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The legal value of the decisions given by the United Nations Human Rights Treaty Bodies in light of the Judgments of the Spanish Supreme Court of 13 June 2023 (STS 786/2023) and of 29 November 2023 (STS 1597/2023): End of Story?

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Abstract: this paper studies the legal value of the decisions given by the United Nations Human Rights Treaty Bodies considering mainly the Judgments 786/2023 and 1597/2023 of the Spanish Supreme Court, recently delivered on 13 June 2023 and 29 November 2023. The first judgment does not recognise a decision of the Committee against Torture as a valid premise to lead to the State liability. Although, the second judgment, on the effects of a decision given by the Committee on the Rights of Persons with Disabilities, confirms the 2018 decision by the same court regarding a ruling by the Committee on the Elimination of Discrimination against Women, which was a turning point for the jurisprudence in this field. In this sense, the paper provides an overview of the varying types of decisions issued by different human rights treaty bodies and scrutinizes their legal value from both international law and Spanish domestic law perspectives. In addition, it considers the different approaches of the Spanish legal scholarship to this issue. Notably, the paper conducts a thorough analysis of how the Supreme Court interprets its doctrine in light of the 2023 judgments. In essence, it concludes the establishment of a jurisprudence by the Supreme Court on the legal value of these decisions consisting of its condition of valid premise to seek the State liability, as such having a binding effect, confirming the doctrine started five years ago. Nevertheless, the author criticizes this doctrine as he believes it does not align accurately with both international law and the Spanish domestic legal framework.

Keywords: United Nations Human Rights Treaty Bodies, Supreme Court's Judgment of 13 June 2023, Supreme Court's Judgment of 29 November 2023, human rights enforcement, Committee on the Rights of Persons with Disabilities

(A) INTRODUCTION

Contrary to the mandatory nature of the judgments rendered by the regional international tribunals, the legal value of the decisions given by the United Nations Human Rights Treaty Bodies remains as a disputed question. As the International Law Commission has pointed out, "regional human rights courts and bodies have also used pronouncements of expert treaty bodies as an aid for the interpretation of treaties that they are called on to apply" and "various domestic courts have considered that pronouncements of expert

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treaty bodies under human rights treaties, while not being legally binding on them as such, nevertheless 'deserve to be given considerable weight in determining the meaning of a relevant right and the determination of a violation.'"[1]

The enforcement of the different decisions given by the distinct committees of independent experts that monitor implementation of the core international human rights treaties depends on the legal system of each State Party on every treaty. Thus, there are different kinds of internal enforcement mechanisms, either of an administrative or judicial nature, either these mechanisms have been legally developed or their development has been carried out by the domestic case law.[2]

As it is known and as explained below, in Spain there is a legal gap with regards to the adoption of an internal enforcement mechanism of these decisions. As such, the Spanish domestic courts have been in charge of its development, although there was a turning point, i.e., the Judgment 1263/2018 rendered by the Spanish Supreme Court on 17 July 2018 in the famous case of Ángeles González Carreño, to which I will refer later. In fact, this judgment constituted a turning point in the sense that prior to this decision there were few cases related to the value of the decisions of the United Nations organs considering that before the aforementioned judgment the domestic decisions were unequivocal: the human rights treaty bodies are not jurisdictional organs and as a result their decisions have just an interpretative value and are not final and binding.[3] However, after the 2018 Supreme Court Judgment, numerous cases were brought before the Spanish courts and tribunals seeking a remedy for a human right violation from the State liability, thus asking the recognition of compulsory legal value in the domestic legal order of the decisions given by the United Nations human rights treaty bodies.

In view of the above, in this article my goal is to pursue the study the legal value in Spain of the decisions given by the United Nations Human Rights Treaty Bodies, in particular in light of two recent judgments given by the Spanish Supreme Court, namely: the Judgment 786/2023 of 13 June 2023 and the Judgment 1597/2023 of 29 November 2023. To this end, I will firstly address succinctly the legal nature of the different decisions rendered by these United Nations organs from an international and domestic legal perspective. Secondly, I will analyse these latest judgment of 2023 in which the Supreme Court clarifies its previous jurisprudence and settles its doctrine by cassation for the future. Finally, I will try to expose some conclusions with a particular focus on the potential consequences of this latest judgment for the legal value of the decisions of the United Nations treaty bodies in Spain, taking into account that from this point and until a new judicial criterion would be given, this value has been established by the Supreme Court since 2023.

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1 International Law Commission, *Report of the International Law Commission Seventieth session (30 April–1 June and 2 July–10 August 2018)*, doc. A/73/10, p. 114, para. 22.

2 E. J. Martínez Pérez, 'Los órganos de tratados de las Naciones Unidas como alternativa limitada para la salvaguarda de los derechos humanos en España' 15 (1) *Cuadernos de Derecho Transnacional* 517-548, at 518 [doi: 10.20318/cdt.2023.7552].

3 Ibid.

B) SOME INITIAL CONSIDERATIONS ABOUT THE UNITED NATIONS HUMAN RIGHTS TREATY BODIES AND THE LEGAL VALUE OF THEIR DECISIONS FROM AN INTERNATIONAL AND A DOMESTIC LEGAL PERSPECTIVES

In order to apply the international human rights treaties, States receive support and assistance in fulfilling their international obligations by the human rights treaty bodies (also known as human rights committees or expert organs), whose main competence is monitoring such application by States parties of those human rights treaties. Nowadays these committees are ten: the Committee on the Elimination of Racial Discrimination;[4] the Committee on Economic, Social and Cultural Rights;[5] the Human Rights Committee;[6] the Committee on the Elimination of Discrimination against Women;[7] the Committee against Torture;[8] the Subcommittee on Prevention of Torture;[9] the Committee on the Rights of the Child;[10] the Committee on Migrant Workers;[11] the Committee on the Rights of Persons with Disabilities;[12] and the Committee on Enforced Disappearances.[13] It is important to note that not every universal conventions for the protection of human rights have established their own committees and that not all of these committees have the same competences and procedures.

However, international treaty bodies, except for the Subcommittee on Prevention of Torture, have a mandate to receive and review reports periodically submitted by State parties.[14] These reports detail how these nations are applying the provisions of international treaties within their own borders. The treaty bodies offer guidance to help States in preparing their reports, produce general comments to provide interpretations of treaty provisions, and organize discussions on topics related to these treaties. Some

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4 It was the first committee to be created in 1969 and it is in charge of monitoring the application of the International Convention on the Elimination of All Forms of Racial Discrimination.

5 It was established in 1985 and it handles the application of the International Covenant on Economic, Social and Cultural Rights.

6 This committee was established in 1976 in order to review the application of the International Covenant on Civil and Political Rights.

7 Since its establishment in 1981 it is in charge of monitoring the application of the Convention on the Elimination of All Forms of Discrimination against Women.

8 The Committee against Torture, that was created in 1987, handles the application of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. This committee will be relevant in this article since the value of one of its decisions was analysed by the Spanish Supreme Court in its judgment given on 13 June 2023.

9 This Subcommittee started its work in 2007 and it has two main mandates: to visit all places of detention in State parties; and to provide assistance and advice to both States parties and their independent national bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment, the national preventive mechanism (see Office of the High Commissioner of the United Nations for Human Rights, *The United Nations Human Rights Treaty System*, nº 30 (1) (2012) 1-68, at 20.

10 Since 1991 it has been monitoring the application of the Convention on the Rights of the Child, as well as its Optional Protocols related.

11 It reviews the application of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

12 This committee (created in 2008) monitors the implementation of the Convention on the Rights of Persons with Disabilities.

13 This committee was the latest to be established and it is in charge of monitoring the application of the international Convention for the Protection of All Persons from Enforced.

14 Office of the High Commissioner of the United Nations for Human Rights, *The United Nations Human Rights Treaty System*, *supra* n. 9, 21.

treaty bodies also undertake various activities to enhance the implementation of the treaties by State parties, although not all of them do. Most treaty bodies can examine complaints or communications from individuals alleging that their rights have been violated by a State party, but this is contingent on the State's voluntary participation in this process. Some of these bodies may also conduct investigations and evaluate complaints between States.

Although the committees develop their functions by means of different procedures, three main mechanisms are common in the development of their activity by most of these committees, namely: firstly, the consideration of State parties' reports; secondly, the adoption of concluding observations; and, thirdly, the publication of general comments.[15]

Importantly, the principal mandate of all committees, save for the Subcommittee on Prevention of Torture, is the systematic review of the periodic submissions of reports by State parties, in accordance with the stipulations of the respective human rights treaties. Within this foundational remit, the treaty bodies have cultivated procedural practices that have proven notably efficacious in the meticulous evaluation of the degree to which States have discharged their obligations under the human rights accords to which they are parties.[16] Thus, these committees serve as catalysts for the advancement and sustained enforcement of the human rights protected under these treaties.

