

HUMAN RIGHTS COMMITTEE

Hiro Balani v. Spain

Communication No. 1021/2001

28 March 2003

CCPR/C/77/D/1021/2001*

ADMISSIBILITY

Submitted by: Rita Hiro Balani (represented by counsel Mr. Juan Carlos Lara Garay)

Alleged victim: The author

State party: Spain

Date of communication: 23 October 1998 (initial submission)

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

Meeting on 28 March 2003

Adopts the following:

Decision on admissibility

1. The author of the communication dated 23 October 1998 is Rita Hiro Balani, who at the time of the events was an Indian national, and subsequently obtained Spanish citizenship. She claims to be the victim of a violation by Spain of articles 14 and 26 of the International Covenant on Civil and Political Rights. The author is represented by counsel. The Optional Protocol to the Covenant entered into force for Spain on 25 January 1985.

The facts as submitted by the author

2.1 In 1985 the Japanese "Orient Watch Co. Ltd." filed a claim with Court of First Instance No. 8 in Madrid against the Spanish "Orient H. W. Balani M□laga" trademark, alleging that under the Paris

Convention for the Protection of Industrial Property, the registration in Japan in 1951 of its trade name gave it ownership of that name in all States parties to the Convention - including Spain - and protected it against subsequent registration of any identical or similar trademark. Ms. Hiro Balani opposed the claim filed by the Japanese company, alleging that the period of three years in which to file such claims had passed, and that that had the legal effect of "establishing" her trademark, while the trade name "*Orient Watch Co. Ltd.*" was not genuine, as a "*Creaciones Oriente*" trademark had already existed, had been registered in 1934 and had been transferred to the Japanese company in 1984.

2.2 By a judgement dated 9 May 1988, the Madrid Audiencia Territorial accepted the "establishment" as claimed by the author. In a judgement of 30 April 1990 the Supreme Court held, on the contrary, that there had been no "establishment" of the trademark, as its registration had been void.

2.3 The author filed an amparo appeal against this judgement and on 29 October 1990 the Constitutional Court rejected the appeal.

2.4 The author later appealed to the European Court of Human Rights, which on 9 December 1994 found that Spain had violated article 6, paragraph 1, of the European Convention on Human Rights, corresponding to article 14 of the Covenant, because the established safeguards were not applied during the civil proceedings annulling the trademark registered by the author. The author requested that the Supreme Court's decision against her should be overturned. In a judgement dated 23 April 1997, the Constitutional Court rejected the request, holding that the author, by filing an appeal contending that the Supreme Court's ruling was void, had used an inappropriate channel, as she should have filed an amparo appeal within 20 days of notification by the Supreme Court, and that in the Spanish legal system, adverse decisions by the European Court of Human Rights had only declaratory weight in civil proceedings. The sole exception would be if the European Court had found that fundamental rights had been violated "*in the criminal field*".

2.5 As a precedent, the author refers to the case of *Barber*, *Messegu* and *Jabardo*, for which the European Court of Human Rights had issued a judgement (1) determining that Spain had violated article 6, paragraph 1, of the European Convention on Human Rights during the trial of these three individuals accused of committing a terrorist act. The Constitutional Court, in a ruling dated 16 December 1991, annulled the judgement of the Supreme Court and ordered proceedings in the case to be resumed at the point when the right to legal protection had been violated.

The complaint

3.1 The author claims a violation of article 14 of the Covenant, which establishes that all persons shall be equal before the courts and tribunals. She argues that the Constitutional Court ascribed different force to the two rulings of the European Court of Human Rights, since it refused to order a fresh ruling in her case, but not in the case of *Barber*, *Messegu* and *Jabardo* on which the European Court had ruled.

3.2 The author further alleges a violation of article 26 of the Covenant, according to which all persons are equal before the law and are entitled without any discrimination to the equal protection of the law,

as the Constitutional Court did not afford equal treatment to the defendants in the *Barber*, *Messegu* and *Jabardo* case and to her.

Issues and proceedings before the Committee

4.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

4.2 As regards the author's allegations concerning the violation of article 14 of the Covenant, to wit that the Constitutional Court violated this rule by refusing to order a fresh judgement in the case of the "*Orient H. W. Balani M^laga*" trademark, the Committee observes that these allegations by the author have not been sufficiently substantiated to be admissible. Consequently, this aspect of the communication is inadmissible under article 2 of the Optional Protocol.

4.3 As regards the author's allegations concerning the violation of article 26 of the Covenant, arguing that the Constitutional Court did not afford equal treatment to the European Court of Human Rights' rulings on her case and on *Barber*, *Messegu* and *Jabardo*, the Committee refers to its constant jurisprudence according to which the right to equality before the law and to equal protection of the law without any discrimination does not make all differences of treatment discriminatory. A differentiation based on reasonable and objective criteria does not amount to prohibited discrimination within the meaning of article 26.

4.4 In this regard, the Committee observes that the Constitutional Court noted in its judgement of 23 April 1997 that "*adverse decisions by the European Court of Human Rights are, in principle, of merely declarative value. The only exception allowed would be if that Court found that a violation of rights in the criminal field had taken place - a violation, what is more, whose effects must be current when enforcement of the judgement is material. In the present case, on the other hand, we have a ruling by the European Court of Human Rights which finds a violation of article 6, paragraph 1, of the Convention in civil proceedings, proceedings which resulted in a judgement by the Supreme Court that obviously in no way affects the freedom of the author. Hence there are none of the special circumstances required by STC 245/1991 to justify an exception to the general principle under which adverse decisions by the Strasbourg Court are declarative in nature*". Consequently, the Committee considers that the arguments provided by the author are not sufficient to substantiate her complaint for the purposes of admissibility, as it does not establish that the State party afforded her discriminatory treatment or unequal protection under the law. The communication is therefore inadmissible under article 2 of the Optional Protocol.

5. The Human Rights Committee therefore decides:

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

(b) That this communication shall be communicated to the author and, for information to the State

party.

[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.]

*/ The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr. Alfredo Castellero Hoyos, Ms. Christine Chanet, Mr. Franco Depasquale, Mr. Maurice G1□1□Ahanhanzo, Mr. Walter K□lin, Mr. Ahmed Tawfik Khalil, Mr. Rafael Rivas Posada, Mr. Nigel Rodley, Mr. Martin Scheinin, Mr. Ivan Shearer, Mr. Hip□lito Solari Yrigoyen, Ms. Ruth Wedgwood, Mr. Roman Wieruszewski and Mr. Maxwell Yalden.

Note

1/ Case 24/1986/122/171-173 of 6 December 1988.