



**International covenant  
on civil and  
political rights**

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HUMAN RIGHTS COMMITTEE  
Ninety-fifth session  
16 March-3 April 2009

**DECISION**

**Communication No. 1511/2006**

*Submitted by:* Eugenia and José Antonio García Perea (represented by  
counsel, José Luis Mazón Costa)

*Alleged victim:* The authors

*State party:* Spain

*Date of communication:* 3 July 2006 (initial submission)

*Document references:* Special Rapporteur's rule 97 decision, transmitted to the  
State party on 22 November 2006 (not issued in document  
form)

*Date of adoption of decision:* 27 March 2009

*Subject matter:* Inequitable estate distribution in violation of the will of the  
deceased

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\* Made public by decision of the Human Rights Committee.

*Procedural issues:* Non-exhaustion of domestic remedies; lack of substantiation

*Substantive issues:* Right to privacy. Right to non-discrimination

*Articles of the Covenant:* 17, paragraph 1, and 26

*Articles of the Optional Protocol:* 2; 5, paragraph 2 (b)

[ANNEX]

[Annex]

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

**Ninety-fifth session**

**concerning**

**Communication No. 1511/2006\*\***

*Submitted by:* Eugenia and José Antonio García Perea (represented by  
counsel, José Luis Mazón Costa)

*Alleged victim:* The authors

*State party:* Spain

*Date of communication:* 3 July 2006 (initial submission)

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

*Meeting on ...* March 2009,

*Adopts the following:*

**Decision on admissibility**

1.1 The authors of the communication, dated 3 July 2006, are Eugenia and José Antonio García Perea, both of Spanish nationality. They claim to be victims of violations by Spain of article 17, paragraph 1, and article 26 of the Covenant. The Optional Protocol entered into force for Spain on 25 April 1985. The authors are represented by counsel, José Luis Mazón Costa.

1.2 On 16 October 2007, the Rapporteur on New Communications and Interim Measures, acting on behalf of the Committee, decided that the admissibility of the communication should be considered separately from the merits.

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\*\* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine Chanet, Mr. Ahmad Amin Fathalla, Mr. Yuji Iwasawa, Ms. Helen Keller, Mr. Lazhari Bouzid, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Mr. Michael O'Flaherty, Mr. José Luis Pérez Sanchez-Cerro, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabian Omar Salvioli, Mr. Krister Thelin and Ms. Ruth Wedgwood.

### **The facts as submitted by the author**

2.1 The father of the authors died in 1981. In a will drawn up in July 1974, he granted his wife a life usufruct of his estate and named his three children - Eugenia, María Teresa and José Antonio - as the heirs to his estate, to be divided equally.

2.2 The distribution of the estate took place on 4 July 1987. The widow renounced the usufruct, and an adjudication of the assets known at the time was made to the three siblings. Subsequent to the distribution, the authors learned that their sister, María Teresa, had taken possession of assets not included in the distribution, which meant that the assets had not been distributed equally among the heirs as required by the testamentary disposition, and that the will of the deceased had not been respected. The omitted assets consisted of a hill on which a marble quarry is located and constructions built on the said piece of land.

2.3 The authors filed a claim against their sister before the Cieza District Court. In a ruling of 17 May 1999, the claim was rejected on the grounds that the time period of four years for filing a claim for damages under article 1074 of the Spanish Civil Code had been exceeded.<sup>1</sup> The authors argue that the ruling does not constitute an interpretation of domestic legislation that is consistent with the will of the deceased.

2.4 The authors appealed against the ruling before the Murcia Provincial Court which, on 4 November 2000, rejected the appeal and upheld the decision in first instance. In addition, an appeal in cassation was lodged with the Civil Chamber of the Supreme Court, where it was rejected on 25 November 2003. Lastly, the authors submitted an application for *amparo* to the Constitutional Court, citing the right to an effective legal remedy and the right to due process. The Constitutional Court rejected the application on 22 March 2004.

### **The complaint**

3.1 The authors allege a violation of the right to privacy embodied in article 17, paragraph 1, of the Covenant, since the personal wishes of their father expressed in the will were not respected.

3.2 The authors also allege a violation of article 26 of the Covenant on the grounds of discrimination in relation to their sister, who received a larger share of the inheritance.

### **The State party's observations on admissibility**

4.1 In its observations dated 19 January 2007, the State party argues that the authors' complaint concerns a question that is strictly inheritance-related and has nothing to do with the privacy and family rights protected in article 17.

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<sup>1</sup> Spanish Civil Code, article 1074: distributions may also be rescinded for damages of more than one quarter, based on the value of the assets at the time of their adjudication.

4.2 In addition, at no time were the rights set out in the Covenant invoked before the domestic courts. Consequently, the State party maintains that the communication should be declared inadmissible due to non-exhaustion of domestic remedies and because it constitutes a clear abuse of the purpose of the Covenant under article 3 of the Optional Protocol. In the alternative, the State party requests that the matter be declared to lie outside the material scope of application of the Covenant.

### **The authors' comments on the State party's observations**

5.1 On 17 December 2007, the authors submitted their comments on the observations of the State party on admissibility. The authors reiterate their argument that the unequal distribution of the estate violates the will of their deceased father to divide his assets equally among his three children and thus constitutes a violation of article 17 of the Covenant. They maintain that respect of the personal will of the testator is part of his private life and that, as the authors are his heirs, they preserve the right to have the will of the deceased respected.

5.2 With regard to the non-exhaustion of domestic remedies, the authors argue that, given the Constitutional Court's interpretation in case law<sup>2</sup> of the right to privacy, no invocation of article 17 of the Covenant would have been successful. In that regard, the authors refer to the Committee's case law, pursuant to which a remedy does not have to be exhausted if it has no chance of being successful.<sup>3</sup>

### **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 takes note of the observations of both parties regarding the exhaustion of domestic remedies. The Committee observes that, although it has recognized in its case law that there is no obligation to exhaust domestic remedies if they have no chance of being successful, mere doubts as to the effectiveness of those remedies do not absolve the authors from the obligation to exhaust them.<sup>4</sup> Moreover, the authors have not submitted to the Committee sufficient or relevant information on the case law of the Spanish Constitutional Court relating to the rights protected under article 17, paragraph 1, which might enable it to conclude that the remedies would have been ineffective.

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<sup>2</sup> The authors are referring to Constitutional Court rulings 37 of 15 February 1989 and 206 of 24 September 2007.

<sup>3</sup> Communication No. 896/2001, *Semey v. Spain*, Views of 30 July 2003.

<sup>4</sup> See, inter alia, communication No. 674/1995, *Kaaber v. Iceland*, decision on admissibility of 5 November 1996, paragraph 6.2.

6.3 With regard to article 26 of the Covenant, the Committee observes that the authors do not provide any explanation as to the reasons why the present complaint was not referred to the domestic courts. In addition, the Committee notes that the authors confine themselves to asserting that there has been a violation of article 26 of the Covenant, without giving reasons in support of the allegation. Consequently, the Committee considers that the authors have not sufficiently substantiated the complaint to justify admissibility and that the complaint must therefore be declared inadmissible in accordance with article 2 of the Optional Protocol.

7. The Human Rights Committee therefore decides:

(a) That, in accordance with article 2 and article 5, paragraph 2 (b), of the Optional Protocol, the communication is inadmissible; and

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

[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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