



**International Covenant on
Civil and Political Rights**

Distr.: General
25 November 2014

Original: English

Human Rights Committee

Communication No. 2070/2011

**Decision adopted by the Committee at its 112th session
(7–31 October 2014)**

<i>Submitted by:</i>	José Antonio Cañada Mora (represented by counsel, José Luis Mazón Costa)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Spain
<i>Date of communication:</i>	14 March 2011 (initial submission)
<i>Date of decision:</i>	28 October 2014
<i>Subject matter:</i>	Recovery of tax debts
<i>Substantive issues:</i>	Denial of justice
<i>Procedural issues:</i>	Failure to exhaust domestic remedies
<i>Articles of the Covenant:</i>	14, paragraph 1
<i>Articles of the Optional Protocol:</i>	5, paragraph 2 (b)



Decision on admissibility*

1.1 The author of the communication is José Antonio Cañada Mora, a Spanish national born on 2 July 1935, who claims to be the victim of a violation by Spain of article 14, paragraph 1 of the Covenant. The author is represented by counsel.

1.2 On 5 July 2011, the Special Rapporteur on new communications and interim measures, acting on behalf of the Committee, determined that observations from the State party were not needed to ascertain the admissibility of the present communication.

Factual background

2.1 The author was a wine producer. The Tax Agency of the Ministry of Finance carried out an investigation on the author's income for tax periods between 1992 and 1996. On 27 July 1998, it concluded that the author owed 55,810,667 pesetas, including interest, for value-added tax (VAT) and income that had not been included in his declarations and payments for those tax periods. The Tax Agency also imposed a fine of 24,243,814 pesetas on him. Those measures were subsequently upheld by the Regional Economic-Administrative Court (TEAR), and upheld on appeal by the Central Economic-Administrative Court (TEAC) on 25 April 2011.

2.2 On 7 December 2001, the author lodged an application before the High Court against the TEAC decision of 25 April 2001. He claimed inter alia that the debts for the years 1992 and 1993 had expired pursuant to the legal statute of limitations. According to the author, during the proceedings he challenged the main documentary evidence submitted by the Tax Agency, as it was in the form of photocopies that had not been authenticated and did not comply with the legal requirements. On 31 May 2003, the High Court granted his request and ordered that the documentation provided by the Tax Agency of Albacete of 21 January 2003 be kept separate from the case file. On 28 September 2004, the High Court dismissed the author's application and upheld the TEAC decision.

2.3 On 15 October 2004, the author submitted a request for leave to appeal in cassation before the High Court. On 2 November 2004, the High Court dismissed the author's request since the disputed sum for each of the tax periods did not exceed 25 million pesetas (about 150,253 Euros), as required by law for an appeal to the High Court. The decision also stated that it could be challenged before the Supreme Court through complaint proceedings (*recurso de queja*) within the following 10 days.

2.4 On 10 November 2004 the author filed an appeal to the High Court to overturn its decision (*recurso por nulidad de actuaciones*) of 2 November 2004. He claimed that his right to a fair trial, as enshrined in article 24 of the State party's Constitution, had been violated since, inter alia, the decision was based on facts that had not been proved by the Tax Agency.

2.5 On 15 December 2004, the author lodged complaint proceedings before the Supreme Court, challenging the High Court decision of 2 November 2004. He argued inter alia that the authorities had imposed only a single tax debt settlement of 55,810,667 pesetas, without

* The following members of the Committee participated in the examination of the present communication: Yadh Ben Achour, Lazhari Bouzid, Christine Chanet, Ahmad Amin Fathalla, Cornelis Flinterman, Walter Kälin, Yuji Iwasawa, Zonke Zanele Majodina, Gerald L. Neuman, Sir Nigel Rodley, Víctor Manuel Rodríguez-Rescia, Fabián Omar Salvioli, Anja Seibert-Fohr, Dheerujlall Seetulsingh, Yuval Shany, Konstantine Varzelashvili, Margo Waterval and Andrei Paul Zlătescu.

making any distinction as to tax periods or years; and that the total amount should therefore be taken into account in determining whether his cassation appeal met the requirements of the law.

2.6 On 7 February 2005 the High Court dismissed the author's appeal against its decision, stating that the author had not provided valid arguments for overturning the decision of 2 November 2004, but simply expressed his disagreement with it.

2.7 On 14 March 2005, the author lodged an application for *amparo* (legal protection) before the Constitutional Court against the previous administrative and judicial decisions and alleged a violation of article 24 (right to effective legal protection) of the State party's constitution.

2.8 On 1 April 2005, the Supreme Court rejected the author's complaint proceedings and confirmed the High Court's decision. The Supreme Court stated that article 86.2.b of Act 29/1998 on the Jurisdiction for Judicial Review excluded from cassation appeal cases in which the disputed sum did not exceed 25,000,000 pesetas; that that requirement should be calculated for each of the tax settlements (quarterly for VAT); and that, in the author's case, none of the tax settlements in question exceeded that amount.

2.9 The author alleges that, on 25 April 2005, he filed a second application for *amparo* before the Constitutional Court. According to a copy of that submission provided by the author, he referred to the main administrative and judicial decisions which had been challenged before the Constitutional Court; informed the Court of the Supreme Court's decision of 1 April 2005; and expressly stated that he "reiterat[ed] the application for *amparo* that was lodged on 14 March 2005".

