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Committee on Economic, Social and Cultural Rights

Communication No. 11/2015

Views adopted by the Committee at its fifty-seventh session (22 February-4 March 2016)

Subject matter:	Supplementary social benefits established in a collective agreement
Substantive issues:	Right to the enjoyment of just and favourable conditions of work; right to social security
Procedural issues:	Submission of the communication within one year after the exhaustion of domestic remedies; Committee's competence *ratione temporis*; Committee's competence *ratione materiae*
Articles of the Covenant:	7 and 9
Articles of the Optional Protocol:	2 and 3 (2) (a) and (b)

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Annex

Decision of the Committee on Economic, Social and Cultural Rights under the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (fifty-seventh session)

Concerning

Communication No. 11/2015*

Submitted by:	F.G.M. et al. (represented by counsel Antonio Álvarez-Ossorio Gálvez)
Alleged victims:	The authors
State party:	Spain
Date of communication:	15 July 2015

The Committee on Economic, Social and Cultural Rights, established under Economic and Social Council resolution 1985/17 of 28 May 1985,

Meeting on 29 February 2016,

Having concluded its consideration of communication No. 11/2015, submitted to the Committee under the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights,

Adopts the following:

Decision on admissibility

1.1 The authors of the communication are F.G.M., F.V.C., F.P.D., R.C.N., J.P.P.B.Q., J.D.C., M.A.P.E., G.C.P., M.C.B.M., M.B.D., F.J.C.C. and A.S.S., all of whom are Spanish nationals and are of legal age. The authors submit that the State party violated their rights under articles 7 and 9 of the International Covenant on Economic, Social and Cultural Rights.[1] In addition, they submit that the State party also violated their rights under articles 12 (1) and 26 of the International Covenant on Civil and Political Rights. They are represented by counsel.

1.2 On 28 December 2015, the Working Group on Communications, acting on behalf of the Committee, decided that observations from the State party were not needed to ascertain the admissibility of the present communication. In accordance with article 6 (1) of the Optional Protocol, the communication was thus not transmitted to the State party.

* In accordance with rule 5 (1) (c) of the provisional rules of procedure under the Optional Protocol, Committee member Mr. Mikel Mancisidor de la Fuente did not take part in the examination of the communication.

[1] The Optional Protocol entered into force for the State party on 5 May 2013.

The facts as submitted by the authors

2.1 The authors had worked in a bank for several decades, each having begun employment on different dates between 1953 and 1973. The bank terminated 11 of the authors on the following dates: F.V.C. on 6 November 1995, M.A.P.E. on 30 November 1995, R.C.N. on 8 February 1996, J.D.C. on 29 April 1996, A.S.S. on 24 March 1997, J.P.P.B.Q. on 10 April 1997, G.C.P. on 4 November 1997, M.C.B.M. on 1 December 1997, M.B.D. on 23 December 1997, F.J.C.C. on 3 March 1998 and F.G.M. on 31 November 2001. F.P.D. resigned on 31 December 1991.

2.2 At the time of termination of each of the authors' employment, the bank had social security arrangements in place for its staff pursuant to a series of collective labour agreements that had been negotiated in the private banking sector, namely Banking Sector Collective Agreements Nos. XVI, XVII and XVIII, which were in force between 1992 and 1995, 1996 and 1998, and 1999 and 2002, respectively. All the Agreements had been published in the Official Gazette in a timely fashion. Under the Agreements, the bank was obliged to supplement the social security benefits paid to its employees or others so entitled in the event of illness, permanent disability, retirement or death of the employee. The bank established an accounting provision in the form of a general internal fund to cover these supplementary benefits.

2.3 Pursuant to Royal Decree No. 1588/1999, between 2001 and 2002 the bank took out policies with insurance companies to secure the supplementary payments for its staff in active service. The authors were included among the policy beneficiaries in accordance with the terms set out in the individual insurance certificates.

2.4 Subsequently, the authors requested the bank to pay out the surrender value of the mathematical reserve corresponding to their accrued pension benefits. The bank did not grant that request.