Concerning the adoption of concluding observations (also named as 'concluding comment'), these concluding observations comprehend the determinations and recommendations issued by a treaty body subsequent to its review of a State party's report. These observations include both the positive facets of a State's adherence to the treaty and areas where the treaty body prescribes further action to be taken by the State. The treaty bodies are endeavoured in their commitment to rendering concluding observations that are precise, focused, and practically actionable. Furthermore, there is a growing emphasis on measures designed to monitor the effective follow-up and implementation of their concluding observations.[17]

With regards to the general comments (named as 'general recommendations' by the Committee on the Elimination of Discrimination against Women and by the Committee on the Elimination of Racial Discrimination), they cover the interpretations by each committee of the provisions of each human rights treaty. As such, the general comments deal with both the comprehensive interpretation of substantive provisions prescribed by human rights treaties and general guidance on the information that should be submitted in State reports.[18] In this regard, these general comments that are public and available have been defined sometimes as jurisprudence taking into account that they mostly

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15 A, Marrero Salvador, 'El valor jurídico de las decisiones de los órganos basados en los tratados en materia de derechos humanos de Naciones Unidas y sus efectos en el ordenamiento español', 39 Anuario Español de Derecho Internacional (2023) 265-287 [doi: 10.15581/010.39.265-287].

16 See W. Kälin, 'Examination of state reports', in H. Keller, G. Ulfstein, *UN Human Rights Treaty Bodies: Law and Legitimacy* (Cambridge University Press, Cambridge, 2012) 16-72.

17 In this regard see J. Cardona Llorens, 'Hacia la configuración de un 'sistema' de protección de los derechos humanos de las Naciones Unidas', 1 *Cursos de derecho internacional y relaciones internacionales de Vitoria-Gasteiz* (2015) 135-172.

18 H. Keller, L. Grover, 'General Comments of the Human Rights Committee and their legitimacy', in H. Keller, G. Ulfstein, *UN Human Rights Treaty Bodies: Law and Legitimacy*, *supra* n. 16, 116-198.

contain interpretations of international treaties and that contribute to precise the sense, the scope and the application of these rules. In my opinion, the term jurisprudence would not be incorrect concerning the general comments given by the human rights committees inasmuch as these compilations of resolutions are helpful to the better interpretation and application of human rights, although it should not be used as an argument to justify the legal value of such decisions.[19]

Moreover, all the committees are entitled to address individual complaints submitted by any individual who considers that his or her rights under one of the respective treaty have been violated by a State party to that treaty, although the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families cannot exercise this competence yet since its treaty has not received the number of declarations required to entry into force.[20] In such a case and whether the State has agreed to recognize the competence of the committee to receive such complaints, the individual is able to bring the complaint before the committee once exhausted the local remedies. Importantly, the legal value of the answers by the committees to the individual by means of decisions is the question at hand in this article.

It is clear that this is the most advanced, perfected, and protective mechanism for the individuals seeking for the protection of their human rights.[21] Nonetheless, this is a facultative system that requires from the State either the ratification of the optative protocol or a declaration accepting the competence of the committee in order to receive communications from individual under its jurisdiction.[22]

(1) The legal value of the committees' decisions from an International Law perspective

Much has been written and discussed regarding the legal value of these human rights committees' communications at the international and domestic levels. Concerning the nature of these decisions from an International Law perspective, it is interesting to consider the two main approaches to this question by the International Court of Justice. In this sense, the principal judicial organ of the United Nations had the opportunity to make statements on this question in two different judgments given in two distinct disputes.

On the first case, the International Court of Justice addressed this issue along the dispute *Ahmadou Sadio Diallo*, between Republic of Guinea and Democratic Republic of the Congo. In that case, the Court declared that "the interpretation above is fully

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19 As explained below, even the International Court of Justice has used the term jurisprudence, mentioning in one of its judgments "the jurisprudence of the Human Rights Committee", in *Ahmadou Sadio Diallo (République de Guinée c. République démocratique du Congo), fond, arrêt, C.I.J. Recueil 2010*, para. 66.

20 See E. J. Martínez Pérez, 'Más allá del tradicional enfoque del control efectivo: los renovados vínculos jurisdiccionales que justifican la aplicación extraterritorial de los tratados internacionales de derechos humanos', 46 Revista Electrónica de Estudios Internacionales (2023), 171-194, at 184.

21 C. Escobar Hernández, 'La protección internacional de los derechos humanos', in M. Diez De Velasco, *Instituciones de Derecho Internacional Público* (Tecnos, Madrid, 2013) 663-696, at 685.

22 E. J. Martínez Pérez, 'Los órganos de tratados de las Naciones Unidas como alternativa limitada para la salvaguarda de los derechos humanos en España'..., *supra* n. 2, at 523.

corroborated by the jurisprudence of the Human Rights Committee established by the Covenant to ensure compliance with that instrument by the States parties."[23] The Court further recalled that "since it was created, the Human Rights Committee has built up a considerable body of interpretative case law, in particular through its findings in response to the individual communications which may be submitted to it in respect of States parties to the first Optional Protocol, and in the form of its "General Comments."[24] Remarkably, the International Court of Justice stated that, "*although the Court is in no way obliged, in the exercise of its judicial functions, to model its own interpretation of the Covenant on that of the Committee, it believes that it should ascribe great weight to the interpretation adopted by this independent body that was established specifically to supervise the application of that treaty*.

The point here is to achieve the necessary clarity and the essential consistency of international law, as well as legal security, to which both the individuals with guaranteed rights and the States obliged to comply with treaty obligations are entitled."[25] Interestingly, the Court analysed in the two following paragraphs of that judgment in a different manner the decision given, on the one hand, by an independent body created within the framework of a regional instrument for the protection of human right (i.e. the African Commission on Human and Peoples' Rights) and, on the other hand, by regional tribunals (such as European Court of Human Rights and the Inter-American Court of Human Rights).[26]

On the second case, the one concerning the questions relating to the Obligation to Prosecute or Extradite between Belgium and Senegal, the International Court of Justice on its judgment of 2012 pronounced itself in a much more indirect manner about the nature of these decisions. However, one should not lose sight of the fact that the Court embraced in that case the interpretation by the Committee against Torture of the term "torture", declaring that this committee emphasized that "'torture' for purposes of the Convention can only mean torture that occurs subsequent to the entry into force of the Convention."[27]

Thus, from the analysis of the limited jurisprudence developed by the principal judicial organ of the United Nations it can be concluded that the Court affirming that it is obliged to follow the interpretations by these committees in fact has recognized a value (great weight) to the interpretations carried out by the committees, even receiving in one of its judgments the interpretation made by one of the committees.

In this line, even the Human Rights Committee upheld in a well-known General Comment that, "*while the function of the Human Rights Committee in considering individual communications is not, as such, that of a judicial body*, the Views issued by the Committee

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[23] *Ahmadou Sadio Diallo (République de Guinée c. République démocratique du Congo), fond, arrêt, C.I.J. Recueil 2010*, para. 66.

[24] Ibid.

[25] Ibid. Emphasis added.

[26] Ibid, paras. 67-68. In particular, along the paragraph 67 the Court declared that: "likewise, when the Court is called upon, as in these proceedings, to apply a regional instrument for the protection of human rights, it must take due account of the interpretation of that instrument adopted by the independent bodies which have been specifically created, if such has been the case, to monitor the sound application of the treaty in question".

[27] *Questions concernant l'obligation de poursuivre ou d'extrader (Belgique c. Sénégal), arrêt, C.I.J. Recueil 2012*, para. 101.

under the Optional Protocol exhibit some of the principal characteristics of a judicial decision" and that "they are arrived at in a judicial spirit, including the impartiality and independence of Committee members, the considered interpretation of the language of the Covenant, and the determinative character of the decisions."[28]

Therefore, the issue is whether and to what degree must a State conform to an interpretation issued by a human rights treaty monitoring body. This is not a secondary matter, and deserves consideration, because international law scholarship tends to place the emphasis firmly upon the role of international courts and comparable bodies as tools for promoting international law itself.[29]

To sum up and prior to consider on the legal value of the committees' decisions from the Spanish legal perspective, I agree with Borlini and Crema when the affirm that, "while their non-binding nature is now undisputed, granting a treaty body the power to make determinations on questions of breach and reparation, even if non-binding, is difficult to reconcile with the freedom of a State to entirely ignore its findings."[30] Besides, these authors understand that, "as far as interpretation is concerned, the work of treaty bodies provides a secondary, and not primary, source for defining treaty terms", that they do not implement the treaty, and they cannot be understood as 'practice,' which shapes the meaning of a treaty under Article 31(3)(b).[31] Nevertheless, I do not fully share this latest view because, as it will be explained below, in my opinion it is in the interpretation of the treaties where the committees find their authentic *raison d'être*.

