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HUMAN RIGHTS COMMITTEE
Eighty-eighth session
16 October-3 November 2006

DECISION

Communication No. 1151/2003

Submitted by:	Estela Josefina González Cruz (represented by Jose Luis Mazón Costa)
Alleged victim:	The author
State party:	Spain
Date of communication:	25 May 2001 (initial submission)
Document references:	Special Rapporteur's rule 97 decision, transmitted to the State party on 18 August 2005 (not issued in document form)

* Made public by decision of the Human Rights Committee.

Date of decision:	1 November 2006
Subject matter:	Recognition of a foreign university qualification under international treaty
Procedural issues:	Insufficiently substantiated claims
Substantive issues:	None
Articles of the Covenant:	14, paragraph 1; 26
Article of the Optional Protocol:	2

[ANNEX]

Annex

DECISION OF THE HUMAN RIGHTS COMMITTEE UNDER THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Eighty-eighth session

concerning

Communication No. 1151/2003*

Submitted by:	Estela Josefina González Cruz (represented by Jose Luis Mazón Costa)
Alleged victim:	The author
State party:	Spain
Date of communication:	25 May 2001 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 1 November 2006,

Adopts the following:

Decision on admissibility

1. The author of the communication, dated 25 May 2001, is Estela Josefina González Cruz, a Dominican national born in 1966. She claims to be the victim of a violation by Spain of articles 14, paragraph 1, and 26 of the Covenant. The Optional Protocol entered into force for the State party on 25 April 1985. The author is represented by Jose Luis Mazón Costa.

* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Edwin Johnson, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Mr. Michael O'Flaherty, Ms. Elisabeth Palm, Sir Nigel Rodley, Mr. Ivan Shearer, Mr. Hipólito Solari-Yrigoyen and Mr. Roman Wieruszewski.

The text of an individual opinion signed by Committee member Mr. Hipólito Solari-Yrigoyen is appended to the present document.

Factual background

2.1 The author moved to Spain on completion of her dentistry studies in the Dominican Republic. Once in Spain, she applied on 15 January 1991 for automatic recognition of her degree in dentistry of *Doctora en Odontología*, awarded by the University of the Dominican Republic, as equivalent to the Spanish degree of *Licenciada en Odontología*, invoking the Cultural Cooperation Agreement of 27 January 1953 between Spain and the Dominican Republic. According to article 3 of the agreement, "Nationals of both countries who have received degrees or diplomas awarded by the competent national authorities for the practice of a profession in either of the States parties shall be deemed competent to practise such professions in the territory of the other State, subject to the rules and regulations of that State."

2.2 On 23 March 1995, the Technical General Secretary of the Ministry of Education and Science issued a decision to the effect that the recognition sought would be conditional upon the successful completion of "a supplementary examination on the basic Spanish training requirements for the degree of *Licenciada en Odontología*".

2.3 Again invoking the 1953 cooperation agreement, the author challenged the Technical General Secretary's decision in the Administrative Division of the High Court, seeking unconditional automatic recognition of her qualification as equivalent to the Spanish degree.

2.4 In a ruling dated 11 November 1996, the Administrative Division noted that the recognition of foreign higher education qualifications was governed by Royal Decree No. 86/1987 of 16 January, which gives as "the primary sources in this regard the international treaties ... signed by Spain and, where appropriate, the recommendations or resolutions adopted by the intergovernmental bodies of which Spain is a member, as well as the equivalence tables for courses of study and qualifications approved by the Ministry of Education and Science on the basis of the report of the Academic Committee of the Board of Universities". The Division noted that Spain and the Dominican Republic had signed the 1953 agreement cited by the author, and that this had been superseded by the Cultural Cooperation Agreement of 27 January 1988. However, under the transitional provision of the 1988 agreement, "in accordance with the principle of non-retroactivity of laws, applications for recognition of qualifications or diplomas held by nationals of either country and obtained following university courses of study commenced in the other country before the signing of this agreement [shall continue] in each case to be considered in the light of the specific regulations of each country, within the framework established by the 1953 agreement". Inasmuch as the author, according to the certificate issued by the Dominican University, had commenced her course of study in 1987, the Division concluded that the 1953 agreement applied.

