



Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 818/2017*, **

<i>Communication submitted by:</i>	E.L.G. (represented by counsel, Valentín J. Aguilar Villuendas)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Spain
<i>Date of complaint:</i>	23 March 2016 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 115 of the Committee's rules of procedure, transmitted to the State party on 5 April 2017 (not issued in document form)
<i>Date of adoption of decision:</i>	26 November 2019
<i>Subject matter:</i>	Cruel, inhuman or degrading treatment or punishment in police custody
<i>Procedural issues:</i>	Incompatibility <i>ratione materiae</i> , lack of substantiation, exhaustion of domestic remedies
<i>Substantive issues:</i>	Torture; cruel, inhuman and degrading treatment; conditions of detention; lack of a full and impartial judicial process
<i>Articles of the Convention:</i>	1, 2, 11, 12, 13 and 16

1. The complainant is E.L.G., a national of Spain, born in 1979. She claims that the State party has violated her rights under articles 1, 12, 13 and 16 of the Convention. Although the complainant does not explicitly invoke articles 2 and 11 of the Convention, the communication also appears to raise issues related to those articles. The complainant is represented by counsel. The State party has made the declaration pursuant to article 22 of the Convention, effective from 21 October 1987.

The facts as submitted by the complainant

2.1 The complainant lives in Córdoba, Spain. She alleges that, on 27 January 2013, she was walking through the train station in Córdoba on her way home when she was stopped by four officials (three men and one woman) in plain clothes who, claiming to be police officers, asked to search her bag. When they found a wallet that was not hers in it, they

* Adopted by the Committee at its sixty-eighth session (11 November–6 December 2019).

** The following members of the Committee participated in the examination of the communication: Essadia Belmir, Felice Gaer, Abdelwahab Hani, Claude Heller Rouassant, Jens Modvig, Ana Racu, Diego Rodríguez-Pinzón and Sébastien Touzé.



began to hit her and ask her where she had the things she had supposedly stolen at the discotheque she was coming from. At that point, before putting her in a car, the officers handcuffed her without telling her why she was being arrested, pulled her by the hair and rammed her against the edge of the car door. On the drive to the Lonja police station, the police officers repeatedly slammed on the brakes so that the complainant would hit her head against the partition, and they laughed each time she did so. When they arrived at the station, the female officer ordered the complainant to undress and took her money. Half an hour later, she was told that she could leave.

2.2 As the complainant was in great pain, she asked the police officers, to no avail, to have a doctor see her. The complainant called an ambulance when she was at the door of the police station. At the hospital, she was found to have a broken nose, which needed surgery. The surgical operation took place on 30 January 2013. She also had bruises on one of her wrists.

2.3 On 28 January 2013, the complainant lodged a complaint against the four police officers before the Court of Investigation No. 1 of Córdoba, claiming that they had tortured her and had not fulfilled their duty of care when she requested medical assistance. The Court began its investigation on 26 June 2013, taking a statement from the complainant and collecting other evidence. On 29 January 2014, the doctor who treated her stated that the complainant's nasal fractures were not accompanied by bleeding when he treated her. On 31 January 2014, the Court closed the case. In reply to the complainant's application for reconsideration, the Court stated on 22 May 2014 that, in view of the conflicting witness statements, it gave "greater credibility to the police officers' version of events than that of [the complainant]".

2.4 On 10 July 2014, the Third Section of the Provincial High Court of Córdoba upheld, on appeal, the decision of the Court of Investigation on the grounds that, although it did not doubt that the complainant's nose was broken, the statements given by other police officers who had witnessed the night's events, and the security camera stills showing that the complainant had no visible injuries when she entered and left the police station, were sufficient for it to dismiss the complaint. The complainant submitted an application for annulment of proceedings in respect of the decision; on 5 September 2014, the Provincial High Court ruled in the same way as previously.

2.5 On 16 March 2015, the Constitutional Court rejected the complainant's application for *amparo*, arguing the manifest absence of any violation of a fundamental right for which protection could be sought.

The complaint

3.1 The complainant submits that the State party has violated her rights under articles 1, 12, 13 and 16 of the Convention. First, she maintains that the treatment she was given amounts to torture or at least cruel, inhuman or degrading treatment. She claims that she was injured while she was under arrest, as she did not have any injury before her arrest and the ambulance picked her up at the entrance to the police station. In accordance with the findings of international bodies, it cannot be presumed that the injuries are attributable to the complainant or to any resistance by her;¹ instead, the burden of proof rests on the authorities, who must provide a satisfactory and convincing explanation.² The complainant submits that these events caused her psychological harm, as a result of which she is having to take medication, as confirmed in a report of 10 June 2013 signed by two psychiatrists from the Health Service of Andalucía.

