (*Gallastegi v. Spain*)

Complaint No. 453/2011 (*Gallastegi v. Spain*) concerned a Spanish national who claimed to be the victim of a violation by Spain of articles 12, 14 and 15 of the Convention. The complainant alleged that on 24 October 2002 he was arrested in a violent manner at 5 a.m. by the Basque autonomous police force during a police operation and taken to the central police station where it was determined that the charges against him fell within the scope of anti-terrorism laws and he was held incommunicado for three days. He also alleged that his self-incriminating statements during police interrogations were obtained under ill-treatment and physical and psychological torture. The complainant further argued that the doctors, provided by the police, did not consider his allegation of torture during the medical examinations nor in their forensic medical reports. The complainant alleged that no prompt, independent and impartial investigation into his allegation of torture was carried out and that the competent courts failed to act on his repeated claims of having been subjected to ill-treatment and torture. The complainant further asserted that the trial leading to his conviction was unfair since his self-incriminating statements, obtained under torture, were used as evidence leading to his conviction for the crime of terrorist murder. The Committee noted that the complainant had lodged a complaint of torture and ill-treatment, which was examined by a Magistrate's Court, that the latter ordered a stay of proceedings on the basis of the forensic medical reports, which did not support the complainant's allegations and that the Provincial High Court subsequently dismissed the complainant's appeal, also on the basis of the forensic medical reports. The Committee also noted that the complainant requested that further evidence be taken, but that his request was turned down by the courts, which considered this unnecessary. The Committee further noted that, during committal proceedings against the complainant by the Fourth Examining Magistrate of the National High Court and the subsequent trial, the complainant stated that he had incriminated himself as a result of the torture and ill-treatment to which he had been subjected and that the court did not take measures to investigate these allegations. The Committee considered that the above indicated a failure to investigate on the part of the authorities that was incompatible with the State party's obligation under article 12 of the Convention. The Committee also noted that the complainant's self-incriminating statement was lent substantial weight in the proceedings against him, but considered that the complainant had not provided information that would allow it to conclude that his self-incriminating statement was in all probability a result of torture and accordingly concluded that the information before it did not reveal a violation of articles 14 and 15 of the Convention.