(2) The legal value of the committees' decisions from a Spanish domestic law perspective

At the domestic level, it is clear that the human rights treaties (as the treaties that establish these committees) as well as the international treaties are part, according

[28] Human Rights Committee, General Comment No. 33, 25 June 2009 *Obligations of States parties under the Optional Protocol to the International Covenant on Civil and Political Rights*, CCPR/C/GC/33, para. 11.

[29] F. Zarbiyev, *Le discours interprétatif en droit international contemporain* (Bruylant, Bruxelles 2015), at 162.

[30] L. Borlini, L. Crema, 'The Legal Status of Decisions by Human Rights Treaty Bodies: Authoritative Interpretations or mission éducatrice?', *The Global Community Yearbook of International Law and Jurisprudence* (2019) 129-158, at 157 [doi: 10.1093/oso/9780197513552.001.0001]. These authors further argue that "it seems that each state party to the underlying treaties does, indeed, have a procedural obligation to examine such pronouncements and present detailed counter-arguments in case of disagreement, but *only* where it results from individual complaints against the same state regarding the same subject matter" (emphasis in original), ibid at 157.

[31] Ibid, at 157. As it is known, article 31 of the Viena Convention on the Law of the Treaties establishes that: "1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose. 2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes: (a) any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty; (b) any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty. 3. There shall be taken into account, together with the context: (a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions; (b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation; (c) any relevant rules of international law applicable in the relations between the parties. 4. A special meaning shall be given to a term if it is established that the parties so intended."

to article 96 of the Spanish Constitution, of the Spanish legal system and have, in accordance with article 95 of the Spanish Constitution, a special and privileged position within this internal legal system.[32] In an important judgment given by the Constitutional Court in 2018, the Court has declared that article 96 "does not give a higher hierarchical position to the treaties with respect to the domestic laws, but it establishes, on the one hand, a rule for the displacement by the treaty of the previous domestic law, without its abrogation, and, on the other hand, it defines the resistance of the treaty to be derogated by domestic laws adopted later."[33]

Moreover, the human rights treaties ratified by Spain has a special value as an interpretative parameter following article 10.2 of the Spanish Constitution. It foresees that "the principles relating to the fundamental rights and liberties recognised by the Constitution shall be interpreted in conformity with the Universal Declaration of Human Rights and the international treaties and agreements thereon ratified by Spain."[34] Consequently, the Constitutional Court has declared in different judgments that the committees' decisions, even though they do not meet the requirements to be considered judicial decisions, have some significance at the internal level and, as such, the interpretations included thereof must be considered.[35]

In addition, although their value cannot be compared to the interpretations made by the Constitutional Court mentioned above, other internal documents dealing with the value of the committees' decisions may be referred. For instance, in a note (*circular*) published by the State Attorney in 2020 about the "legal nature of the decisions adopted by the committees competent to monitor the United Nations Human Rights Treaties", the State Attorney concluded that "the decisions do not have binding legal value", but they "have an interpretative value of the Human Rights Treaty and they are arguments of authority that must guide the interpretation and application of the treaties by the States parties."[36] Besides, the State Attorney concluded that the "States Parties have undertaken to behave in accordance with the due diligence principles in taking into consideration the recommendations of the decisions", despite the fact that "the committees do not have jurisdiction to adopt provisional measures."[37] However, the committees "have

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[32] Article 96 of the Spanish Constitution establishes that: "1. Validly concluded international treaties, once officially published in Spain, shall form part of the internal legal order. Their provisions may only be repealed, amended or suspended in the manner provided in the treaties themselves or in accordance with the general rules of international law. 2. The same procedure shall be used for denouncing international treaties and agreements as that, provided in Article 94, for entering into them." On its part, article 95 of the Spanish Constitution prescribes that: "1. The conclusion of any international treaty containing stipulations contrary to the Constitution shall require prior Constitutional amendment. 2. The Government, or either of the Houses may request the Constitutional Court to declare whether or not there is a contradiction."

[33] See in this regard the STC 140/2018, 20 December 2018, at 7062.

[34] Article 10.2 of the Spanish Constitution.

[35] See S. Ripol Carulla, "Las decisiones de los órganos de tratados de derechos humanos de las Naciones Unidas en el derecho español", in C. FERNÁNDEZ DE CASADEVANTE ROMANÍ (ed.), *Los efectos jurídicos en España de las decisiones de los órganos internacionales de control en materia de Derechos Humanos de naturaleza no jurisdiccional* (Dykinson, Madrid, 2020) 201-233. This autor mentions, among other, the STC 116/2006, 24 April 2006.

[36] Circular 1/2020 of the State Attorney, delivering the note about the 'legal nature of the decisions adopted by the committees competent to monitor the United Nations Human Rights Treaties' , *Anales de la Abogacía General del Estado 2020* (BOE, Madrid, 2021) 292-304, at 292.

[37] Ibid, at 293.

jurisdiction to request the urgent exam of a provisional measure by the State parties", the State parties "have the obligation to carry out this exam according to the due diligence rules" and the "States parties would not comply with their international obligations whether they do not give due consideration to the recommendations and requests of the different committees."[38]

In this vein, the Spanish Attorney Foundation published in September 2022 a practical guide for attorneys about the "effects of the decisions given by the Human Rights International Committees in the Spanish legal system."[39] After deep research on the topic, the practical guide comes up with some interesting conclusions. Firstly, it highlights the "relevant role of Spain in the system of the United Nations concerning the procedures of individual complaints before the different treaties' committees" being "one the States that receives more complaints and the one receiving the higher number of condemning decisions" by some of the committees (for instance, the Committee on the Rights of the Child).[40] In spite of the important overrepresentation of procedures against Spain before these committees, "the enforcement of the decisions by the distinct powers of the State", even though "it is not an exclusive problem of Spain."[41] After highlighting that the "lack of the due consideration of the decisions is based on the traditional doctrine of not being compulsory and the inexistence of appropriate procedures to that effect", the practical guide emphasises the "big step" mad by means of the *famous* judgment of the Supreme Court given on 17 July 2018 (to which we will refer below).[42] In conclusion, this interesting document points out the "absolutely necessary adoption of measures both by the executive power and by the legislative power departing from its compulsory and binding character" (*sic*).[43] In this regard, the Spanish Attorney Foundation proposes to follow the Colombian model (established by its Law 288/1996) and to foresee the possibility of "reviewing final and decisive administrative and judicial resolutions."[44] To that effect, it suggest the amendment of the Organic Law on Judicial Power and of the Law 25/2014 on treaties and other international agreements.[45]

Having said that, the Spanish legal scholarship has had different approaches to the work of the committees and particularly to the value of their decisions. In addition, one could say that this topic received a renewed interest as a result of the Spanish Supreme Court judgment 1263/2018 of 17 July 2018 and its impact, that in my opinion has been so far an authentic turning point on this issue.[46]

Accordingly, some authors has supported the view that the decisions of the committees are binding since "the recognition of legal effects in the Spanish legal order of a binding act of an international body with judicial functions is not a new issue in Spain" and due to the fact that the considerations asserted in relation to the judgments

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38 Ibid.
39 Spanish Attorney Foundation, 'Practical Guide for Attorneys', September 2022.
40 Ibid, first conclusion, at 89.
41 Ibid, second conclusion, at 90.
42 Ibid, sixth and seventh conclusions, at 91.
43 Ibid, eighth conclusion, at 91.
44 Ibid, nineth and tenth conclusions, at 91.
45 Ibid, tenth conclusion, at 91.
46 This term of "turning point" ('punto de inflexión') was launched by professor Cesáreo Gutiérrez Espada in an article mentioned just below.

of the European Court of Human Rights "should be predicable in relation to the views and interim measures of human rights treaty bodies."[47] Likewise, professor Gutiérrez Espada has upheld that these organs work as "quasi-judicial organs", with respect to the principles of contradiction, with a founded and public decision.[48] In such a manner, these decisions develop "'a kind of jurisprudence' or a 'guide' about the specific content of the related rights, constituting references of a huge interest for the States parties and their organs."[49]

Other authors like professor Escobar Hernández have a different approach to this legal value and do not consider these decisions as the judgment given by the human rights regional tribunals.[50] This author understand that, "even though as a rule the human rights treaties do not expressly declare the interpretative power of the control and monitoring organs, the affirmation of this implicit competence is generally admitted", and adds that "this interpretation is a qualified interpretation because the States have conferred to the expert organs, even implicitly, the competence to interpret the treaty", a competence that is "inherent to the guidance function and it has a special significance in this field."[51] Personally I agree with professor Escobar Hernández in the attachment of the value of these decisions to an authoritative and qualified interpretation of the treaties instead of considering these views as final and binding decisions similar to the human rights regional courts' judgments. In my opinion, the Supreme Court in some way confirms this position along its interpretation carried out in the 13 June 2023 judgment, commented below.