3.2 Second, the complainant claims that she was not informed of her rights at the time of her arrest, and was not given legal or medical assistance while she was in custody. She also claims that her belongings were confiscated on her release and that she was not given a receipt for them. The failure to provide medical care, which was a breach of the duty to

¹ The complainant cites *Achabal Puertas v. Spain* (CCPR/C/107/D/1945/2010).

² The complainant cites European Court of Human Rights, *Salman v. Turkey* (application No. 21986/93), Grand Chamber judgment of 27 June 2000, para. 100.

render assistance, was a way to keep her injuries from being documented and, above all, to cause her pain.³

3.3 Lastly, the complainant claims that she was denied a full and impartial judicial process. Her complaint was dismissed before a trial could be held, merely on the strength of the denials by the accused persons. The investigation showed that she had a broken nose, which, objectively considered, must have been caused while she was in custody, during which time she was not given access to medical care. The complainant draws attention to the prevailing situation in Spain, in which the State party systematically denies the practice of ill-treatment and torture.⁴

3.4 The complainant asks the Committee to request that the State party (a) thoroughly investigate the torture and ill-treatment to which she was subjected, taking appropriate action against those responsible for such treatment; and (b) ensure that she receives full and adequate compensation for the harm she has suffered.

State party's observations on admissibility and the merits

4.1 The State party submitted its observations on admissibility and the merits on 21 December 2017. It concluded that the communication is inadmissible as manifestly unfounded and abusive (rule 113 (b) of the rules of procedure); as incompatible with the provisions of the Convention (rule 113 (c)); and because domestic remedies have not been exhausted (rule 113 (e)).

4.2 Regarding the failure to inform the complainant of her rights when she was arrested, the State party argues that: (a) as the arrest was for alleged theft, the matter falls outside the material scope of the Convention and would come under the scope of the International Covenant on Civil and Political Rights; and (b) since it is clear that no such matter was raised before the domestic courts, either in the proceedings for alleged injuries or in the parallel proceedings in which the complainant was investigated for theft, domestic remedies have not been exhausted.

4.3 In reply to the complainant's claim regarding the lack of a full, fair and impartial judicial process, the State party emphasizes that the complainant's allegations led to the institution of criminal proceedings, that all evidence requested by the parties was produced, that she was able to appeal to a higher jurisdiction, that the decision is not unreasonable and that there are no grounds to argue that the judges who conducted the proceedings were biased. The State party stresses in particular that in the doctor's witness statement that is also mentioned by the complainant, it is stated that, although the complainant was not bleeding, she did have visible swelling caused by the fracture of the nasal bone and that the swelling "was obvious, both to [him], as a doctor, and to anyone else". In addition, the complainant claims that her injuries were caused by the blows she received from the police officers when they arrested her, the blow against the car door and the blows she received when she hit the partition in the car – in other words, she would have received those blows to the face by the time she reached the police station. However, in the images captured as the complainant entered and left the station, she shows no signs of injury.⁵

4.4 In response to the claim of treatment amounting to torture or inhuman and degrading treatment, the State party argues that a reading of the two decisions of the Provincial High

³ The complainant cites the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

⁴ The complainant cites a report by the Coordinadora para la Prevención y Denuncia de la Tortura (Coordinating Committee for the Prevention and Reporting of Torture), which indicates that, over a period of ten years, 7,582 people reported being victims of torture and that, out of 4,361 officials accused of torture, assault and/or ill-treatment between 2009 and 2012, only 29 were convicted. The complainant also cites a 2015 report on Spain submitted to the Committee by Amnesty International, which reports that judicial complaints are dismissed for lack of evidence, even if there is medical information and other credible supporting evidence, and that police officers fail to take action to prevent or report ill-treatment by colleagues and tend to unite in defence of each other, which leads to cover-ups of unlawful conduct.

⁵ In this connection, the State party cites the two decisions of the Provincial High Court, according to which the complainant's statements cannot be considered credible, as the kind of injury that she alleges to have received, as also described by the doctor, cannot be reconciled with the complete absence of any sign of such injuries in the stills from the police station security cameras.