2.10 In a decision of 11 December 2006, the Constitutional Court took note of the author's submissions of 14 March and 25 April 2005, and declared his application for *amparo* inadmissible on the ground of prior failure to exhaust all other judicial remedies under article 44, paragraph 1 (a), of the Organic Law of the Constitutional Court. The Court referred to its jurisprudence and stated that, in order to preserve the subsidiary nature of the application for *amparo* in its legal system, the application must meet the admissibility requirements at the time of submission to the Court. In the author's case, his complaint proceedings were still pending before the Supreme Court when he lodged his application.

2.11 On 22 May 2007, the author submitted a complaint against the State party before the European Court of Human Rights. On 30 November 2010, the Court, in single-judge formation, found the author's complaint inadmissible since domestic remedies had not been exhausted pursuant to article 35, paragraph 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights). According to the Court's decision, the author had failed to lodge his application for *amparo* in accordance with the legal requirements under the State party's law. On 9 December 2010, the author requested the Court to review its decision and argued that its reasoning could not be applied to his submission of 25 April 2005, which was another independent application for *amparo* submitted to the Constitutional Court in accordance with the law. On 13 December 2010, the Court informed the author that its decision was final.

The complaint

3.1 The author claims to be the victim of a violation of his rights under article 14, paragraph 1, and contends that the decisions taken by the State party's courts were arbitrary and not based on facts and evidence. The only relevant evidence submitted by the Tax Agency against him was removed from the case file by the High Court on 31 May 2003. Against that background, it should be understood that the judicial authorities' decisions were based on evidence previously declared inadmissible by the High Court.

3.2 The author considers that the High Court's denial of his request for leave to appeal in cassation, further upheld by the Supreme Court's decision of 1 April 2005, is arbitrary and amounts to a denial of justice.

3.3 The author holds that the Constitutional Court's decision declaring his application for *amparo* inadmissible also constitutes a denial of justice. The author argues before the Committee that the Court should have considered his submission of 25 April 2005 as a second application for *amparo*. He also argues that that submission expanded the original application submitted on 14 March 2005.

Issues and proceedings before the Committee

4.1 Before considering any claim contained in a communication, the Human Rights Committee must determine whether it is admissible under the Optional Protocol to the International Covenant on Civil and Political Rights.

4.2 The Committee recalls that, when it ratified the Optional Protocol, Spain entered a reservation excluding the Committee's competence in matters that had been, or were being, examined under another procedure of international investigation or settlement. The Committee also recalls its jurisprudence regarding article 5, paragraph 2 (a), of the Optional Protocol to the effect that when the European Court of Human Rights bases a finding of inadmissibility not only on procedural grounds, but also on grounds arising from some degree of consideration of the substance of the case, the matter should be deemed to have been examined within the meaning of the relevant reservations to article 5, paragraph 2 (a), of the Optional Protocol.¹ In the instant case, the Committee observes that the author's application was declared inadmissible on procedural grounds by a single-judge formation of the Court since domestic remedies had not been exhausted. Accordingly, the Committee considers that it is not precluded from considering the present communication, in accordance with article 5, paragraph 2 (a), of the Optional Protocol.

4.3 The Committee takes note of the author's claims under article 14, paragraph 1, that the administrative and judicial decisions against him were not based on sufficient evidence, since the only relevant proof submitted by the Tax Agency was declared inadmissible by the High Court; and that the denial of his request for leave to appeal in cassation constitutes a denial of justice. The Committee notes that those claims refer to the evaluation of the facts and the evidence, and the application of domestic legislation by the courts of the State party. The Committee recalls its jurisprudence according to which it is incumbent on the courts of States parties to evaluate the facts and the evidence in each case, or the application of domestic legislation, unless it can be shown that such evaluation or application was clearly arbitrary or amounted to a manifest error or denial of justice.² The Committee has examined the materials submitted by the author, including the High Court and Supreme Court decisions of 28 September, 2 November 2004 and 1 April 2005, and considers that those materials do not show that the proceedings against the author were defective. The Committee also takes note of the author's claim that the Constitutional Court's decision of 11 December 2006 constitutes a denial of justice, as the Court should have considered his submission of 25 April 2005 as a second application for *amparo*. However, the Committee notes that it cannot be concluded from the wording of the author's submission to the Constitutional Court of 25 April 2005 that his purpose was to submit a second request for

¹ Communication No. 944/2000, *Mahabir v. Austria*, decision on inadmissibility of 26 October 2004, paras. 8.3 and 8.4.

² See communication No. 1616/2007, *Manzano et al. v. Colombia*, decision adopted on 19 March 2010, para. 6.4; communication No. 1622/2007, *L.D.L.P. v. Spain*, decision adopted on 26 July 2011, para. 6.3.

amparo separate from that filed by him on 14 March 2005. Nor does he explain the reasons for for which he lodged an application on 14 March 2005, while his complaint proceedings were still pending before the Supreme Court. Furthermore, he does not indicate whether, under the Organic Law of the Constitutional Court, applicants are allowed to expand or amend their original applications in order to comply with the admissibility criteria. Accordingly, the Committee considers that the author has failed to provide sufficient substantiation of his claims and concludes that the present communication is 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 the decision be transmitted to the State party and to the author.
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