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47 J. Cardona Llorens, "The Legal Value of the Views and Interim Measures Adopted by United Nations Treaty Bodies (A response to the opinions of E. Jiménez Pineda, C. Jiménez Sánchez and B. Vázquez Rodríguez)", 23 *Spanish Yearbook of International Law* (2019) 146-165, at 162-163 [doi: 10.17103/sybil.23.7]. This article was part of an agora included in that volume of this very journal together with the following articles: C. Jiménez Sánchez, 'Human Rights Committees: Their nature and legal relevance in Spain', 23 *Spanish Yearbook of International Law* (2019) 104-128 [doi: 10.17103/sybil.23.5]; and, E. Jiménez Pineda, 'A commentary on the Supreme Court's Judgment of 17 July 2018 (STS 1263/2018) and its supposed impact for a legally binding value of the decisions adopted by the Committee on the Elimination of Discrimination against Women (CEDAW)', 23 *Spanish Yearbook of International Law* (2019) 129-145 [doi: 10.17103/sybil.23.6].
This author, professor Cardona Llorens, has thoroughly researched on this topic, so other of his publications can be mentioned such as J. Cardona Llorens, 'El valor jurídico de los actos adoptados por los órganos de tratados de derechos humanos: la necesidad de distinguir entre los distintos actos y entre los efectos jurídicos internacionales e internos", in E. Martínez Pérez (ed.), *Cuestiones actuales en torno a la aplicación de normas y obligaciones en materia de derechos humanos: diálogo con la práctica y otras disciplinas jurídicas* (Tirant lo Blanch, Valencia, 2022) 117-140.

48 C. Gutiérrez Espada, 'La aplicación en España de los dictámenes de comités internacionales: la STS 1263/2018, un importante punto de inflexión', 10 (2) *Cuadernos de Derecho Transnacional* 2018, 836-851, at 845 [doi: 10.20318/cdt.2018.44406]. Professor Gutiérrez Espada also published more recently the following article in book: C. Gutiérrez Espada, 'Reflexiones sobre la ejecución en España de los dictámenes de los comités de control creador por los tratados sobre derechos humanos', in C. Fernández de Casadevante Romaní (ed.), *Los efectos jurídicos en España de las decisiones de los órganos internacionales de control en materia de Derechos Humanos de naturaleza no jurisdiccional* (Dykinson, Madrid, 2020) 279-297.

49 Ibid.

50 C. Escobar Hernández, 'Sobre la problemática determinación de los efectos jurídicos internos de los "dictámenes" adoptados por comités de derechos humanos. Algunas reflexiones a la luz de la STS 1263/2018, de 17 de julio', 71 (1) Revista Española de Derecho Internacional (2019) 241-250, at 249 [doi:10.17103/redi.71.1.2019.3.01].

51 Ibid, at 249.

The Spanish legal scholarships have been plentiful and rich on the topic at hand. Very interesting papers, without being exhaustive, have been published by different authors. Among them professors Sánchez Legido,[52] Vázquez Rodríguez,[53] Bou Franch,[54] Faleh Pérez,[55] Fernández de Casadavante Romaní,[56] Jimena,[57] López Martín,[58] or Ripol Carulla[59] can be mentioned. Among these significant contributions, a short reference to the Council of State's doctrine is brought here. As highlighted by professor López Martín, the doctrine developed by the Spanish Council of State is based on two main arguments, namely, the views given by the committees are not binding and they do not even constitute an authentic interpretation of the conventions, since the committees are not organs of judicial nature.[60]

(3) The turning point: the STS 1263/2018 of 17 July 2018

As explained above, the was a turning point in Spain aimed at achieving a binding legal value of the views and decisions of the human rights committees. This decisive moment in this procedural history took place in July 2018 by the publication of the STS 1263/2018.[61] Considering that much has been written and said about this judgment by the previously mentioned doctrine (and other authors also abroad Spain), along the following lines I will just point out the exact paragraphs declared by the Supreme Court

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52 A. Sánchez Legido, 'Las relaciones entre el Derecho internacional y el Derecho interno en la práctica española y de la Unión Europea', in J. Alcaide Fernández and E. W. Petit De Gabriel (eds.), *España y la Unión Europea en el orden internacional* (Tirant lo Blanch, Valencia, 2017) 467-498.

53 B. Vázquez Rodríguez, 'La STS (Sala Especial) 1/2020, de 12 de febrero: ¿es el recurso de revisión una vía útil para dotar de efectividad a los dictámenes adoptados por los comités de derechos humanos?' 13 (1) *Revista Española de Derecho Internacional* (2021) 353-359 [doi: 10.17103/redi.73.1.2021.3a.01].

54 V. Bou Franch, "Las comunicaciones individuales contra España presentadas en el Comité de Derechos Humanos y su incidencia en el derecho español", in C. Fernández de Casadevante Romaní (ed.), *Los efectos jurídicos en España de las decisiones de los órganos internacionales de control en materia de Derechos Humanos de naturaleza no jurisdiccional…supra* n. 47, 17-64.

55 C. Faleh Pérez, 'Los dictámenes del Comité de Derechos Económicos, Sociales y Culturales y sus efectos jurídicos en España', in C. Fernández de Casadevante Romaní (ed.), *Los efectos jurídicos en España de las decisiones de los órganos internacionales de control en materia de Derechos Humanos de naturaleza no jurisdiccional…supra* n. 47, 65-97.

56 C. Fernández de Casadevante Romaní, 'La obligación del Estado de reconocer y aceptar los efectos jurídicos de las decisiones de los órganos internacionales de control en materia de derechos humanos', in C. Fernández de Casadevante Romaní (ed.), *Los efectos jurídicos en España de las decisiones de los órganos internacionales de control en materia de Derechos Humanos de naturaleza no jurisdiccional…supra* n. 47, 237-277.

57 L. Jimena, 'La efectividad de las resoluciones del Comité Europeo de Derechos Sociales', in C. Fernández de Casadevante Romaní (ed.), *Los efectos jurídicos en España de las decisiones de los órganos internacionales de control en materia de Derechos Humanos de naturaleza no jurisdiccional…supra* n. 47, 125-167.

58 A. López Martín, 'La doctrina del Consejo de Estado sobre los efectos jurídicos de los dictámenes de los Comités de Derechos Humanos de Naciones Unidas', in C. Fernández de Casadevante Romaní (ed.), *Los efectos jurídicos en España de las decisiones de los órganos internacionales de control en materia de Derechos Humanos de naturaleza no jurisdiccional…supra* n. 47, 171-200.

59 S. Ripol Carulla, 'La interpretación del Tribunal Constitucional', in C. Fernández de Casadevante Romaní (ed.), *Los efectos jurídicos en España de las decisiones de los órganos internacionales de control en materia de Derechos Humanos de naturaleza no jurisdiccional…supra* n. 47, 201-233.

60 A. López Martín, 'La doctrina del Consejo de Estado sobre los efectos jurídicos de los dictámenes de los Comités de Derechos Humanos de Naciones Unidas' *…supra* n. 57, at 198.

61 STS 1263/2018, 17 July 2018.

in order to contextualize the interpretation of its doctrine in the subsequent judgment of June 2023 about the value of a decision given by the Committee Against Torture.

