



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE
Ninety-second session
17 March-4 April 2008

DECISION

[Original: ENGLISH]

Communication No. 1527/2006

Submitted by: Mario Conde Conde (represented by counsel, José Luis Mazón Costa)

Alleged victim: The author

State party: Spain

Date of communication: 1 September 2006 (initial submission)

Date of decision: 1 April 2008

Subject matter: Submission of the same case already examined by the Committee but under a different claim

Procedural issue: Abuse of the right to submit a complaint

Substantive issue: -

Article of the Covenant: 14, paragraph 1

Article of the Optional Protocol: 3

[ANNEX]

* Made public by decision of the Human Rights Committee.

Annex

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

Ninety-second session

concerning

Communication No. 1527/2006*

Submitted by: Mario Conde Conde (represented by counsel, José Luis Mazón Costa)

Alleged victim: The author

State party: Spain

Date of communication: 1 September 2006 (initial communication)

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

Meeting on 1 April 2008,

Adopts the following:

Decision on admissibility

1. The author of the communication, dated 1 September 2006, is Mario Conde Conde, a Spanish citizen born in 1948. He claims to be a victim of a violation by Spain of article 14, paragraph 1, of the Covenant. The Optional Protocol entered into force for Spain on 25 April 1985. He is represented by counsel, José Luis Mazón Costa.¹

* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine Chanet, Mr. Maurice Glèlè Ahanhanzo, Mr. Yuji Iwasawa, Mr. Edwin Johnson, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Mr. Michael O'Flaherty, Ms. Elisabeth Palm, Mr. José Luis Pérez Sanchez-Cerro, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Ivan Shearer and Ms. Ruth Wedgwood.

¹ The author is currently serving his sentence in a *tercer grado* penitenciario (lowest category within the prison system, which allows for day release).

Factual background

2.1 The author, former chairman of the *Banco Español de Crédito* (Banesto), was convicted on 31 March 2000 by the Spanish National High Court (*Audiencia Nacional*) on two counts of misappropriation and fraud. On appeal, the Supreme Court partly reversed this decision convicting him on an additional count of misappropriation and forgery and increasing the sentence accordingly.

2.2 The author submitted a communication under the Optional Protocol on 7 January 2003, alleging a violation of article 14, paragraph 5, because (a) the Supreme Court did not secure a full review of the decision handed down by the National High Court and dealt only with procedural issues, and (b) he was denied any kind of review in relation to his conviction and increased sentence imposed by the Supreme Court. On 31 October 2006, the Committee found the first claim inadmissible in light of the judgement of the Supreme Court, which carefully examined in detail the trial court's evaluation of the evidence and diverged to some extent from the High Court's assessment in respect of two of the charges. With regard to the second claim, the Committee found that the author's conviction on two counts for which he had been acquitted on first instance and the consequent aggravation of his sentence without any possibility of further review constituted a violation of article 14, paragraph 5, of the Covenant.

The complaint

3. Referring to the same case, the author now claims to be a victim of a violation of article 14, paragraph 1, of the Covenant, because the witnesses who testified during his trial were allegedly partial as they had already testified before the prosecutor.

Issues and proceedings before the Committee

4.1 Pursuant to rule 93 of its rules of procedure, before considering any claim contained in a complaint, the Human Rights Committee must determine whether it is admissible under the Optional Protocol to the Covenant on Civil and Political Rights.

4.2 The Committee notes that the author had already previously submitted a communication, based on exactly the same facts as set out above and that this communication was considered by the Committee on 31 October 2006. It further notes that the author has neither presented any new facts which occurred since that date nor provided any explanation as to why he was unable to raise the present claim at the time of submitting his initial communication. Under these circumstances, the Committee considers that the author's present claim constitutes an abuse of the right to submit a complaint and declares it inadmissible under article 3 of the Optional Protocol.

4.3 The Human Rights Committee therefore decides:

- (a) That the communication is inadmissible under article 3 of the Optional Protocol;
- (b) That the decision be transmitted to the State party, to the author and to his counsel.

[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.]