Court, together with the medical reports and security camera stills, demonstrates the complete lack of substantiation of the complainant's allegations.

Complainant's comments

5.1 The complainant responded to the State party's comments on admissibility and the merits on 10 April 2018. First, she argues that the State party provides no explanation or justification for how a person who did not have injuries when she was arrested came to have them when she was released. It also fails to note whether the matter was investigated. The complainant points out that the medical report drawn up on the day of the injury, which was submitted by the State party itself, reads "moderate swelling, no displacement". A year later, the same doctor stated in his testimony that the swelling of the nose was obvious. It seems reasonable, however, to give greater importance to the report drawn up on the day of the events. If the swelling was moderate at the time of the examination, it might not have been very visible at the police station. In any event, it is the State party that has failed to provide a rational explanation of what caused the injury.⁶

5.2 Second, the State party does not clarify why the police did not open an investigation into the incident, even though the complainant had informed them that she had been assaulted, and why the complainant was not taken to a health facility. According to a statement made by one of the officers who had not taken part in the arrest of the complainant but was at the police station while she was in custody, he asked her who had hit her and informed her of the steps to take to file a complaint. However, despite the complainant's allegations that she had been subjected to ill-treatment by members of the same police force, and the strange fact that she was picked up by an ambulance at the entrance to the police station,⁷ the police did not open an investigation, thereby failing to discharge their duty of care.⁸

5.3 Third, the State party does not explain why the complainant's statement and existing injuries did not justify full judicial proceedings, including a trial. Lastly, the complainant points out again that the State party considers the issue of torture to be irrelevant, as it does not accept the recommendations of the Council of Europe and the United Nations or recognize the existence of a structural problem.⁹

State party's observations on the complainant's comments

6.1 On 5 August 2019, the State party responded to the complainant's comments by emphasizing that criminal proceedings had indeed been instituted as a result of the allegations made by the complainant and that the evidence she requested had been produced. However, the case was closed in the absence of any evidence that the accused police officers had committed an offence. The State party emphasizes once again that the stills from the security cameras at the police station where the complainant was questioned show no signs of the violence that she claims to have suffered. It also notes again that, according to the report of the health services, the complainant "reeked of alcohol". It adds that, according to a statement from a person who was at the discotheque where the complainant allegedly stole wallets, the complainant said, "I know how to make an injury report that will get you in trouble."

6.2 The State party reiterated its request for the communication to be found inadmissible or, alternatively, dismissed on the merits.

⁶ The complainant again notes that the burden of proof is reversed when harm is done to a person in detention.

⁷ According to the police officer's full testimony submitted by the complainant as an annex to her initial communication, he acknowledges that the complainant "had requested the assistance of an ambulance" upon her departure from the police station.

⁸ The complainant cites *Blanco Abad v. Spain* (CAT/C/20/D/59/1996), para. 8.6, according to which a formal complaint is not needed in order for the State to open an investigation.

⁹ The complainant cites CAT/C/ESP/CO/6/Add.1, para. 35 (in the opinion of the State party, the public holds the work of the law enforcement agencies in high esteem, "a fact that corresponds to the extremely low rate of irregularities in the conduct of the police").

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any complaint submitted in a communication, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22 (5) (a) of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

7.2 The Committee notes the State party's argument that the failure to inform the complainant of her rights when she was arrested is outside the material scope of the Convention, since that matter should be considered under the International Covenant on Civil and Political Rights rather than the Convention. The Committee also notes, however, that in its general comment No. 2 (2008) on the implementation of article 2 by States parties, it specifies that certain basic guarantees apply to all persons deprived of their liberty. Such guarantees include the right of detainees to be informed of their rights and the right promptly to receive independent legal assistance and independent medical assistance.¹⁰ In addition, the Committee notes that, in the past, it has found that failures by a State party to respect such guarantees, including in cases of detention in police custody, constitute violations of article 11 of the Convention.¹¹ The Committee therefore concludes that the complaint is, on this point, compatible *ratione materiae* with the Convention, in that the Committee is not bound by the parties' legal allegations but only, in principle, by their factual allegations.

7.3 The Committee notes, however, that the State party argues that the complainant did not exhaust domestic remedies, since she did not claim before the domestic courts that she had not been informed of her rights when she was arrested. In the absence of any information to the contrary from the complainant, the Committee declares this part of the communication inadmissible under article 22 (5) (b) of the Convention.

