



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE
Eighty-fourth session
11-29 July 2005

DECISION

Communication No. 1333/2004

Submitted by: Liberto Calvet Ràfols (represented by counsel,
Miquel Nadal Borràs)

Alleged victim: The author

State party: Spain

Date of communication: 18 December 2002 (initial submission)

Document references: Special Rapporteur's rule 97 decision, transmitted to
the State party on 10 December 2004 (not issued in
document form)

Date of decision: 25 July 2005

Subject matter: Prohibition on imprisonment for inability to fulfil a
contractual obligation

Procedural issues: Inadmissibility *ratione materiae*

Substantive issues: -

Article of the Covenant: 11

Articles of the Optional Protocol: 1 and 3

[ANNEX]

* 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-fourth session

concerning

Communication No. 1333/2004*

Submitted by: Liberto Calvet Ràfols (represented by counsel,
Miquel Nadal Borràs)

Alleged victim: The author

State party: Spain

Date of communication: 18 December 2002 (initial submission)

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

Meeting on 25 July 2005

Adopts the following:

Decision on admissibility

1.1 The author of the communication, which is dated 18 December 2002, is Liberto Calvet Ràfols, a Spanish national resident in Vilanova i la Geltrú, Barcelona. The author claims to be a victim of a violation by Spain of article 11 of the Covenant. The Optional Protocol entered into force for the State party on 25 April 1985. The author is represented by counsel, Miquel Nadal Borràs.

1.2 On 17 February 2005, the Special Rapporteur on New Communications and Interim Measures, acting on behalf of the Committee, agreed to the State party's request to separate the consideration of the admissibility and merits of the communication, in accordance with rule 97, paragraph 3, of the Committee's rules of procedure.

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

Factual background

2.1. The author and his wife concluded an agreement dissolving their marriage, and this was approved by the court in February 1990. Following submission of an application for divorce by the author's ex-wife, court No. 4 in Vilanova i la Geltrú, in a ruling dated 7 March 1992, awarded the mother care and custody of the couple's minor daughter and ordered the author to pay his ex-wife the sum of 25,000 pesetas (150.28 euros) per month in maintenance. On 27 October 1995, the author's ex-wife submitted to examining magistrate No. 6 in Vilanova i la Geltrú a claim for recovery of three monthly payments outstanding from 1993, two from 1994 and all payments from 1995.

2.2 On 14 March 2001, criminal court No. 12 in Barcelona found the author guilty of the offence of abandonment of the family under article 227 of the Spanish Criminal Code and sentenced him to eight weekends' imprisonment and reimbursement of the sums owed to his ex-wife.

2.3 The author appealed, claiming, inter alia, a violation of the prohibition on imprisonment for inability to meet contractual obligations, as provided under article 11 of the Covenant, inasmuch as he had been sentenced to deprivation of liberty for allegedly failing to pay a debt. In a judgement dated 5 July 2001, the Barcelona Provincial Court upheld the earlier ruling, albeit limiting the payment to the amounts outstanding for the period from August 1994 to 27 October 1995, the date of submission of the complaint.

2.4 The author submitted an application for *amparo* to the Constitutional Court, again claiming a violation of article 11 of the Covenant inasmuch as he had been sentenced to imprisonment for alleged breach of a contractual obligation. He also claimed that article 227 of the Spanish Criminal Code was in itself a violation of article 11 of the Covenant. The Constitutional Court rejected both claims on the grounds that maintenance payments are not a contractual but a legal obligation, and that article 227 of the Criminal Code provides not for imprisonment for debt, but for punishment for an act defined in law as an offence and consisting in the failure to fulfil the legal obligation to care and provide for one's family.

The complaint

3.1 The author alleges a violation of the prohibition, under article 11 of the Covenant, on imprisonment for inability to meet contractual obligations, insofar as he was sentenced to deprivation of liberty for a debt which he had failed to pay solely for lack of financial resources and not by deliberate intent.

3.2 The author also claims that article 227 of the Criminal Code itself violates article 11 of the Covenant insofar as it provides for deprivation of liberty for non-payment of maintenance.

State party's submissions on the admissibility of the communication, and author's comments

4.1 The State party argues that the communication is inadmissible because it manifestly lacks any basis in article 11 of the Covenant, sentence having been passed on the author on the grounds not of his failure to meet a contractual obligation but of his failure to fulfil his legal

obligation to keep and feed his family. It further states that the fact that this obligation was contained in a document conveying an agreement between the parties does not make the obligation a contractual one, for the obligation itself derives not from that agreement but from the legal obligation on parents to support their children at all times, and on spouses to support each other during the marriage, and even following its dissolution if one partner is left without means. Consequently, the basis for the author's conviction was not contractual but legal.

4.2 As to the alleged inconsistency of article 227 of the Criminal Code with article 11 of the Covenant, the State party notes that the former provides for imprisonment not for debt but for abandonment of one's dependent family, i.e., on grounds deriving not from a contractual agreement but from a legal requirement.

5.1 In a letter dated 4 April 2005, the author points out that article 227 of the Criminal Code was amended by Organic Law No. 15/2003, which entered into force on 1 October 2004, replacing the previous penalty of 8 to 20 weekends' detention by the current sentence of three months' to one year's imprisonment or a 6- to 24-months' fine.

5.2 The author insists that the inability to pay maintenance constitutes a failure to fulfil a contractual obligation that derives from the contract signed by the two spouses, i.e., the agreement reached at the time of their separation or divorce. In his view, then, the obligation is contractual, albeit one ratified by the court.

5.3 Lastly, the author argues that all contractual obligations are legal obligations since all juridical relations between persons are regulated by law.

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 or not the communication is admissible under the Optional Protocol to the Covenant on Civil and Political Rights.

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

6.3 The Committee has also ascertained that the author has exhausted all available domestic remedies, as required under article 5, paragraph 2 (b), of the Optional Protocol.

6.4 With regard to the alleged violation of article 11 of the Covenant by the imposition of a custodial sentence for failure to pay maintenance, the Committee notes that the case concerns a failure to meet not a contractual obligation but a legal obligation, as provided in article 227 of the Spanish Criminal Code. The obligation to pay maintenance is one deriving from Spanish law and not from the separation or divorce agreement signed by the author and his ex-wife. Consequently, the Committee finds the communication incompatible *ratione materiae* with article 11 of the Covenant and thus inadmissible under article 3 of the Optional Protocol.

6.5 In light of the foregoing, it is not, in the Committee's opinion, appropriate for it to consider *in abstracto* the compatibility of article 227 of the Criminal Code with article 11 of the Covenant. The author's complaint in this regard amounts to an *actio popularis* and, as such, the Committee finds it inadmissible under article 1 of the Optional Protocol.

7. Consequently, the Committee decides:

(a) That the communication is inadmissible under articles 1 and 3 of the Optional Protocol;

(b) That this decision shall be communicated to the author of the communication 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.]
