



**International covenant  
on civil and  
political rights**

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HUMAN RIGHTS COMMITTEE  
Eighty-third session  
14 March-1 April 2005

**DECISION**

**Communication No. 1099/2002**

*Submitted by:* Catalina Marín Contreras (represented by counsel,  
José Luis Mazón Costa)

*Alleged victim:* The author

*State party:* Spain

*Date of communication:* 3 September 1999 (initial submission)

*Document references:* Special Rapporteur's rule 97 (former rule 91) decision,  
transmitted to the State party on 16 July 2002 (not issued  
in document form)

*Date of decision:* 17 March 2005

*Subject matter:* Right to obtain compensation for death in a traffic accident

*Procedural issues:* Inadmissibility under article 2 of the Protocol

*Substantive issues:* Assessment of facts and evidence by the domestic courts

*Articles of the Covenant:* 14, paragraph 1, and 26

*Article of the Optional Protocol:* 2

[ANNEX]

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

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**Annex**

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

**Eighty-third session**

**concerning**

**Communication No. 1099/2002\***

*Submitted by:* Ms. Catalina Marín Contreras (represented by counsel)

*Alleged victim:* The author

*State party:* Spain

*Date of communication:* 3 September 1999 (initial submission)

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

*Meeting on 17 March 2005,*

*Adopts the following:*

**Decision on admissibility**

1. The author of the communication is Ms. Catalina Marín Contreras, a Spanish national, who alleges that she is a victim of a violation by Spain of article 14, paragraph 1, and article 26 of the Covenant. She is represented by counsel, José Luis Mazón Costa.

**The facts as submitted by the author**

2.1 On 31 May 1992, the author's husband was involved in a traffic accident in which he lost his life. He bore principal responsibility for the accident, since he drove onto the left-hand side of the road and collided head-on with another vehicle carrying Mr. Sánchez Gea. A witness who travelled in another vehicle for roughly a kilometre behind the one which caused the accident

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\* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr. Prafullachandra Bhagwati, Mr. Alfredo Castillero Hoyos, Ms. Christine Chanet, Mr. Maurice Glèlè Ahanhanzo, Mr. Edwin Johnson, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Mr. Michael O'Flaherty, Ms. Elisabeth Palm, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Ivan Shearer, Mr. Hipólito Solari-Yrigoyen, Ms. Ruth Wedgwood and Mr. Roman Wieruszewski.

stated that the vehicle which caused the accident was travelling some of the time along the central white line, and at a certain moment veered completely into the left-hand lane. According to the author, Mr. Sánchez Gea was also responsible for the collision, since he failed to notice that over a straight stretch of road, over a distance of roughly a kilometre, and in conditions of good visibility, a vehicle was approaching him from the opposite direction which was zigzagging and veering onto the wrong side of the road.

2.2 The author instituted proceedings against the company which had insured Mr. Sánchez Gea's vehicle in the court of Caravaca de la Cruz in order to obtain compensation for the death of her husband. The application was refused. She then lodged an appeal with the Murcia provincial high court, which was also denied. The author then applied to the Supreme Court for a declaration that a judicial error had been committed. This application was rejected on the grounds that the remedy in question is not applicable when, as in this case, the parties only disagree on the evaluation of the evidence by the corresponding courts as part of their judicial functions. Finally, the author instituted *amparo* proceedings in the Constitutional Court for the protection of her constitutional rights on the grounds of judicial error. This application was also denied.

### **The complaint**

3.1 The author maintains that the denial of compensation for the death of her husband constitutes a breach of her right to equal treatment under article 14, paragraph 1, of the Covenant for two reasons. Firstly, because her case was very similar to others in which, when there was any form of guilt, however slight, on the part of the other driver involved in the accident, the person principally responsible for the accident was acknowledged to have a right to compensation, in pursuance of article 1.2 of the Motor Vehicles (Use and Circulation) Act. Secondly, the restrictive jurisprudence of the Supreme Court in relation to judicial errors, has had adverse consequences for her.

3.2 The author also maintains that there was a breach of the right to adversary proceedings under article 14, paragraph 1, of the Covenant, since in the appeal proceedings the court made use of arguments which had not been subjected to rebuttal or argument. In addition, in the proceedings before the Supreme Court, the author had not been able to respond to or comment on the reports of the judicial bodies involved.

### **State party's observations on admissibility and the merits and author's comments**

4.1 On 27 September 2002 the State party challenged the admissibility of the complaint. On 17 January 2003, the State party reiterated its view that the complaint was inadmissible and that there had been no violation of the Covenant.

4.2 Concerning the violation of the right to equal treatment under article 14, paragraph 1, of the Covenant, the State party points out that the author makes no claim of a distinction based on arbitrary or unreasonable treatment, and emphasizes that her account of the events is a subjective one. Concerning the violation of the right to adversary proceedings, the State party indicates that the items of information or circumstances referred to in the ruling handed down by the provincial

high court already appeared in the technical reports included in the case file in the court of first instance. In addition, this allegation was not made in the domestic courts, so that it should be considered inadmissible under article 5, paragraph 2 (b), of the Optional Protocol.

4.3 The State party points out that the reason for the complaint is the fact that the author disagrees with the manner in which the judicial bodies evaluated the evidence. But the author has not shown that the actions of the judicial bodies were arbitrary or denied her justice, and the State party considers that the complaint constitutes a clear abuse of the right to submit complaints.

5.1 On 15 May 2003 the author reiterated the arguments already set out in her initial complaint and added that, in addition to the articles of the Covenant referred to previously, her rights under article 26, taken together with article 2 of the Covenant, had been violated.

### **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 97 of its rules of procedure, decide whether the complaint is admissible under the Optional Protocol to the Covenant.

6.2 The Committee has ascertained that the same matter is not being examined under another procedure of international investigation or settlement for the purposes of article 5, paragraph 2 (a), of the Optional Protocol.

6.3 With regard to the author's claim that the situations reported constitute a violation of article 14, paragraph 1, of the Covenant, and article 26 taken together with article 2, the Committee considers that the allegations relate in substance to the assessment of facts and evidence made by the Spanish courts. The Committee recalls its jurisprudence and reiterates that it is generally for the courts of States parties to review or to evaluate facts and evidence, unless it can be ascertained that the conduct of the trial or the evaluation of facts and evidence was manifestly arbitrary or amounted to a denial of justice. The Committee considers that the author has not sufficiently substantiated her complaint to be able to state that such arbitrariness or such a denial of justice existed in the present case, and consequently believes that the complaint must be found inadmissible under article 2 of the Optional Protocol.

7. The Committee therefore decides:

- (a) That the communication is inadmissible under article 2 of the Optional Protocol;
- (b) That this decision shall be communicated to the author and 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.]

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