7.4 The Committee notes that the complainant also claims that other guarantees were violated, such as the right to receive medical care, which she allegedly requested several times while in custody, and that the alleged violation of that guarantee was raised before the domestic courts, as indicated in the application for reconsideration that she submitted to the Court of Investigation. As the State party did not comment on this claim, the Committee is of the opinion that domestic remedies have been exhausted and that there are no obstacles to the admissibility of the claim.

7.5 The Committee notes the State party's assertion that the communication is manifestly unfounded and abusive, and that it is thus inadmissible pursuant to article 22 (2) of the Convention and rule 113 (b) of the Committee's rules of procedure. The Committee notes that the complainant has failed to substantiate her complaint under article 13 of the Convention and finds it inadmissible pursuant to article 22 (2) of the Convention.

7.6 The Committee observes, however, that the complainant raises substantive issues under articles 1, 2, 11, 12 and 16 of the Convention and that those issues should be examined on the merits. As the Committee finds no further obstacles to admissibility, it declares the complainant's allegations submitted under articles 1, 2, 11, 12 and 16 admissible and proceeds with its consideration of the merits.

Consideration of the merits

8.1 The Committee has considered the communication in the light of all the information made available to it by the parties, in accordance with article 22 (4) of the Convention.

8.2 Before considering the allegations made by the complainant, the Committee must determine whether the acts to which she was subjected constitute acts of torture within the meaning of article 1 of the Convention, or cruel, inhuman or degrading treatment, within the meaning of article 16 of the Convention. The Committee notes the complainant's allegations that she was hit by police officers when she was arrested, including by being

¹⁰ Paragraph 13.

¹¹ *Aarrass v. Morocco* (CAT/C/52/D/477/2011), para. 10.3; *E.N. v. Burundi* (CAT/C/56/D/578/2013), para. 7.6; and *Ndarisigaranye v. Burundi* (CAT/C/62/D/493/2012), para. 8.4.

rammed against the edge of the car door, and that, as she was being taken to the police station, she was caused repeatedly to hit her face against the partition inside the patrol car. The Committee also notes that it has been objectively established that the complainant was picked up by an ambulance from the entrance to the police station immediately after her release and that her nose was broken. Although, in practice, the definitional threshold between cruel, inhuman or degrading treatment or punishment, on the one hand, and torture, on the other, is often not clear, the Committee recalls that it established, in general comment No. 2, that the obligation to prevent torture, laid down in article 2, is indivisible from and interdependent with the obligation to prevent cruel, inhuman or degrading treatment or punishment.¹² The Committee considers that the established facts of the case constitute, as a minimum, cruel, inhuman or degrading treatment within the meaning of article 16 of the Convention, although it is unable to find sufficient evidence to state with certainty that they constitute torture within the meaning of article 1. It will therefore consider the communication under article 16 of the Convention.

8.3 The Committee must decide, in accordance with article 12 of the Convention, whether there is reasonable ground to believe that the complainant was subjected to cruel, inhuman or degrading treatment and, if so, whether the State party's authorities complied with their obligation to proceed to a prompt and impartial investigation.¹³

8.4 The Committee recalls that the burden of proving the existence of prima facie evidence of cruel, inhuman or degrading treatment is borne by the complainant, who must present an arguable case, that is, submit substantiated arguments showing that she has been subjected to torture or cruel treatment.¹⁴ However, when complainants are in a situation where they cannot elaborate on their case, such as when they have demonstrated that they have no possibility of obtaining documentation relating to their allegation of torture or have been deprived of their liberty, the burden of proof is reversed, and the State party concerned must investigate the allegations and verify the information on which the communication is based.¹⁵ In line with the State party's obligation to investigate ex officio any allegation of torture or ill-treatment,¹⁶ it is the State authorities who bear the burden of providing the information to prove that they are not responsible for the allegations against them, as it cannot be expected that persons deprived of their liberty will be able to gather the necessary evidence in relation to the deprivation of their liberty. In this case, the Committee notes that the facts, and in particular the detention of the complainant, are sufficient to shift the burden of proof from the complainant to the authorities. The Committee is of the view that, given the circumstances of the case, the State party did not provide information sufficient to conclude that the complainant's injuries were not caused while she was in detention. The possibility that the complainant had some kind of injury to her nose while she was at the police station cannot be ruled out on the basis of the still images from the security camera footage alone, given the quality of those images. In addition, in the report of the medical examination carried out on the day of the injury, which was provided by the State party itself, it is stated that the swelling was moderate, with no displacement, suggesting that the injury would not be obvious in security footage. It should be noted that this report contradicts the testimony given a year later by the same doctor, in which he stated that the swelling of the nose was obvious, thereby undermining the credibility of the version of the facts submitted to the Committee by the State party. Accordingly, the Committee is of the view that, in the light of the acts that the complainant described and to which she was subjected while in police custody, as well as her request for medical assistance immediately upon her release and her broken nose, it can be concluded that there was prima facie evidence of cruel, inhuman or degrading treatment, which has not been refuted by the State party.

