



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE
Ninety-second session
17 March-4 April 2008

DECISION

Communication No. 1745/2007

Submitted by: José Luis Mazón Costa (not represented by counsel)

Alleged victim: The author

State party: Spain

Date of initial communication: 16 November 2007

Date of decision: 1 April 2008

Subject matter: Compatibility of the Spanish monarchy with article 25 of the Covenant

Procedural issue: Incompatibility of the claim with the provisions of the Covenant

Substantive issue: -

Articles of the Covenant: 2, paragraph 3; 14; 25 and 26

Articles of the Optional Protocol: 1, 3, 5 (2) (b)

[ANNEX]

* Made public by decision of the Human Rights Committee.

Annex

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

Ninety-second session

concerning

Communication No. 1745/2007*

Submitted by: José Luis Mazón Costa (not represented by counsel)

Alleged victim: The author

State party: Spain

Date of initial communication: 16 November 2007

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

Meeting on 1 April 2008,

Adopts the following:

Decision on admissibility

1. The author of the communication, dated 16 November 2006, is José Luis Mazón Costa, a Spanish citizen born in 1948. He claims to be a victim of a violation by Spain of articles 2, paragraph 3; 25; and 26, read together with 14 of the Covenant. The Optional Protocol entered into force for Spain on 25 April 1985. He is not represented.

The complaint

2.1 The author claims to be a victim of a violation of article 25, because the Spanish monarchy is not subject to free and public elections. As a Spanish citizen, his right to vote and to be elected

* 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. Yuji Iwasawa, Mr. Edwin Johnson, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Ms. Elisabeth Palm, Mr. Rafael Rivas Posada, Sir Nigel Rodley and Mr. Ivan Shearer.

King of Spain is therefore violated. He contends that the monarchy was institutionalized by former dictator Francisco Franco y Bahamonde in 1936, when he came to power as a result of a military coup d'état. He notes that, unlike other countries, Spain has not made any reservations to article 25 of the Covenant.

2.2 He claims that article 2, paragraph 3, is also violated because there is no effective remedy against this violation.

2.3 Finally, he contends that the recognition in the Spanish Constitution of the inviolability of the monarch grants the king an unacceptable privilege and violates article 26, read together with article 14.

Issues and proceedings before the Committee

3.1 Pursuant to rule 93 of its rules of procedure, before considering any claim contained in a complaint, the Human Rights Committee must determine whether it is admissible under the Optional Protocol to the Covenant on Civil and Political Rights.

3.2 The Committee recalls that the right to take part in the conduct of public affairs directly or through freely chosen representatives referred to in article 25, paragraph (a), of the Covenant relates to the exercise of political power.¹ However, this article does not impose a specific political model or structure. The Committee notes, in particular, that a constitutional monarchy based on separation of powers is not in itself contrary to article 25 of the Covenant. While article 25, paragraph (a), alludes to the election of representatives, paragraph (b) of the same provision, while guaranteeing the right to vote and to be elected at genuine periodic elections, does not grant a right to elect a head of State or to be elected to such position. Therefore, the Committee considers that the author's complaint is incompatible *ratione materiae* with the provisions of the Covenant and declares it inadmissible under article 3 of the Optional Protocol. The same is true for the author's allegations under article 2, paragraph 3, of the Covenant. The Committee recalls that the rights referred to in this provision are accessory in nature and can be invoked only in conjunction with another provision of the Covenant.²

¹ General comment No. 25 on article 25 (Participation in public affairs and the right to vote), para. 5.

² *Vid*, among others, *C.E.A. v. Finland* (communication No. 316/1988), decision of 10 July 1991, para. 6.2; *Rogerson v. Australia* (communication No. 802/1998), Views of 3 April 2002; and *Sastre Rodríguez et al v. Spain* (communication No. 1213/2003), decision of 28 March 2007, para. 6.6.

3.3 As regards the claim that the inviolability of the monarch grants the king an unacceptable privilege and violates article 26, read together with article 14 of the Covenant, the Committee considers that the author has not shown that he is a victim of the alleged violation in accordance with article 1 of the Optional Protocol.

3.4 The Human Rights Committee therefore decides:

- (a) That the communication is inadmissible under articles 1 and 3 of the Optional Protocol;
- (b) That the decision be transmitted 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.]