The Fourth Section of the Contentious-Administrative Chamber of the Supreme Court analysed several aspects along the merits of this judgment. As main questions of cassations' interest, the Supreme Court stated that "there cannot be doubt that they will have binding/obligatory value for the State party which recognized the Convention and the Protocol since article 24 of the Convention stipulates that 'States Parties undertake to adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognized in the present Convention.'"[62] Moreover, the Supreme Court declared that "body created within the international legislation that, by express stipulation in article 9.6 of the Spanish Constitution, belongs to our domestic legal system" and, besides, "as a result of article 10.2 of our Constitution, the norms related to fundamental rights will be interpreted in accordance with the Universal Declaration of Human Rights and the treaties and international agreements about those subjects ratified by Spain."[63]

Furthermore, according to the Supreme Court in this judgment a human rights committee's declaration is "binding for Spain as a State party which has recognized […] the competence of the Committee ex article 1 of the Optional Protocol […]" and such "*decision must be considered, in this case and with its particularities, as a valid prerequisite in order to lodge a State liability request regardless of the previously denied one*."[64] In this case, the Supreme Court declared that the lack of a specific process to enforce the decisions of the Committee "in itself as a breach of a legal and constitutional obligation", highlighting the special relevance of dealing with a special process for the protection of fundamental rights.[65] As a result, the Supreme Court affirmed that the Administration violated the fundamental rights of the appellant and did not implement the CEDAW's decision, to which it was obliged under the terms set out in the Convention and in the Optional Protocol.[66]

In fact, this judgment has been a turning point, at least for the Spanish courts and tribunals, since after June 2018 a huge number of actions have been filed before them seeking compensations for violations allegedly made by Spain of human rights protected by the treaties in which the State is Party. Among the judgments answering some of those applications, decisions from different Spanish tribunals can be mentioned, such as: 1) judgments given by the National Hugh Court;[67] 2) judgments given by the Constitutional Court;[68] and, even prior to the judgments of 2023, 3) judgments given by the Supreme

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62 Ibid, seventh legal basis, third question.

63 Ibid.

64 Ibid. Emphasis added.

65 Ibid.

66 Ibid. In light of these and other arguments, the Supreme Court declared that: (1) the inexistence of a specific and autonomous process to enforce into the Spanish legal system the recommendations of a CEDAW's decision hampers the autonomous request of the enforcement of those decisions; (2) despite the lack of an appropriate process, it is possible to admit this decision as an enabling premise to lodge a State liability's request; and (3) the Administration violated the appellant's fundamental rights (ibid, eight legal basis).

67 For instance, the SAN 5/2020, 12 May 2021 or the SAN 3080/2021, 1 July 2021.

68 Among them STC 23/2020, 13 February 2020 or STC 46/2022, 24 march 2022..

Court.[69] Between the latest subgroup, the ruling STS 1/2020, 12 February 2020, deserves a special attention because the Supreme Court (by means of a Special Chamber) upheld a different criterion to the one developed in 2018. In particular, it declared that "it does not proceed to put on the same level the judgments of the ECHR [European Court of Human Rights] and the recommendations or views of the distinct committees belonging to the international organizations that make statements about the enforcement of the obligations committed by Spain in the field of human rights."[70] Hence, according to this Special Chamber of the Supreme Court "the Spanish law just confer to the ECHR' judgments, and under certain circumstances, the condition of valid premise to file an application for review of a final judicial decision."[71]

In the light of the above, along the following section of this paper the judgment given in June 2023 by the Supreme Court will be analysed. Thus, after such analysis the reader will be able to confirm — together with the judgment of November 2023 — that these judgments are a precision and a better interpretation of the Supreme Court's previous doctrine that began in 2018.

(C) THE STS 786/2023 OF 13 JUNE 2023: AN ANALYSIS OF THE INTERPRETATION BY THE SUPREME COURT OF ITS OWN DOCTRINE

On 13 June 2023 the Fourth Section of the Contentious-Administrative Chamber of the Supreme Court — the very Chamber that delivered the already known judgment of 17 July 2018 — rendered its judgment 786/2023 dealing with a cassation appeal nº 5269/2022 issued by the State Attorney against the 27 April 2022 judgment given by the National High Court.

(1) Factual and procedural background

The aforementioned judgment of the National High Court admitted partially the previous appeal and recognized a reparation of 3.000 euros to the appellant as a result of the State liability.[72] Against this National High Court the State Attorney filed an appeal before the Supreme Court seeking from the court to "declare and establish the jurisprudence in the seventh legal basis of the appeal" and, "on the basis of this doctrine, to set aside the judgment appealed and, on its place, to render a new judgment fully dismissing the appeal."[73]

In the origin of the case at hand, the appellant was arrested by the police in the city of Córdoba on 27 January 2013.[74] In the course of this detention, the appellant (Ms.

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69 In this regard, the STS 1/2020, 12 February 2020 must be mentioned.

70 Ibid, sixth legal basis.

71 Ibid. The original wording in Spanish of this *obiter dictum* of the Supreme Court is as follows: "La ley española sólo atribuye a las sentencias del TEDH, y en determinadas condiciones, la condición de título habilitante para un recurso de revisión contra una resolución judicial firme."

72 STS 786/2023, 13 June 2023, first pleas of facts (*antecedente de hecho*).

73 Ibid, fifth pleas of facts.

74 Ibid, first legal basis (*fundamento de Derecho*).

Noelia) allegedly was bodily injured and suffered a deviation of her nasal septum and, consequently, asked an economic compensation.[75]

Subsequently, the currently appealed part filed a lawsuit against the four police officers as a result of the injuries suffered before the Court of first instance (*Juzgado de Instrucción*) nº 1 of Córdoba, that declared the stay in proceedings concerning this criminal offence.[76] Later on, the third section of the Córdoba's regional court (*Audiencia Provincial*) rendered a writ on 10 July 2014 dismissing the appeal and stated that "it deem inexorable in this case the stay of the proceedings, even considering the existence of a potential false complaint."[77]

Moreover, an appeal for constitutional protection (*recurso de amparo*) before the Constitutional Court was refused by means of a ruling given on 16 March 2015 in which the court highlighted "the clear inexistence of violation of a fundamental right able to be protected in this manner."[78]

Subsequently, on 23 March 2016 the appellant submitted a complaint before the Committee against Torture on the basis of the facts that took place on 27 January 2013 in Córdoba.[79] On 15 January 2020, this Committee published its individual communication in accordance with article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.[80] In this decision, the Committee recalled that, "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*."[81]

In addition, the committee added that, "in line with the State party's obligation to investigate ex officio any allegation of torture or ill-treatment, 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."[82] Therefore, the committee was 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."[83]

Besides, the committee, due to the absence of information from the State party on this point, found 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

75 Ibid.
76 Ibid, fourth legal basis.
77 Ibid fourth legal basis, point 2.
78 Ibid.
79 Ibid fourth legal basis, point 3.
80 Decision adopted by the Committee against Torture under article 22 of the Convention, concerning communication No. 818/2017, 15 January 2023.
81 Ibid, consideration of the merits, 8.4. Emphasis added.
82 Ibid.
83 Ibid.

Convention, the latter read alone and in conjunction with article 2."[84] In light of these and further considerations, the committee, acting according to article 22 (7) of the convention, concluded 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*" and urged 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."[85]

Following this decision, the appellant firstly submitted a request of information to the Ministry of Internal Affairs on 23 October 2020 asking information about the steps developed in application of the Committee's decision. Secondly, on 23 February 2021, her legal representation submitted, also before the Ministry of internal Affairs, a request of State liability as a result of an abnormal functioning of the police that caused the injuries of the appellant, request that was dismissed, too.[86]

Finally, a contentious-administrative appeal, following the procedures for the protection of fundamental rights, was filed on her behalf against the dismissal of the request of State liability.[87] The appellant argued as relevant the "violation of articles 15, 17 and 20 of the Spanish Constitution as well as articles 1, 3, 8 and 13 of the European Convention on Human Rights" and seek the "enforcement of the 15 January 2020 CAT decision by paying a compensation of 8.931 euros."[88]

The appealed judgment was given by the National High Court on 27 April 2022 and it declared, in light of the facts, that "'it is possible to admit in this case that the views [given by the Committee against Torture] is a valid prerequisite to lodge a State liability request due to an abnormal functioning of the Administration (...) as the latest resource to obtain a compensation.'"[89] Besides, in the wording of the National High Court' judgment, "'the relevant fact in this case is that until a full and appropriate reparation of the damages is satisfied in execution of the CAT' decision, the violation of human rights is maintained declared by that decision, in which accordance no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment ex article 5 of the Universal Declaration of Human Rights and article 7 of the International Covenant on Civil and Political Rights, being its correlative the right to physical integrity protected under article 15 of our Constitution.'"[90]

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84 Ibid. Consideration of the merits, 8.6.

85 Ibid. Consideration of the merits, points 9 and 10. Emphasis added.
Finally, at the point 10 the Committee, pursuant to rule 118.5 of its rules of procedure, invited "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."

