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HUMAN RIGHTS COMMITTEE
Eighty-sixth session
13-31 March 2006

DECISION

Communication No. 1183/2003

Submitted by:	Salvador Martínez Puertas (represented by counsel)
Alleged victim:	The author
State party:	Spain
Date of communication:	13 September 2001 (initial submission)
Document references:	Special Rapporteur's rule 97 decision, transmitted to the State party on 2 July 2003 (not issued in document form)
Date of decision:	27 March 2006

* Made public by decision of the Human Rights Committee.

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Subject matter:	Judgement of the Spanish Supreme Court inconsistent with existing case law; failure to communicate to the author the opinion of the Public Prosecutor's Office regarding the appeal
Procedural issues:	Insufficient substantiation of the alleged violations
Substantive issue:	Equal treatment before the courts, "equality of arms", principle of adversarial proceedings
Article of the Covenant:	14, paragraph 1
Article of the Optional Protocol:	2

[ANNEX]

Annex

DECISION OF THE HUMAN RIGHTS COMMITTEE UNDER THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (EIGHTY-SIXTH SESSION)

concerning

Communication No. 1183/2003*

Submitted by: Salvador Martínez Puertas (represented by counsel)

Alleged victim: The author

State party: Spain

Date of communication: 13 September 2001 (initial submission)

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

Meeting on 27 March 2006,

Adopts the following:

Decision on admissibility

1. The author of the communication, which is dated 13 September 2001, is Salvador Martínez Puertas, a Spanish national, who alleges that he is a victim of violations by Spain of article 14, paragraph 1, of the Covenant. The Optional Protocol entered into force for the State party on 25 April 1985. The author is represented by counsel, Mr. José Luis Mazón Costa.

Factual background

2.1 The author worked as a janitor for the Municipal Sports Institute of the municipality of Murcia (hereinafter the Institute). He had signed a contract of employment on 2 April 1996, and was carrying out maintenance work in sports facilities in municipal swimming pools.

* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal Bhagwati, 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 and Mr. Roman Wieruszewski.

2.2 On 31 March 1998, the author signed the following settlement with the Institute: "Employer. Municipal Sports Institute. Breakdown of the settlement: Salary 73,310; summer premium 36,654; local supplement 42,909; specific allowance 29,798; average hourly earnings 10,000; special availability allowance 15,315. Total 207,987. (Less) Personal income tax 14,559, social security 11,712; balance 181,716. I, the undersigned, Salvador Martínez Puertas, declare that I hereby receive from the above-mentioned employer one hundred and eighty-one thousand seven hundred and sixteen pesetas, in payment of services rendered for this employer until the present day, in accordance with legislation in force and taking into account payments received to date, thus settling all accounts to my full satisfaction and releasing the company from any further claims whatsoever. I hereby agree to the present final settlement of accounts, which cancels the contract of employment signed with the said employer in Molina de Segura."

2.3 The Institute terminated his contract of employment on that same day, 31 March 1998. On 26 May 1998, the author filed an application for unjustified dismissal, in which he stated that the settlement listed only certain outstanding items, contained no provision for a severance payment and did not constitute a discharge from employment. In its ruling of 30 September 1998, Employment Tribunal No. 3 of Murcia acceded to the request in part, declaring the dismissal unlawful and instructing the Institute to reinstate the author with immediate effect. The tribunal considered that the settlement did not contain "the necessary elements to indicate the clear intent to terminate the contract" and that it did not release the Institute from its obligations, since the amounts outstanding were not paid in full.

2.4 In November 1998, the Institute appealed by means of an application for reversal of the tribunal's decision, asserting that the settlement released the Institute from its obligations and terminated the employment relationship. In January 1999, the author opposed the application, invoking Supreme Court case law relating to the conditions which a settlement must meet in order to terminate the employment relationship. Under that case law, signing a settlement does not automatically imply consent to terminating the employment relationship. Rather, the text must give a clear and unequivocal indication of the employee's intention to end the employment relationship. On 23 February 1999, the Employment Division of the Superior Court of Justice in Murcia granted the Institute's application and annulled the judgement of Employment Tribunal No. 3 of Murcia. The Division considered that the terms of the settlement were sufficiently clear and that there had been an intent to terminate the employment relationship. The author maintains that the Division's ruling is inconsistent with Supreme Court case law.