2.5 In the Division's view, and in accordance with the Supreme Court's consistent case law, while article 3 of the 1953 agreement should be interpreted as containing a principle of "automatic" recognition of qualifications, nevertheless, as the Supreme Court itself had stated, the equivalent qualification should be the old Spanish degree in dentistry, which has been obsolete since 1948. The old degree had remained valid as there were still in fact practising dentists in Spain who held that qualification, and it did permit a restricted practice, confined to

certain types of activity consistent with a course of studies that did not include a degree in medicine or surgery. The Division stated that "there can be no equivalence with the present degree of *Licenciada en Odontología* established in Act No. 10/1986 of 17 March, which demands a longer course of studies, at a higher level, than that followed by the [author]".

2.6 In light of the foregoing, the High Court upheld the appeal, providing that the Spanish equivalent qualification should be the one that became obsolete in 1948, with the option of equivalence with the new dentistry qualification upon successful completion of a supplementary examination.

2.7 On 13 May 1997, the Government Attorney submitted an appeal in cassation against the High Court judgement, claiming a violation of article 3 of the 1953 agreement in conjunction with regulation No. 86/1987, with Community Directives Nos. 78/686/EEC, 78/687/EEC, 78/688/EEC and 81/1057/EEC, in respect of dental practice, and with Act No. 10/86. The appeal was based on the Supreme Court's recent jurisprudence on the issue of equivalence between the Dominican degree of *Doctor en Odontología* and the Spanish degree of *Licenciado en Odontología*, according to which:

(a) In order to practise as a dental surgeon in Spain, it was now necessary to hold the new university degree of *Licenciado en Odontología* governed by Act No. 10/86;

(b) The profession of dental practitioner covered by the old qualification which became obsolete in 1948 was substantially different from the new qualification in terms of knowledge acquired, as repeatedly established in case law;

(c) The purpose of the Community Directives relating to dental practice was to ensure that the dental profession in all member States met the required standard of specialist training, as moderated by the competent academic authority in each member State; to that end, Act No. 10/1986 established the degree of *Licenciado en Odontología*, which is different from and of a higher level than the formal qualification obtained by the author;

(d) The transitional provision of the 1988 agreement governed any legal relationships and rights established at the time the law changed and was intended to bridge the gap created by the abolition of the old qualification;

(e) There were no grounds for recognizing an equivalence between the Dominican qualification and the Spanish qualification applicable up to 1948, since the latter no longer existed at the time the application for recognition was made;

(f) The only admissible equivalence was between the Dominican qualification and the new Spanish qualification following successful completion of a supplementary examination in accordance with the provisions of Royal Decree No. 86/1987.

2.8 In a judgement of 25 May 1998, the Supreme Court upheld the appeal, on the following grounds:

(a) The courses of study leading to the old qualification in dentistry had ceased to be offered in 1948, as a result of which that qualification no longer existed in Spain;

(b) The 1988 agreement could not be properly applied without reference to domestic legislation, in accordance with the Community Directives cited, since the recognition requested required the authorities to verify the equivalence of the foreign and Spanish qualifications;

(c) Consequently, the qualification of dental practitioner obtained by the author was not equivalent to the new dental qualification, since the course of study leading to the latter and conferring the right to practise as a dentist was of a higher level than that required to obtain the qualification awarded in the Dominican Republic.

2.9 On 9 July 1998 the author applied for *amparo*, claiming a violation of her right to equal treatment and to effective legal remedy. In a ruling dated 28 September 1998, the Constitutional Court rejected the appeal on the grounds that "the contested judgement [was] one in a series of judgements, some pre-dating it, some post-dating it, which [had] effectively changed case law on the interpretation and application of the relevant legislation on recognition in Spain of dental qualifications from Latin American and, specifically, Dominican, universities, which [meant it could not] be viewed as an isolated or *ad casum* decision".

The complaint

3.1 The author argues that the denial of automatic equivalence of her degree as provided by the 1953 agreement and recognized by the High Court judgement amounts to a denial of justice, which is prohibited under article 14, paragraph 1. She claims that the arguments adduced in the Supreme Court judgement altering existing case law on the direct equivalence of qualifications are false and contrived. Further, the Supreme Court's argument based on Community law is arbitrary and fabricated, and contradicts the Court's own case law by maintaining that the qualification with which the foreign qualification should be compared is the dentistry degree established in Act No. 10/1986 when in previous rulings it had found that the benchmark should be the old 1948 degree.

3.2 The author also alleges a violation of the right to equality before the law and the courts under articles 26 and 14, paragraph 1, inasmuch as the Supreme Court, applying what she claims were contrived arguments that contradicted its own case law, treated her case differently from numerous previous cases in which, she asserts, the Court had upheld automatic recognition. Citing the International Convention on the Elimination of All Forms of Racial Discrimination, she further argues that a change in case law which invalidates university degrees obtained abroad by nationals of other States must be transparent if it is to reflect the principles of that Convention.

