



**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. 1528/2006

Submitted by: Pedro José Fernández Murcia (represented by counsel,
Mr. José Luis Mazón Costa)

Alleged victim: The author

State party: Spain

Date of communication: 26 July 2006 (initial submission)

Date of adoption of decision: 1 April 2008

Subject matter: Decision of the Supreme Court to declare inadmissible an
appeal in cassation

Procedural issue: Re-evaluation of the application of domestic legislation

Substantive issue: Equality before the courts

Articles of the Covenant: 14, paragraph 1; 26

Article of the Optional Protocol: 2

[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. 1528/2006*

Submitted by: Pedro José Fernández Murcia (represented by counsel,
Mr. José Luis Mazón Costa)

Alleged victim: The author

State party: Spain

Date of initial communication: 26 July 2006 (initial submission)

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 26 July 2006, is Mr. Pedro José Fernández Murcia, a Spanish citizen born in 1952. He claims to be a victim of a violation by Spain of articles 14, paragraph 1, and 26 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 of the communication and his wife were the respondents in civil proceedings for the annulment of the registration of ownership of a plot of land acquired in 1987. The persons

* 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.

from whom they had acquired the property (M.R.M. and F.I.D.) were also respondents in the same proceedings. The suit had been brought by Mr. José Torrico, who claimed to have previously purchased the same property from a company by means of a private contract, without registering the purchase with the public registry.

2.2 The civil proceedings had originated in an earlier suit before the same judge in which Mr. Torrico had successfully demanded the recognition of the validity of a private contract regarding the purchase of several plots, some of which had been sold to the author.

2.3 On 8 February 2000, the Murcia court of first instance dismissed the case. Mr. Torrico appealed to the Murcia Provincial Court, which on 23 May 2000 annulled the decision of the court of first instance. According to the Provincial Court, the author had not purchased the plot in good faith, since there was ample evidence that he knew it belonged to Mr. Torrico. The Court therefore ordered that the registration of the property as belonging to the author and his wife be declared null and void. The decision of the Provincial Court specified that the judgement could be appealed in cassation.

2.4 The author lodged an appeal in cassation. However, on 10 June 2003, the Supreme Court declared that the judgement of the Provincial Court did not fall under any of the categories of judgement against which an appeal in cassation could be lodged under article 1687 of the Civil Procedure Act. The Court held that although the judgement, in an ancillary reference, characterized the case as one involving a minor offence - one of the categories included in article 1687 - the case had in fact been heard under article 198 of the Mortgage Regulations, which contains no provision for appeal in cassation.

2.5 The author did not institute *amparo* proceedings before the Constitutional Court. However, the co-respondents in the initial proceedings did so, claiming that the refusal of the Supreme Court to hear the appeal in cassation on the merits amounted to a breach of the constitutional right to due process. The Constitutional Court dismissed the application on 17 January 2005, as it did not find any arbitrary act or manifest error in the Supreme Court's decision. According to the author, this decision proves that the remedy of *amparo* is not an effective remedy and that, in accordance with the Committee's jurisprudence in the *Gómez Vázquez* and *Joseph Semey* cases against Spain, domestic remedies which are not effective do not need to be exhausted.

The complaint

3.1 The author alleges that the Supreme Court's inadmissibility decision breaches his right to equality before the courts provided for in article 14, paragraph 1, and article 26 of the Covenant, because of its discriminatory and arbitrary nature.

3.2 Article 1687 of the Civil Procedure Act stipulates that appeals in cassation may be lodged against orders (*autos*) handed down at the appeal stage in proceedings for the enforcement of judgements against which an appeal in cassation is also possible, when such orders concern substantive issues which were not disputed in the main suit, or had not been resolved in the judgement, or contradict the enforceable judgement.

3.3 In the case under consideration, although the author lodged the appeal in cassation not against a decision (*auto*) but against a judgement, the judgement at issue had nevertheless been

handed down in the context of the earlier suit, where Mr. Torrico had secured recognition of the validity of a private contract regarding the purchase of several properties. The judgement dealt with an issue which had not been decided in the main suit, and therefore the Supreme Court should have interpreted article 1687 in a way that would allow the appeal. This would have prevented the discrimination arising from the fact that appeals in cassation are allowed against decisions (*autos*) but not against judgements.

3.4 The author requests the Committee to declare that there was a violation of articles 14, paragraph 1, and 26. The State party should also be requested to respect the right to an effective remedy set forth in article 2, paragraph 3 (a), of the Covenant, by declaring that the author has the right to lodge an appeal in cassation and to receive compensation.

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 has ascertained, as required 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.

4.3 The issue before the Committee is whether the State party violated the author's rights under the Covenant by virtue of the fact that the Supreme Court declared his appeal in cassation inadmissible. The Committee recalls its constant jurisprudence that it is not a final instance competent to re-evaluate findings of fact or the application of domestic legislation, unless it can be ascertained that the proceedings before the domestic courts were arbitrary or amounted to a denial of justice.¹ The author has failed to substantiate, for purposes of admissibility, that the conduct of the Court was arbitrary or constituted a denial of justice. Accordingly, the communication is inadmissible under article 2 of the Optional Protocol.

4.4 The Human Rights Committee therefore decides:

- (a) That the communication is inadmissible under article 2 of the Optional Protocol;
- (b) That the decision should be transmitted to the State party, to the author and to counsel.

[Adopted in English, French and Spanish, the English 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.]

¹ See communications Nos. 541/1993, *Errol Simms v. Jamaica*, decision of 3 April 1995, para. 6.2; 1138/2002, *Arenz et al. v. Germany*, decision of 24 March 2004, para. 8.6; 917/2000, *Arutyunyan v. Uzbekistan*, Views of 29 March 2004, para. 5.7.