2.5 The author filed an appeal for unification of doctrine. This remedy aims at ensuring consistency in court rulings on cases whose factual circumstances are identical. The author invoked a judgement handed down by the Employment Division of the Supreme Court on 24 June 1998 respecting a situation which, in the author's view, was identical to his own. In its judgement, the Court had granted an application from a person who had temporarily taken a second job and who, at the end of the contract, had signed a proportional settlement confirming "receipt of a certain sum as final payment and settlement at the end of the contract". The document further stated that "for the purpose of the present settlement, I declare that I have received all current and future entitlements, thus relinquishing any further claims or compensation".

2.6 On 22 November 1999, during the appeal, the Employment Division, acknowledging that there might be grounds for dismissing the appeal, ordered a hearing for the author and requested the Public Prosecutor's Office to advise on the admissibility of the request. The Public Prosecutor's Office issued an opinion advocating the dismissal of the appeal, but the author claims that he was never informed of the opinion, nor was he given the opportunity to comment on its contents. Under article 224 of the Spanish Labour Procedure Act, the Public Prosecutor's Office, if it is not the plaintiff, is required to issue an opinion on the admissibility of the appeal. This opinion is not binding on the court. In its judgement of 3 February 2000, the Employment Division of the Supreme Court dismissed the appeal and considered that no contradiction could be found between the two judgements invoked by the author. The Division considered that the settlements were worded differently, and that the one signed by the author was much more explicit.

2.7 The author filed an application for *amparo* with the Constitutional Court, alleging a violation of his right to equal treatment before the courts and maintaining that the Supreme Court's decision was based on illogical and irrational grounds. He also alleged that the fact that he was not given the opportunity to comment on the contents of the Public Prosecutor's opinion violated his right to adversarial proceedings in the appeal. In respect of this allegation, the author cited the judgement of the European Court of Human Rights of 20 February 1996 in the case of *Lobo Machado v. Portugal*, according to which the fact that it was impossible for the plaintiff to obtain a copy of the opinion before judgement was given and reply to it infringed his right to adversarial proceedings. That right meant the opportunity for the parties to a criminal or civil trial to have knowledge of and comment on all evidence adduced or observations filed, even by an independent member of the national legal service, with a view to influencing the court's decision.

The complaint

3.1 The author alleges a violation of article 14, paragraph 1, of the Covenant, because the Employment Division rejected his appeal for unification of doctrine on the grounds that the decision handed down in the author's case and that with which it was being contrasted were not identical, whereas in the author's view there was no substantive difference between the two situations on which the decisions were based. The author adds that the conclusion reached by the Division is arbitrary, illogical, irrational and capricious. He considers that the arbitrariness is manifest and constitutes a denial of justice.

3.2 The author further alleges a violation of article 14, paragraph 1, of the Covenant because he was not provided with the opinion of the Public Prosecutor's Office advocating the dismissal of his appeal and was thus denied the opportunity to reply to it.

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

4.1 According to the State party, the communication is inadmissible, since it constitutes an abuse of the right of submission, manifestly lacks merit and is incompatible with the provisions of the Covenant. The State party considers that the author was given access to the courts repeatedly and secured well-founded legal decisions in which the competent judicial organs replied in detail to his allegations. The State party indicates that the author alone alleges unequal treatment, a claim expressly refuted by the Division that handed down the judgement the author

uses as a comparison. The State party considers that the communication lacks merit and that the author is using the mechanism of the Optional Protocol to raise an issue that has already been the subject of adequate examination, free of arbitrariness, and has been resolved in accordance with due process of law.

4.2 With respect to the merits of the communication, the State party points out that the author believes his situation to be identical to that of another person who obtained a favourable Supreme Court judgement. However, the terms of the settlement agreement signed by the author differ from those of the case with which it is being contrasted to substantiate the complaint and, the State party adds, the Supreme Court so informed the author supplying the grounds for this view and affirming that "no contradiction can be found between the two decisions that are being compared, which concern the consequences and purpose of different settlements; the documents are worded differently, which in itself could be grounds for issuing a different ruling in each case. The wording of the document detailing the amounts received and terminating the contract of employment is much more explicit than that of the document with which it is being contrasted. The latter merely acknowledges receipt of a given amount as final payment and settlement, without any specific reference to the intent to terminate the employment relationship."