2.5 On 28 November 2008, the authors brought action against the bank in Madrid Labour Court No. 28, seeking a declaration of entitlement to the cash surrender value of their individual endowments in the fund at the date of termination of their employment relationship with the bank.

2.6 On 15 October 2009, Court No. 28 dismissed the authors' petition. The Court ruled that the agreement established a right for employees to receive an allowance (supplementary benefits) once the event giving rise to this right had occurred; that nothing in the agreements established a right to redeem the corresponding amount in the event that a person's employment relationship ceased to exist prior to the event giving rise to the right to a benefit; and that, therefore, until this event occurred, the employee had only an expectation of a right. The authors lodged an appeal with the Madrid High Court.

2.7 On 23 September 2010, the Madrid High Court dismissed the appeal and upheld the ruling of Court No. 28.

2.8 On 27 December 2010, the authors filed an appeal in cassation for unification of doctrine before the Supreme Court, which rejected the appeal on 11 October 2011.

2.9 On 1 June 2012, the authors filed a petition before the European Court of Human Rights, claiming that there had been a violation of their rights under articles 6.1 and 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) and article 1 of Protocol No. 1 to the Convention. On 12 December 2013, the Court rejected the petition on the ground that it failed to meet the admissibility criteria set forth in articles 34 and 35 of the Convention. On 11 July 2014, the authors asked the Court to state the reasons why their petition had been declared inadmissible. The authors state that they are submitting the present communication to the Committee as they have received no reply from the Court and that the applicable date for

calculating the one-year period established in article 3 (2) (a) of the Optional Protocol is 11 July 2014.

The complaint

3.1 The authors submit that the State party violated their rights under articles 7 and 9 of the Covenant. They further submit that the State party also violated their rights as set forth in articles 12 (1) and 26 of the International Covenant on Civil and Political Rights.

3.2 The authors request the Committee to find that the articles cited have been violated and that legal costs and compensation for damages should be awarded.

Issues and proceedings before the Committee

Consideration of admissibility

4.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 9 of its provisional rules of procedure under the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (E/C.12/49/3), whether the communication is admissible or inadmissible under the Optional Protocol.

4.2 The Committee is competent *ratione materiae* to consider allegations of a violation of any of the economic, social or cultural rights set forth in the International Covenant on Economic, Social and Cultural Rights. The Committee therefore declares that the authors' allegations filed with regard to articles 12 (1) and 26 of the International Covenant on Civil and Political Rights are inadmissible under article 3 (2) (d) of the Optional Protocol.[2]

4.3 The Committee recalls that the Optional Protocol entered into force for the State party on 5 May 2013 and that, in accordance with article 3 (2) (b) of the Optional Protocol, the Committee must declare a communication inadmissible when the facts that are the subject of the communication occurred prior to the entry into force of the Optional Protocol for the State party concerned unless those facts continued after that date. In the present case, the Committee observes that the events that are the subject of the communication, including all the relevant judicial decisions of the Spanish authorities, occurred prior to 5 May 2013, the date of entry into force of the Optional Protocol for Spain. No grounds can be derived from the information submitted by the authors for concluding that any new events have occurred subsequent to the entry into force of the Optional Protocol that could, in themselves, be considered to constitute a violation of the Covenant. Consequently, the Committee considers that it is precluded *ratione temporis* from examining the present communication and that the communication is inadmissible under article 3 (2) (b) of the Optional Protocol.[3]

5. The Committee therefore decides:

(a) That the communication is inadmissible under article 3 (2) (b) and (d) of the Optional Protocol;

(b) That this decision should be transmitted to the State party and to the authors.

[2] See communications No. 6/2015, *V.T.F. and A.F.L. v. Spain*, decision of inadmissibility of 24 September 2015, para. 4.2; and No. 8/2015, *L.A.M.C. v. Spain*, decision of inadmissibility of 24 September 2015, para. 4.2.

[3] See communications No. 6/2015, para. 4.3, and No. 8/2015, para. 4.3.