86 STS 786/2023, 13 June 2023, fourth legal basis, points 4 and 5.

87 Ibid.

88 Ibid.

89 Ibid.

90 Ibid.

Thus, "'once declared the violation of the right in the decision of the CAT, its lack of enforcement perpetuates such violation, maintaining its effects.'"[91] Moreover, "'as it was upheld in the STS, also in this case is this 'undoubtful' the prospect of the lawsuit, inasmuch as 'it not only should receive an express consideration by the State General Administration, obligation prescribed in article 42 of the law 30/1992, enforcing its international and domestic obligation,' current article 21 of the Law 39/2015, but also 'it is the latest effective remedy to control the alleged continuous breach of human rights that was not repaired after the conclusion of the CEDAW Committee,' here the decision of the CAT."[92]

(2) The merits of this case

The main question of this judgment and the reason why it is thoroughly analysed in this point is the question of cassation's interest, i.e., "'to determine if, in the cases of the decisions of the united Nations Committee against Torture that conclude finding a violation of some rights established in the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, those decisions are binding for the administration and for the Spanish jurisdictional organs in the sense of considering them as an evidence of the existence of the State liability without the possibility of analysis of its existence.'"[93]

In this sense, the Court identified the laws that, in principle, should be object of interpretation in this case, namely: article 15 of the Constitution, article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted in New York on 10 December 1984, together with articles 32 and 34 of the Law 40//2015 of the legal framework of the Public Administrations and the article 30 of the Law 25/2015 of 27 November on treaties and other international agreements.[94]

Concerning the positions of the parties, the State Attorney's view must be considered. According to the State Attorney, "the recommendations included in the views of the committees created by virtue of the Pacts and Conventions adopted within the framework of the United Nations, related to the rights recognized in each pact or convention, do not have executive value and do not preclude the effect of material *res judicata* of the domestic judicial judgments and resolutions, as it happens in this case with the judicial writs adopted by the criminal jurisdiction. The Committee against Torture's decisions, in short, cannot be considered a sufficient prerequisite lead to the State liability."[95]

On the other hand, the legal representation of the appealed part (Ms. Noelia) upheld the binding character, for the effects of the State liability, of the decision of the United Nations Committee against Torture and, for that purpose, it mentioned the 17 July 2018 judgment.[96] Finally, the Public Prosecutor deemed that the cassation appeal should

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91 Ibid.
92 Ibid.
93 Ibid, second legal basis. See the Supreme Court order of 27 October 2022.
94 Ibid.
95 Ibid, third legal basis.
96 Ibid.

be accepted because "the United Nations Committee against Torture's decisions do not entail neither the public administrations nor Spanish tribunals in the sense of considering those decisions as a proof of the existence of the State liability."[97]

Importantly, the most two interesting and relevant legal basis of the Supreme Court judgments are the fifth untitled *the decisions of views of the United Nations Human Rights Committees* and the sixth untitled *our judgment of 17 July 2018* .

(a) The interpretation of the Supreme Court of the decisions of the views of the United Nations Human Rights Committees

Along the crucial fifth legal basis of this judgment, the Fourth Section of the Supreme Court's Contentious-Administrative Chamber declared that the United Nations Human Rights Committees "deliver decisions or views, depending on the kind of Committee. Thus, these resolutions resolve the complaints submitted before each committee about the violation of the rights protected in the International Covenant on Civil and Political Rights and those decisions or views include observations, recommendations or declarations at the same time that propose measures to avoid future violations of the rights. Thus, *the decision of the Committee against Torture of 15 January 2020*, in application of the Convention against Torture and other cruel, inhuman or degrading treatment or punishment, when it deals with the issue of the merits of the facts happened in Córdoba, *includes references like the 'Committee observes', the 'Committee recalls', the 'Committee notes' or the Committee 'recommending the State party', which is revealing*."[98]

In this regard, the "characterization and effects of these decisions and views of the United Nations Committees have been object of analysis by this Chamber *stating repeatedly that these decisions or views do not have binding nature in the terms that is invoked since they do not have direct executory nature in order to determine the annulment of the final judicial resolutions* from national judges and tribunals."[99] Moreover, the International Covenant on Civil and Political Rights "does not include any clause or specific provision that establish this executive effect of the Committees' resolutions."[100] What is more, "our domestic legal system has not established a concrete and specific legal procedure to allow judges and tribunals to review the final criminal writs or judgments as a result of a Committee's decision or views."[101]

As such, according to the Supreme Court "*the legal value of the decisions or views of the Committee is not binding for these effects, they do not impose an obligation and they do not have executive nature, although it does not mean that they do not entail any legal consequence*. Thus, these decisions must be taken into account as relevant indicators of the enforcement of the rights foreseen in the Covenant, that through the suggested measures could limit or reduce the violations of such rights and contribute to their better protection. Likewise, they must be taken into consideration by States in order to guide its legislative action in

97 Ibid.
98 Ibid, fifth legal basis. Emphasis added.
99 Ibid. Emphasis added.
100 Ibid.
101 Ibid.

a such a manner that the requirements from the interpretation made by the Committee of the Covenant's rules."[102]

Having said that, the Supreme Court logically admits that the "International Covenant on Civil and Political Rights is part of our internal law in accordance with article 96.1 of the Spanish Constitution, since the fact that the international treaties ratified by Spain are part of our legal system is undoubtful. However, it does not mean that a fact arising from its application, such as the Committee's decision, should have an identic legally binding nature that it is not recognized neither regulated by the Treaty itself."[103]

Consequently, according to the Supreme Court, these are two different levels: on the one hand, there is an obligation of the State to comply with the rights regulated in the Covenant, to which it is bound conventionally; and, on the other, "it is the nature of the Committee's decisions, its legally compulsory character, binding or not, that not necessarily has the same legal effect than the normative obligations established by the Treaty."[104]

Recalling the 12 February 2020 Supreme Court's judgment, pointed out above, the tribunal declared that the "rules concerning the fundamental rights and the public freedoms recognised by our Constitution shall be interpretated, ex article 10.2 of the Spanish Constitution, in accordance with the treaties and other international agreements ratified by Spain, *which cannot be translated in the fact that the Committee's decisions may become, by the jurisprudence, in a title to determine without further elements the State liability as a mean of enforcement of the decisions or views of the Committee*."[105] In other words, the lack of a legal provision about a specific path that must be follow for the application and enforcement of the CAT's decisions cannot be understood as the need to resource to the State liability.[106]

In a nutshell, according to the Supreme Court, "even though the decisions and views have neither a legally binding nature nor executive force automatically because the treaty and our international legal system do not contain any rule establishing its compulsory character and enforceability", this "does not mean that the decisions lack any effect, since they include recommendations that must be addressed, and they establish useful measures."[107] In addition, these decisions "are helpful as a guidance to confirm, always together with the other circumstances of the case, the determination of a violation of a fundamental right that may have triggered a damage attributable to the Administration", as it occurred in the 17 July 2018 judgment.[108]

(b) The clarification by the Supreme Court of its judgment of 17 July 2018

A special attention also deserves the sixth legal basis of the judgment of 2023 in which the Supreme Court tries to clarify and precise the content of its previous judgment

[102] Ibid. Emphasis added.
[103] Ibid. Emphasis added.
[104] Ibid.
[105] Ibid. Emphasis added.
[106] Ibid.
[107] Ibid.
[108] Ibid.

rendered on 17 July 2018, previously commented as the turning point in this issue. In this regard, the Supreme Court affirmed that the Committee against Torture's decision of 15 January 2020 "*cannot be considered itself as a sufficient title of attribution to lead to the State liability*" and, importantly, "*the previous assertion does not contradict out judgment of 17 July 2018*."[109]

As the Supreme Court recalled, in the origin of that appeal there was also a view from the United Nations Committee, in particular from the Committee on the Elimination of Discrimination against Women, that declare that the "State Party has infringed the rights of the author and her deceased daughter." Nonetheless, looking at the *ratio decidendi* of this judgment, it is important to note that the judgment "took into consideration the other circumstances of the case that were decisive, in a more relevant way than the decision itself, in order to establish the State liability, in that particular case, as a result of the abnormal functioning of the Administration of Justice."[110]

In this judgment of the Supreme Court, unsurprisingly the 2018 judgment included references to that very case, using the expression "in this case."[111] Besides, when it declared that there is no specific path for requiring automatically the enforcement of the Committees' views, it added that "it is possible to admit *in this case* that this views is the valid prerequisite in order to lodge a State liability."[112] The Supreme Court, in brief, affirmed that "*the 2018 judgment is not different in the essence to our previous jurisprudence and that decision does not establish a jurisprudential specific procedure* to enforce, generally, the decisions or the views of the United Nations Committees in light of the lack of a conventional norm or of domestic law in this regard."[113]