4.3 The State party further affirms that the Constitutional Court replied promptly to the author's allegation, pointing out that "this specific allegation cannot be used as grounds for seeking *amparo*, since assessing whether the legal requirements for access to a given remedy have been met is the exclusive right of the competent judicial body. Consequently, the dismissal of an application can be appealed by way of *amparo* only if the decision was manifestly arbitrary or unfounded. It is clear that none of these circumstances apply in the present case, in which the dismissal of the appeal is based on the provisions of articles 217 and 223 of the Labour Procedure Act, since the Employment Division of the Supreme Court considered in a reasoned and substantiated manner, in application of its own settled and reiterated case law, that the allegedly challenged judgement cited in the *amparo* application did not lend itself to adversarial proceedings, so that there are no grounds for challenging the judgement from the constitutional standpoint."

4.4 With regard to the alleged violation of the right to adversarial proceedings, the State party cites part of the Constitutional Court decision on the *amparo* application filed by the author: "A second allegation relates to the possible breach of the fundamental right to adversarial proceedings during the appeal, since the applicant for *amparo* was unable to comment on the opinion of the Public Prosecutor's Office; the judgement delivered by the European Court of Human Rights on 20 February 1996 (the *Lobo Machado v. Portugal* case) is mentioned to support this allegation. It should be added that the situations which gave rise to the aforementioned judgement and the one giving rise to the present controversy are insufficiently similar to prompt similar solutions in the two cases. In the case adjudicated by the European Court of Human Rights, a member of the Attorney-General's department took part in the court's deliberations in private alongside three judges and the registrar of the Supreme Court, thus fully participating in the decision-making process. In the case adjudicated by this Court, on the other hand, the Public Prosecutor's intervention was limited to issuing an opinion on the admissibility of the appeal, pursuant to article 224 of the Labour Procedure Act. It can therefore be concluded that the appellant's right to a defence in the present case was not violated, since the opinion merely refers to issues pertaining to the due process of law and protection of the public interest,

in full compliance with the functions the Spanish Constitution assigns to the Public Prosecutor's Office. Such opinions are not binding on the adjudicating court and do not have the force of decisions. They cannot therefore be interpreted as violating the fundamental right to adversarial proceedings in any way."

5.1 In his submission dated 5 November 2004, the author maintains that he lost his job at the Sports Institute as a result of an arbitrary act on the part of the Employment Division of the Supreme Court, which denied him the right to the same treatment as that accorded in a similar case. In the case examined by the Supreme Court in its judgement of 24 June 1998, the rights of the worker were recognized, although he had signed the following text: "For the purpose of the present settlement, I confirm receipt of payment for all current and future entitlements, thus relinquishing any further claims or compensation." The author states that his circumstances did not justify a final settlement, although the document he signed was identical to the one mentioned earlier, stating: "thus settling all accounts to my full satisfaction, with no amount remaining to be claimed on any other grounds". Both documents contained a breakdown of the items for which the claimants received financial compensation, excluding severance payments. According to the author, the Supreme Court failed to compare the two employment severance agreements in an objective and reasonable manner. The author further states that, while both documents clearly terminate an employment relationship following a temporary contract of employment, the 1998 judgement declares the worker's temporary contract of employment null and void and the settlement is also considered null and void on the grounds that the employer had violated the law on employment contracts and that the worker's relinquishment of his labour rights was invalid, while the author's claims were dismissed.

