

## HUMAN RIGHTS COMMITTEE

### V. E. M. v. Spain

Communication No. 656/1995

30 October 1995

CCPR/C/55/D/656/1995

### ADMISSIBILITY

*Submitted by: V. E. M.*

*Alleged victim: The author*

*State party: Spain*

*Date of communication: 13 June 1994*

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

Meeting on 30 October 1995,

Adopts the following:

#### **Decision on Admissibility**

1. The author of the communication is V. E. M., a Spanish citizen residing in Barcelona, Spain. He claims to be the victim of violations by Spain of articles 3; 7; 14, paragraphs 1, 2, 3,(a) to (e), and 5; 17; and 26 of the International Covenant on Civil and Political Rights.

The facts as submitted by the author:

2.1 The author, a military officer, was dishonourably discharged from the Spanish Army in 1975 by a special tribunal (Tribunal de Honor) which found him guilty of tolerating the alleged dishonourable lifestyle of his wife. The author did not appeal his sentence as the decisions of the Tribunal de Honor were not appealable under article 40 (a) of the (old) Spanish Code of Military Procedure (1945).

2.2 On 5 May 1991, the author filed an application for review to declare invalid the 1975 decision of the Tribunal de Honor and thus declare null and void the act by which he was dismissed. He further filed an administrative complaint (Recurso Contencioso Disciplinar Militar) with the Supreme Court (Tribunal Supremo), requesting a declaratory judgment to the effect that the Tribunal de Honor had been invalidly established and therefore any decision it issued would also be null and void.

2.3 On 30 May 1994, the Military Chamber of the Supreme Court (Sala de lo Militar) dismissed the case on the grounds that the conditions of articles 47 and 109 of the law governing administrative procedures for the revision of final (judicial) decisions had not been met. The judgment further held that the author's appeal was barred by the relevant statutes of limitations, since the deadline for filing the appeal had begun to run from the date of establishment of the Constitutional Court (1981); two judges of the Supreme Court appended dissenting opinions to the judgment of 30 May 1994.

#### The complaint:

3.1 The author contends that the Supreme Court judgments issued in 1992 and 1994, which confirm the judgment of the Tribunal de Honor, constitute violations of the following provisions of the Covenant: articles 3; 7; 14, paragraphs 1, 2, 3,(a) to (e), and 5; 17; and 26, and refers to his previous communication, in substantiation of his claim.

3.2 The author states that this new communication, though relating to the same facts, is different from communication N 467/1991, whose facts had been submitted to the European Commission of Human Rights. He claims, in this respect, that the object of the present communication is the violation of his rights by the judgments issued by the Supreme Court on 5 May 1992 and 30 May 1994. The author emphasizes this fact, lest the State party contend anew that the Human Rights Committee is precluded from analysing the communication because it has already been submitted to another procedure of international investigation or settlement.

#### 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 The Committee observes that while it cannot consider facts occurred in 1975 prior to the entry into force of the Covenant for Spain (27 July 1977) it can ascertain whether the procedural guarantees were observed during the 1992 and 1994 proceedings.

4.3 The Committee has examined the judgments of the Spanish Supreme Court of 5 May 1992 and 30 May 1994. These judgments reveal that the author's arguments were considered by the Court. However, the author has not substantiated his claim that the Court acted arbitrarily or that it discriminated against him. Therefore, the Committee concludes that the communication is inadmissible under article 2 of the Optional Protocol.

5. The Human Rights Committee therefore decides:

(a) that the communication is inadmissible;

(b) that this decision shall be communicated to the author and, for information, to the State party.

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1/ A prior communication from V. E. M. was examined under number 467/1991, and declared inadmissible by the Committee on 16 July 1993, under article 5, paragraph 2 (a) of the Optional Protocol: see Annual Report for 1993 (A/48/40), Vol III, Annex XIII.J.

[Adopted in English, French and Spanish, the English 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.]