8.5 Regarding the prompt and impartial investigation of acts of cruel, inhuman or degrading treatment or punishment, the Committee recalls that an investigation in itself is not sufficient to demonstrate the State party's conformity with its obligations under article

¹² Paragraph 3.

¹³ *Yrusta and Yrusta v. Argentina* (CAT/C/65/D/778/2016), para. 7.4.

¹⁴ General comment No. 4 (2017) on the implementation of article 3 of the Convention in the context of article 22, para. 38.

¹⁵ *Ibid.*

¹⁶ *Blanco Abad v. Spain*, para. 8.2.

12 of the Convention.¹⁷ However, the Committee takes note of the State party's argument that all the claims made by the complainant, including the allegations of torture or cruel, inhuman or degrading treatment, were thoroughly examined by the domestic courts in proceedings in which all the evidence requested by the parties was produced, that the claims were reviewed by higher courts, that the decision is not unreasonable and that there is therefore no reason to argue that the judges who conducted the proceedings were biased. In view thereof, the Committee considers that the State party has met its obligation to proceed to a prompt and impartial investigation of the complainant's allegations of torture or cruel treatment, in accordance with article 12 of the Convention.

8.6 Finally, the Committee notes the complainant's claims that, despite her repeated requests, she did not receive medical assistance. The Committee observes that these claims appear to coincide with the testimony of the police officer who stated that the complainant "had requested the assistance of an ambulance" upon her departure from the police station (see footnote 9). The Committee is of the view that the failure to respect this guarantee falls under articles 2 and 11 of the Convention (see para. 7.2). The Committee recalls its jurisprudence concerning certain basic guarantees that must be applied to all persons deprived of their liberty in order to prevent them from being subjected to torture or cruel treatment, including the right of detainees promptly to receive independent legal and medical assistance.¹⁸ The Committee also recalls its concluding observations on the sixth periodic report of Spain, according to which "the State party should guarantee the right of all detainees [...] to be promptly examined by an independent doctor".¹⁹ The Committee added that it was concerned about "reports of difficulties in obtaining medical treatment in police custody and shortcomings in the quality and accuracy of forensic examinations" and recommended that the State party "take all necessary measures to guarantee that all detainees are given thorough and impartial medical examinations and that forensic examinations are accurate and of a high standard, and that victims are able to obtain medical evidence to support their allegations".²⁰ In the absence of information from the State party on this point, the Committee finds that the State party has failed to comply with its obligations to provide medical assistance as one of the guarantees required under articles 2 (1) and 11 of the Convention, the latter read alone and in conjunction with article 2.²¹

9. In the light of the foregoing, the Committee, acting under article 22 (7) of the Convention, concludes that the facts before it disclose a violation of article 2 (1) of the Convention, read in conjunction with article 16; article 11, read alone and in conjunction with article 2; and article 16.

10. The Committee urges the State party to (a) provide the complainant with full and adequate redress for the suffering inflicted on her, including compensation for material and moral damages and means of rehabilitation; and (b) take the necessary measures, including the adoption of administrative measures against those responsible, and give precise instructions to police officers at police stations, to prevent the commission of similar offences in the future. Pursuant to rule 118 (5) of its rules of procedure, the Committee invites the State party to inform it, within 90 days of the date of the transmittal of the present decision, of the steps it has taken to respond thereto.

¹⁷ *Rakishev and Rakishev v. Kazakhstan* (CAT/C/61/D/661/2015), para. 8.7; and *Ushenin v. Kazakhstan* (CAT/C/60/D/651/2015), para. 7.5.

¹⁸ *Aarrass v. Morocco*, para. 10.3; *E.N. v. Burundi*, para. 7.6; and *Ndarisigaranye v. Burundi*, para. 8.4.

¹⁹ CAT/C/ESP/CO/6, para. 10.

²⁰ *Ibid.*, para. 19.

²¹ See also *Aarrass v. Morocco*, para. 10.3.