



# Economic and Social Council

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## Committee on Economic, Social and Cultural Rights

### Views adopted by the Committee under the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights concerning communication No. 17/2016\* \*\*

<i>Submitted by:</i>	A.C.G. et al. (represented by counsel Antonio Álvarez-Ossorio Gálvez)
<i>Alleged victims:</i>	The authors
<i>State party:</i>	Spain
<i>Date of communication:</i>	23 September 2016
<i>Date of adoption of Views:</i>	22 February 2017
<i>Subject matter:</i>	Supplementary social benefits established in a collective agreement
<i>Procedural issues:</i>	Submission of the communication within one year after the exhaustion of domestic remedies; Committee's competence <i>ratione temporis</i> ; Committee's competence <i>ratione materiae</i>
<i>Substantive issues:</i>	Right to the enjoyment of just and satisfactory conditions of work; right to social security
<i>Articles of the Covenant:</i>	7 and 9
<i>Articles of the Optional Protocol:</i>	2 and 3 (2) (a) and (b)

1.1 The authors of the communication are A.C.G., F.J.C.M., J.C.G., P.L.L., J.M.G., F.M.M., J.A.S.M., C.L.G., F.E.P., E.G.H., J.V.S., J.J.B.G., J.G.L.O., F.G.S., J.R.R., J.M.Y.F., A.C.R., J.M.F., O.M.R., M.O.M, A.L.M. and P.R.M., all of whom are Spanish nationals of legal age. The authors submit that the State party violated their rights under articles 7 and 9 of the Covenant. The Optional Protocol entered into force for the State party on 5 May 2013. They further allege that the State party also violated their rights under articles 12 (1) and 26 of the International Covenant on Civil and Political Rights. The authors are represented by counsel.

1.2 On 2 December 2016, 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. Accordingly, the present communication

\* Adopted by the Committee at its sixtieth session (20-24 February 2017).

\*\* 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.



was not transmitted to the State party, in accordance with article 6 (1), of the Optional Protocol.

## **A. Summary of the information and arguments submitted by the parties**

### **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 1962 and 1998. The authors' employment relationship with the bank came to an end between 1982 and 2005 for various reasons, including unfair dismissal, voluntary severance and severance through leave of absence.

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. All the agreements had been published in the Official Gazette at the time required. Under the agreements, the bank was under an obligation to supplement the social security benefits paid to its employees or other persons entitled in the event of illness, permanent disability, retirement or death of the employees. The bank established an accounting provision in the form of a general internal fund to cover these supplementary benefits.

2.3 Following the termination of their employment, the authors requested the bank to pay out the surrender value of the mathematical reserve corresponding to their accrued pension benefits, a request which the bank rejected.

2.4 On 5 December 2008, the authors brought an action against the bank in Madrid Labour Court No. 15 and requested 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.

2.5 On 9 December 2008, Court No. 15 requested the authors to correct procedural deficiencies in the action, specifically the lack of a lawyer's signature and the lack of proof of authorization to represent the complainants. On 22 December 2008, all the authors, except for M.O.M., A.L.M., P.R.M. and J.A.S.M., submitted the corresponding corrective document. Although these four authors had not submitted any corrective documents, on 29 May 2009 Labour Court No. 15 ruled that the deficiencies had been rectified and proceeded with the hearing.

2.6 On 9 October 2009, Court No. 15 dismissed the authors' action. The Court ruled that the collective agreements established a right for the 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 such event occurred, the employee had only an expectation of a right.

2.7 On 1 December 2009, all the authors filed a petition with Court No. 15 for annulment of proceedings on the grounds that four of the complainants had not had legal representation when the ruling had been issued (see paragraph 2.4). On 28 December 2009, Court No. 15 rejected the petition for annulment of proceedings, finding that it did not meet any of the conditions set out in article 241 of the Judiciary Organization Act and noting that the authors themselves had been responsible for the procedural defects.

2.8 The authors submitted an application for *amparo* to the Constitutional Court, alleging a violation of the right to an effective judicial remedy. On 17 December 2010, the Constitutional Court dismissed the application for *amparo* on the grounds that the authors had not demonstrated the particular constitutional significance of their case, as required pursuant to article 49 (1) of the Constitutional Court Organization Act.

2.9 The authors claim that, on 22 June 2011, they submitted a note to the European Court of Human Rights stating their intention of lodging an application and that the

secretariat of the Court confirmed receipt of the note and sent them a copy of the official application form.

### **The complaint**

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

3.2 The authors request that the Committee find that the articles invoked have been violated and award compensation for damages and legal costs.

## **B. Committee's 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, 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 Covenant. The Committee therefore finds that the authors' allegations filed with regard to articles 12 (1) and 26 of the Covenant are inadmissible under article 3 (2) (d) of the Optional Protocol.<sup>1</sup>

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. 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.<sup>2</sup>

4.4. The Committee notes that under article 6 of the Optional Protocol, it can consider a communication inadmissible without reference to the State party concerned. In the present case, the grounds on the basis of which it concludes that the present communication is inadmissible do not form part of the conditions of admissibility which the State party can waive, as might be the conditions listed in article 3 (1) (2) (a), (c), (e), (f) or (g).

## **C. Conclusion**

5. The Committee on Economic, Social and Cultural Rights therefore decides:

- (a) That the communication is inadmissible under article 3 (2) (b) and (d), of the Optional Protocol; and
- (b) That this decision shall be transmitted to the State party and to the authors.

<sup>1</sup> See communication No. 6/2015, *V.T.F. and A.F.L v. Spain*, decision of inadmissibility of 24 September 2015, para. 4.2; and communication No. 8/2015, *L.A.M.C. v. Spain*, decision of inadmissibility of 24 September 2015, para. 4.2.

<sup>2</sup> See communication No. 6/2015, para. 4.3; and communication No. 8/2015, para. 4.3.