Concerning the State liability, the court did not appreciate the "State liability's requirements in the examined case as a result of the lack of the second requirement that entails that the patrimonial damage is a direct consequence of the police officer's actions."[114] In a significant declaration of the Supreme Court, it upheld that it is not admissible that, "even in this kind of State liability proceedings triggered after a decision of the Committee against Torture, the State liability institution loses its reparation nature constitutionally established to transmute itself, blurring its nature and goal, in a kind of a general system of automatic execution of the CAT's decisions."[115] Moreover, the Supreme Court further elaborated on this question adding that, "even though those decisions do not have binding nature in the sense of its mandatory nature and direct executive power, that are not established by international rules and our domestic legal system, they can have some legal effects as previously explained."[116]

Accordingly, the Supreme Court annulled the appealed judgment since "it has turned a State liability case into a direct and automatic execution of a decision of the Committee that declares the violation of a fundamental right, without examining each

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109 Ibid. Emphasis added.
110 Ibid.
111 Ibid.
112 Ibid. Emphasis in original.
113 Ibid. Emphasis added.
114 Ibid, seventh legal basis.
115 Ibid.
116 Ibid.

of the requirements to be met." As such, it developed "an inappropriate interpretation of our 2018 judgment because it linked the CAT's decision declaring a violation of a fundamental tight to the admission, without any further consideration, of the State liability."[117] In light of the above, the Supreme Court concluded admitting the cassation appeal filed by the State Attorney, dismissing the appeal on behalf of Ms. Noelia, and it did not to assign the cost of the appeal.[118] In addition, the separate opinion of the judge Pablo Lucas Murillo de la Cueva agrees with the finding consisting of the lack of binding nature of the decisions of the United Nations Committees.[119]

(D) THE STS 1597/2023 OF 29 NOVEMBER 2023: THE DEFINITIVE ESTABLISHMENT OF THE SUPREME COURT DOCTRINE

Five months later, on 29 November 2023, the same fourth section of the contentious-administrative chamber of the Spanish Supreme Court delivered a definitive judgment for the legal value of the decisions given by the United Nations Human Rights Treaty Bodies. By means of the STS 1597/2023, it admitted the cassation appeal filed by the legal representation of the family of Rubén, a child with Down syndrome that did not receive an inclusive education, on the basis of a decision given by the Committee on the Rights of Persons with Disabilities.[120] Whether the judgment of 2018 was a turning point, this 29 November 2023 can be defined as a point of arrival, since it establishes in cassation a jurisprudential criterion confirming the interpretation started in 2018 and, doubtfully, arguing that this line does not go against the judgment of 13 June 2023.

In order to explain this highly relevant doctrine of the Supreme Court, firstly the factual context of the case will be succinctly pointed out and secondly the jurisprudential criterion on the topic will be studied.

(1) An introduction of the factual and procedural background of this case

This judgment answers a cassation appeal filed against the 17 November 2022 National High Court judgment that dismissed the contentious-administrative appeal against the denial by silence of a reparation by the Spanish Ministry of Justice.[121] By the 23 March 2023 writ, the Supreme Court admitted the cassation appeal issued by Rubén's attorneys and by the Public Prosecutor since there was an objective cassation interest in order to settle jurisprudence regarding two questions, namely: 1) "the suitable procedural path to seek before the Spanish State the fulfilment of the decision given by the Committee

117 Ibid.

118 Ibid, decision (*fallo*).

119 See the separate opinion of the judge Pablo Lucas Murillo de la Cueva (joined by José Luis Requeiro Ibáñez). In particular, they declare that they agree "that the resolutions of the United Nations Organization Committees, created by virtue of the International Covenant on Civil and Political Rights, do not have by themselves biding character. It explains correctly that in the judgment nº 1263/2018, of 17 July (cassation nº 1002/2017), we considered the circumstances of the case and, precisely, taking them into consideration, we agree with the view of the CEDAW."

120 STS 1597/2023, 29 November 2023, first pleas of facts (*antecedente de hecho*).

121 Ibid.

on the Rights of Persons with Disabilities, delivered in the terms and by the proceeding foreseen in the Optional Protocol of the Convention ratified by Spain , when those decision include recommendations aimed at out authorities in order to repair the damages arising out the breach of the rights protected by the Convention;" and 2) "whether that reparation and the fulfilment of the Decision's prescriptions is a revision of final judicial decisions since the request of the State liability is founded in a different title."[122]

It is important to note that the Committee on the Rights of Persons with Disabilities published on 18 September 2020 a decision in accordance with article 5 of the Optional Protocol to the Convention on the Rights of Persons with Disabilities.[123] Along that decision, the committee declared that Spain breached its obligations following the articles 7, 15, 17, 23 and 24 of the Convention on the Rights of Persons with Disabilities.[124] The appellant requested the economic reparation from the Spanish State as a mean to comply with the aforementioned committee decision. Having made these initial considerations about the case at hand, along the following section the main findings of the Supreme Court in this relevant judgment will be developed.

(2) The merits of the case

The Supreme Court firstly and remarkably declared, recalling its previous 17 July 2018 judgment, that "the inexistence of a specific and autonomous mechanism to enforce in the Spanish legal order the recommendations of a decision of the Committee of the Rights of Persons with Disabilities by means of a breach of human rights foreseen in the Convention by the Spanish State makes impossible to seek autonomously the enforcement of those decisions."[125] Moreover, "since the existence of an efficient and suitable path to ensure the acceptance of a fundamental rights' breach before the Spanish courts and tribunals has to do directly with the respect and observance by the Spanish public authorities, *it is possible to admit that this decision is a valid premise to request the State liability by the abnormal functioning of the Administration of Justice as the last resource to obtain a reparation.*"[126]

After this mention of its previous jurisprudence, the Supreme Court clarified further this line of interpretation in this landmark judgment by adding that, "even though neither the Convention nor the Optional Protocol establish the executive nature of the decisions of the Committee, *there cannot be doubt that they will have a binding/compulsory character for the State party that is linked by the Convention and the Protocol in the article 4.1 of the aforementioned*."[127] According to the Supreme Court, this fact "is reinforced by the

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122 Ibid, third pleas of facts.
123 Ibid, first legal basis.
124 Ibid.
125 Ibid, seventh legal basis.
126 Ibid, empahsis added.
127 Ibid, emphasis added. This article 4.1 of the Convention, untitled *general obligations*, establishes: "States Parties undertake to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability. To this

express admission of the Committee's jurisdiction by means of article 1 of the Optional Protocol, voluntarily accepted by Spain."[128]

Remarkably, the Supreme Court declared that this "decision is adopted by an organ established in the framework of an international norm that, by express provision in article 96 of the Spanish Constitution, is part of our legal system after its ratification and official publication" and that "the rules related to the fundamental rights must be interpreted in accordance with the Universal Declaration of Human Rights and the international treaties and agreements on those fields ratified by Spain."[129]

What is more, it is "an allegation of a breach of the fundamental rights that is founded in a declaration of an international organism recognized by Spain and that has upheld that the Spanish State has violated specific rights", the declaration "has been made in the framework of a proceeding expressly regulated, with guarantees and full participation of Spain", that article 9.3 of the Spanish Constitution affirms that the Constitution "protects, among other, the principle of legality and the hierarchy of legal provisions, and accordingly the international obligations related to the enforcement of the decisions of the international control organs whose competence has been accepted by Spain that are part of our legal system."[130] As a result, "*the effect of the Committee decision cannot be ignored by contrast to the binding effect of the Convention because it could, either leave it without effect or limit its value and effective and real application.*"[131] Indeed, for the Supreme Court, it is an accepted fact that Spain has not proved the adoption of measures aimed to repair the right not to suffer discrimination that was declared as breached due to the State's actions.

Probably one of the most important and surprising declarations upheld in this judgment is the clarification by the Supreme Court that "*it is important to note that the doctrine that is being applied, declared by the Chamber in its judgment 1263/2018, of 17 July (appeal 1002/2017), cannot be understood as abandoned by the subsequent judgment 786/2023, of 13 June (appeal 5269/2022)*."[132] Both judgments have been previously explained in this article, and together with this judgment settles hereinafter the doctrine of the Spanish Supreme Court with regards to the interpretation of the legal value of the decisions adopted by the human rights treaty bodies in which Spain is party, i.e., they must be considered as a valid premise to seek the State liability.

In other words, this judgment confirm the line started in 2018 and, in my opinion, clearly modified in June 2023 and opens the door for the application of this jurisprudential path for the future in order to enforce in Spain the decisions of the human rights committees of the United Nations. This situation happened in the case at hand since the Supreme Court annulled the National High Court's judgment because

end, States Parties undertake: To adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention."