5.2 The author adds that neither the Supreme Court nor the Constitutional Court examined the specificities of his case, or the substance of the problem, or the similarities and differences between the two settlements being contrasted, and formulated only observations of a general nature. The author cites the Committee's general comment No. 13 and adds that when a court issues different rulings on two cases without sufficient grounds, this creates the impression that the court's decisions are arbitrary, unjust and capricious. He maintains that the administration of justice in Spain generally infringes the principles articulated in article 14 of the Covenant. In the author's view, this circumstance is partly due to poor selection criteria in the appointment of judges, ineffective mechanisms to hold judges accountable, and the existence of a strong *esprit de corps*. He adds that the courts hide this abuse behind deceptive language which is lacking in rationality and objectivity, as well as by misrepresenting and manipulating arguments. He further points out that, in the view of distinguished experts, the Constitutional Court "serves no purpose", since only a very small percentage of *amparo* applications for violations of fundamental rights are examined thoroughly.

5.3 The author maintains, with respect to the State party's claim that the *Lobo Machado* case adjudicated by the European Court of Human Rights is different to his own, that the State party distorts the substance of the judgement. According to the author, the European Court ruled that "this fact in itself" - namely the failure to send to the plaintiff a copy of the Deputy Attorney-General's opinion, and the fact that he was unable to challenge the Deputy Attorney-General's arguments in favour of dismissing his appeal - "amounts to a breach of article 6, paragraph 1" of the European Convention on Human Rights. The author further states that the State party "manipulated" the European Court's case law, thus, in his view, committing a further violation of article 14, paragraph 1, of the Covenant.

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 93 of its rules of procedure, decide whether the complaint is admissible under the Optional Protocol to the Covenant on Civil and Political Rights.

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. The Committee further notes that the State party has not submitted any information suggesting the non-exhaustion of domestic remedies, and therefore considers there to be no impediment to examining the communication under article 5, paragraph 2 (a), of the Optional Protocol.

6.3 The Committee takes note of the author's allegation that the judgement of the Supreme Court concerning the appeal for unification of doctrine was arbitrary since the differing judgements related to situations with identical factual circumstances. The Committee considers that the allegation relates in substance to the assessment of facts and evidence 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 his complaint to be able to state that such arbitrariness or a denial of justice existed in the present case, and consequently believes that this part of the communication must be found inadmissible under article 2 of the Optional Protocol.

6.4 The Committee notes that article 14, paragraph 1, of the Covenant does not oblige States parties to provide avenues for redress in respect of judgements relating to the determination of civil rights and obligations. However, the Committee considers that if a State party provides for such redress, the guarantees of a fair trial implicit in the article must be respected in that process. The Committee recalls its case law to the effect that the concept of a fair trial within the meaning of article 14, paragraph 1, of the Covenant also includes other elements, including respect for the principles of "equality of arms" and the right to adversarial proceedings. The Committee takes note of the author's complaint that, while his appeal for unification of doctrine was being processed, he was not informed of the opinion issued by the Public Prosecutor's Office opposing the granting of the appeal, which prevented him from commenting thereon. It also takes note of the author's assertion that his complaint is identical to the one in the *Lobo Machado* case, which secured a favourable ruling from the European Court of Human Rights. However, the Committee notes that the author did not challenge the intervention of the Public Prosecutor's Office before the Supreme Court; that the Public Prosecutor's Office did not act in the author's case as an interested party, but rather to uphold the due process of law and protect the public interest; that its opinion was not binding on the Court; that there is nothing in the Court's ruling that might imply that it was influenced by the opinion of the Public Prosecutor's Office; and that, in contrast to the precedent invoked by the author, the Public Prosecutor's Office did not participate in the Court's deliberations. The Committee also notes that the procedure for requesting an opinion from the Public Prosecutor's Office is provided for in article 224 of the Labour Procedure Act. Nothing in the information submitted to the Committee indicates that there are any legal obstacles that prevent the appellant from gaining access to the opinion.

In the present case there is no indication that the author had attempted to ascertain the contents of the opinion before the Supreme Court decided on the inadmissibility of the appeal, or that he had brought a complaint before the Court concerning the lack of access to the opinion. The Committee further notes that the author had the opportunity to comment on the admissibility of the appeal for unification of doctrine, and that he also had ample scope for expressing his views during the proceedings. Accordingly, the Committee considers that the author has not sufficiently substantiated this part of the communication, for the purpose of admissibility, and therefore considers it to be inadmissible under article 2 of the Optional Protocol.

7. The Human Rights 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.

[Done 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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