State party's observations on admissibility and the merits

4.1 The State party argues (2 February 2006) that the Committee should declare the communication inadmissible or, failing that, should find that no violation has occurred. It points out that the issue raised is one of interpretation of domestic law, which is the prerogative, in principle, of the domestic courts, as the Committee has said many times. The State party argues that there has been a change in the interpretation applied in the Supreme Court's case law, insofar as the recognition of equivalence that had for some time been automatic has now been made subject to the successful completion of a general examination. That change meant that all subsequent judgements must rule similarly.

4.2 The State party recalls that Supreme Court jurisprudence holds only that changes in interpretation should be made on adequate and specific grounds. In its most recent judgements (17 and 23 November 2005, copies annexed to the State party's observations), the Court refers to the change in interpretation in respect of the equivalence of Dominican and Spanish dentistry qualifications, giving explicit, extensive and reasoned arguments therefor and citing "oft-repeated legal jurisprudence, as reflected in such judgements as those of 4 July 2001, 4 October 2000, 16 October and 20 November 2001 and 4 June 2002, which in turn refer back to earlier rulings".[1] In these judgements, the Supreme Court similarly finds that the degree in dentistry awarded by the Dominican Republic cannot be deemed equivalent to the current Spanish degree, and moreover that, since the training leading to the old degree in dentistry ceased to be offered in 1948, there can be no equivalence with the old qualification either.

Author's comments

5.1 The author reiterates that the 1953 agreement clearly allows for automatic recognition of qualifications and that every judgement handed down by the Supreme Court between 1953 and 1995 upheld that interpretation. She argues that the change in interpretation constitutes arbitrary disregard for a bilateral treaty signed by Spain and is not based on reasonable and objective grounds.

5.2 The author further argues that the change came about because the Supreme Court yielded under pressure exerted by the General Board of Colleges of Dentistry and Stomatology in what she calls "dental xenophobia", and amounts, she asserts, to arbitrary discrimination against immigrant Hispanic dental practitioners, whose right to recognition of their qualifications is denied with a view to stopping them living and working in Spain.

Issues and proceedings before the Committee

6.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not the communication is admissible under the Optional Protocol to the Covenant.

6.2 The Committee has ascertained, as required under article 5, paragraph 2 (a), of the Optional Protocol, that the same matter is not being examined under any other procedure of international investigation or settlement.

6.3 The author argues that the change in the Supreme Court's case law on recognition of foreign degrees in dentistry constitutes a denial of justice, in violation of article 14, paragraph 1, claiming it is not based on objective or reasonable grounds. The Committee notes the State party's argument to the effect that the issue is one of interpretation of domestic law, which, as repeatedly stated in the Committee's case law, is the prerogative of the domestic authorities and

[1] Extract from judgement of 23 November 2005 of the Administrative Division of the Supreme Court, 7th Section, application No. 6863/1999.

courts unless such interpretation is manifestly arbitrary or amounts to a denial of justice.[2] The Committee considers that the information before it and the arguments adduced by the author fail to show that the interpretation of applicable law by the Supreme Court in cassation was arbitrary or amounted to a denial of justice. Rather, they reveal a decision that follows the case law consistently applied by the Court in recent years and which reflects a change in jurisprudence warranted by the abolition of the old Spanish degree - which nevertheless remained temporarily valid so as to accommodate holders of the old qualification who were still practising in Spain. Moreover, the fact that, as from 1995/1996, the Court ceased to recognize the equivalence of foreign qualifications and a qualification that had been obsolete for more than 40 years, in view of the introduction of a new, more advanced degree in 1986, cannot, prima facie, be challenged as arbitrary. In light of the foregoing, the Committee finds that the author has not substantiated this part of her claim sufficiently for purposes of admissibility and accordingly declares it inadmissible under article 2 of the Optional Protocol.

6.4 As to the claims under articles 26 and 14, paragraph 1, the Committee considers that the author has failed to show that she was a victim of differentiated treatment on any of the grounds established in article 26. In that regard, she has not provided a single example of a similar application made around the same time that might have been dealt with differently by the Spanish authorities; she cites only cases prior to 1995, i.e., cases that pre-date the change of interpretation in the Supreme Court's jurisprudence on the matter. The Committee recalls in any event that not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant.[3] The Committee concludes that this part of the communication is insufficiently substantiated for purposes of admissibility and declares it inadmissible under article 2 of the Optional Protocol.

7. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under article 2 of the Optional Protocol;

(b) That this decision shall be communicated to the State party and to the author.

[Adopted in English, French and Spanish, the Spanish text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

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[2] See, inter alia, communications Nos. 811/1998, *Mulai v. Republic of Guyana*, decision of 18 August 2004, para. 5.3; and 1399/2005, *Cuartero Casado v. Spain*, decision on admissibility, 16 August 2005, para. 4.3.

[3] General comment No. 18 (HRI/GEN/1/Rev.7), adopted by the Committee at its thirty-seventh session. In the same vein, see, inter alia, communications Nos. 182/1984, *Zwaan de Vries v. The Netherlands*, decision of 9 April 1987, para. 13; 861/1999, *Alain Lestourneaud v. France*, decision on admissibility, 3 November 1999, para. 4.2; and 945/2000, *Bohumir Marik v. Czech Republic*, decision of 26 July 2005, para. 6.3.

Appendix

DISSENTING OPINION BY COMMITTEE MEMBER HIPOLITO SOLARI-YRIGOYEN

I disagree with the majority view on the following points:

Consideration of admissibility

The author argues that the change in the Supreme Court's case law on recognition of foreign degrees in dentistry constitutes a denial of justice, in violation of article 14, paragraph 1, and that, in violation of article 26, she has been discriminated against in relation to other similar cases by the application of this change in case law, which is based on criteria that are neither reasonable nor objective. The State party maintains that the communication is inadmissible in that the issue it raises is in principle a matter for the interpretation of domestic law by the domestic courts. Nevertheless, the Committee should point out that the possible conflict between the application of an international treaty and domestic law raises issues concerning the two above-mentioned articles of the Covenant that require the communication to be ruled admissible in relation to them.

Consideration of the merits

When the 1953 Cultural Cooperation Agreement was superseded by a new one on 27 January 1988, the State party and the Dominican Republic decided by common accord that recognition of degrees from both countries obtained as a result of studies commenced before the new agreement came into force would be governed by the old 1953 agreement. This was the case of the degree of *Doctora en Odontología*, which the author wishes to have recognized and which she had obtained from the University of the Dominican Republic, having commenced her course of study in 1987.

The author notes that, under the above-mentioned agreement, the granting of automatic recognition in similar cases was upheld in rulings of the Supreme Court between 1953 and 1995, i.e. for 42 years. There is no doubt, therefore, that both States understood during this time that recognition would be automatic.

As from 1995/1996, the Supreme Court's case law changed. According to the State party, this was because a higher degree of *Licenciado en Odontología*, governed by Act No. 10/1986, had been introduced in 1986 in Spain. Nevertheless, the State party does not explain why, between the introduction of this higher degree in 1986 and 1995, i.e. for nine years, the degree of *Doctor en Odontología* obtained by the author in the Dominican Republic continued to be recognized automatically.

Nor does the State party explain why, when it signed the new Cultural Cooperation Agreement in 1988, two years after the introduction of the higher degree in 1986, it was expressly stipulated that cases like the author's would continue to be governed by the 1953 agreement. Neither a domestic law nor its regulations or changes in case law can be used by a State party to amend an international treaty that remains in force, if the signatories have not denounced the treaty.

In accordance with the principle of *pacta sunt servanda*, any treaty in force binds the parties and must be complied with by them in good faith. The Vienna Convention on the Law of Treaties, which has been in force since 27 January 1980, establishes that a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty (art. 27).

The information supplied to the Committee by the parties makes it clear that the Supreme Court's application of national law that involves departing from the provisions of an international agreement constitutes a violation of article 14, paragraph 1, of the Covenant.

The change in case law has led the State party to treat the author differently to those who received automatic recognition of the same degree of *Doctorado en Odontología* that the author possesses, and there is no need to ask her to provide examples from around the same time, as the majority of Committee members would have done, since it is obvious that case law has been changed to avoid compliance with the international agreement governing recognition of degrees between the Dominican Republic and the State party.

I consider, therefore, that the author's rights under article 26 of the Covenant have been violated.

The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it disclose a violation by the State party of articles 14, paragraph 1, and 26 of the Covenant.

(*Signed*): Hipólito Solari-Yrigoyen

[Done in English, French and Spanish, the Spanish text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]