128 Ibid.

129 Ibid.

130 Ibid.

131 Ibid, emphasis added.

132 Ibid, emphasis added.

it denied "all effect to the decision" and, as such, it "violated the legal order and our jurisprudence."[133]

Concerning the second question of cassation interest, the Supreme Court declared that this interpretation "does not violate the principle of res judicata" and, importantly, that "the cases in which the State liability is sought on the basis of the conclusions and obligations imposed to the State by a decision of the Committee on the Rights of Persons with Disabilities do not review final judicial decisions."[134] Furthermore, "the judicial decisions on the violation of a fundamental right" "is not object of review by a reclamation of State liability."[135] Nevertheless, always according to this Supreme Court's interpretation, "this fact does not hamper that the administrative actions prior to the judicial decision may constitute an inappropriate treatment of the minor with disabilities."[136] In light of the above, applying this doctrine, the Chamber of the Supreme Court found the necessary admission of the cassation appeal and the annulment of the appealed judgment, sending back the case to the National High Court.[137]

(E) CONCLUDING REMARKS

This paper has tried to analyse the legal value of the decisions of the United Nations Human Rights Committees considering their effects in the Spanish domestic legal order in light of the two judgments of the Spanish Supreme Court given recently, firstly on 13 June 2023 and secondly on 29 November 2023, being the latest one much more important. Indeed, these judgments come to conclude a line of the case law that began with the famous Supreme Court's judgment 1263/2018 of 17 July 2018, that was an authentic turning point (a *point de départ*) in the understanding of the legal nature of the committees' decisions in Spain. In fact, the 29 November 2023 judgment is an arrival point (a *point d'arrivée*) that settles this doctrine for the future, establishing the jurisprudence on this crucial matter.

Prior to the 2018 judgment, the Spanish case law did not recognise a legally binding nature to the decisions and views of the different human rights treaty bodies of the United Nations. However, that judgment started an incipient jurisprudence that has been followed by other judgments of the National High Court and even the Supreme Court itself, although by a different chamber.

In my opinion, as I tried to explain in a previous paper in this very journal, the interpretation developed by the Supreme Court in the 2018 judgment — basically, that a CEDAW's view was a valid premise to file a request of State liability leading to a compensation for the violation of the fundamental rights — was unadjusted since it recognised, by the jurisprudential line, legally binding effects to the decisions of the United Nations Human Rights Committees that, in accordance with the treaties that create those committees, do not have that nature. On the contrary, in my view the legal

[133] Ibid.
[134] Ibid, eighth legal basis.
[135] Ibid.
[136] Ibid.
[137] Ibid, nineth legal basis.

value of those decisions must be circumscribed to the interpretation of the substantive provisions prescribed by human rights treaties. In this regard, the main effect of the committees' decisions is to contribute as a general guidance in the interpretation of the human rights treaties or, in other words, they are very relevant hermeneutic instruments for the precision and better understanding of the rights protected by the treaties that establish those committees.

In the 13 June 2023 judgment, the Supreme Court clarified that "characterization and effects of these decisions and views of the United Nations Committees have been object of analysis by this Chamber stating repeatedly that these decisions or views do not have binding nature in the terms that is invoked since they do not have direct executory nature in order to determine the annulment of the final judicial resolutions from national judges and tribunals." Besides, the Supreme Court added that "our domestic legal system has not established a concrete and specific legal procedure to allow judges and tribunals to review the final criminal writs or judgments as a result of a Committee's decision or views" and, thus, "the legal value of the decisions or views of the Committee is not binding for these effects, they do not impose an obligation and they do not have executive nature, although it does not mean that they do not entail any legal consequence."

Nonetheless, in the more recent judgment, the one delivered on 29 November 2023, the Supreme Court upholds that "the inexistence of a specific and autonomous to enforce in the Spanish legal order the recommendations of a decision of the Committee of the Rights of Persons with Disabilities by means of a breach of human rights foreseen in the Convention by the Spanish State makes impossible to seek autonomously the enforcement of those decisions." In this sense, the Supreme Court affirmed that "it is possible to admit that this decision is a valid premise to request the State liability by the abnormal functioning of the Administration of Justice as the last way to obtain a reparation". In addition, the Spanish highest tribunal clarifies that this newest judgment is not different in its line of interpretation to the one of June and that it confirms, settles and establishes its doctrine on the legal value of the decisions adopted by the United Nations Human Rights Treaty Bodies started in 2018.

As a result, since the judgment of November 2023, there is an established and unequivocal doctrine of the Supreme Court about the legal nature of these committees' decisions, whose effects are legally binding and mandatory for the Spanish authorities according to this judicial interpretation. It can be summarized as follows: since there is not a legal proceeding in Spain to enforce in Spain these committees' decisions, to which the State is obliged to accomplish in accordance with the international treaties, the individuals can request the State liability on the basis of these decisions that are valid premise in the domestic legal order for that purpose.

Having said that, in my opinion there is a clear opposition between the two judgments given in 2023, regardless of the attempts of justification made by the Supreme Court. In addition, being clear hereinafter the legal effect of these decisions in Spain until there would be either a change of this doctrine or the establishment of a legal proceeding aimed to enforce them, I still refuse to consider that a decision of one of these committee that declares a breach of the State's international obligations could be a valid premise to trigger the State liability for the abnormal functioning of the Administration of Justice.

However, it does not mean that these decisions have not legal relevance. On the contrary, these decisions must be taken into account as relevant criterions of the enforcement of the rights foreseen in the Covenant, that through the suggested measures could limit or reduce the violations of such rights and contribute to their better protection. In addition, the committees' decisions must be taken into consideration by States in order to guide their legislative action in order to fulfil the requirements from the interpretation made by the Committee of the Covenant's rules.

In my view, it could be even admissible than in a particular case the Supreme Court (or another Spanish judge or tribunal) would assume the legal reasoning the interpretation of the human rights treaties' provisions carried out by these committees. However, that legal possibility does not mean that the Spanish judges and tribunals are obliged to necessarily follow not only the interpretations by the human rights committees but also their findings of a particular violation of a human right and their consideration of the merits in each individual case.

In this line one could deemed the 13 June 2023 judgment when it declared that "the legal value of the decisions or views of the Committee is not binding for these effects, they do not impose an obligation and they do not have executive nature, although it does not mean that they do not entail any legal consequence". A different approach, in the words of the Supreme Court, would be "an inappropriate interpretation of out 2018 judgment because it linked the CAT's decision declaring a violation of a fundamental tight to the admission, without any further consideration, of the State liability." Nonetheless, as stated above, in the 29 November 2023 judgment the Supreme Court makes a complicated effort in order to argue that this judgment is not in opposition to the previous one and that it confirms the line started in 2018 crystalizing its doctrine and jurisprudence on the topic in the meaning of the Civil Code.

From the point of view of the material justice, this consolidated jurisprudence must be welcome since it is effective in the enforcement and better protection of human rights, giving a renewed sense to the United Nations human rights system. However, in my opinion the judgment is not founded because the international organizations' acts do not have automatically legal binding nature in the Spanish legal system. Indeed, I agree with the judge Luis María Díez-Picazo Giménez when he points out in his dissenting opinion to the 29 November 2023 judgment that the fact that the international treaty "that creates an international organization, defines its competences and rules its proceedings is part of the international legal order in Spain does not mean, neither from the logical perspective nor considering the practice, that the international organizations' acts also automatically receive the condition of domestic law."[138]

[138] Ibid, dissenting opinion of Luis María Díez-Picazo Giménez. In order to develop this opinion, this judge argues several examples. For instance, the direct efficacy of some acts of the European Union as a result of the article 288 of the Treaty on the Functioning of the European Union or the European Convention on Human Rights and the European Court of Human Rights, whose judgments only are applicable if they are recognized by each domestic legal order. Moreover, this judge adds that, due to the fact that the Committee's acts are not binding in the Spanish legal order, its declarations "on specific situations cannot modify the findings of judicial judgments and other final resolutions given by the Spanish courts and tribunals." (ibid)

In a nutshell, following this judgment of the Supreme Court it seems clear what are the effects of the United Nations human rights committees' decisions in the Spanish domestic legal system, that on top of a hermeneutic value are a valid premise to seek State liability by the abnormal functioning of the Administration of Justice. From this point forward, the jurisprudential path that was started by the 2018 judgment is confirmed, giving answer to reasons of justice needed in a particular case. In any case, and taking into account that a potential appeal before the Constitutional Court cannot be discarded, I keep considering that it is not a legally sound solution since it enlarges the State's obligations further than the ones initially consented by the State through the ratification of these international treaties.