



**International Covenant
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and Political Rights**

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HUMAN RIGHTS COMMITTEE
Sixtieth session
14 July to 1 August 1997

DECISIONS

Communication N° 758/1997

Submitted by: José María Gómez Navarro
(represented by Mr. J. L. Mazón Costa)

Victim: The author

State party: Spain

Date of communication: 19 September 1996 (initial submission)

Date of present decision: 29 July 1997

[ANNEX]

* Made public by decision of the Human Rights Committee.
SPR.758

ANNEX

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

concerning

Communication N° 758/1997

Submitted by: José María Gómez Navarro
(represented by Mr. J. L. Mazón Costa)

Victim: The author

State party: Spain

Date of communication: 19 September 1996 (initial submission)

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

Meeting on 29 July 1997,

Adopts the following:

Decision on admissibility

1. The author of the communication is José María Gómez Navarro, a Spanish citizen living in Cartagena, Spain. He claims to be a victim of violations by Spain of articles 14, paragraph 1; 25, paragraph (c), and 26 of the International Covenant on Civil and Political Rights. The Optional Protocol entered into force for Spain on 25 April 1985. The author is represented by counsel, Mr Jose Luis Mazón Costa.

*The following members of the Committee participated in the examination of the communication: Mr. Nisuke Ando, Mr. Prafullachandra N. Bhagwati, Mr. Thomas Buergenthal, Ms. Christine Chanet, Lord Colville, Ms. Elizabeth Evatt, Ms. Pilar Gaitan de Pombo, Mr. Eckart Klein, Mr. David Kretzmer, Ms. Cecilia Medina Quiroga, Mr. Fausto Pocar, Mr. Martin Scheinin and Mr. Maxwell Yalden.

Facts as submitted by the author:

2.1 The author, who has been a civil servant for twenty three years in the Administrative Service (Cuerpo Administrativo), holds a law degree and has held posts of certain responsibility. He complains that he has not been promoted; on 13 September 1991 he requested a promotion, which was denied him, by decision of the Ministry of Public Affairs (Ministerio para las Administraciones Públicas), on 5 November 1991, on the ground that he had failed one of three competitive exams.

2.2 The author complains that in the promotion policy for Spanish civil servants, neither merits nor professional ability are taken into account. He contends that those are two criteria which should be observed by the authorities when promoting civil servants, and claims that this is a requirement imposed by the 1978 Spanish Constitution (article 23.2).

2.3 The author claims that he suffered discriminatory treatment in 1976, when the Government enacted a Decree (Decreto-Ley 14/1976) which created the Treasury Service Section (Cuerpo de Gestión de la Administración del Estado). By this, all administrative service civil servants who were then serving in the Treasury (Ministerio de Hacienda) were automatically integrated into the newly created Treasury Service Section. As a result, the author and those colleagues who at that time were not working in the Treasury, were not integrated into the new department. The author claims that the 1976 Decree had disastrous consequences for his career.

2.4 In 1984, the Public Service Amendment Act N° 30/1984 (Ley 30/1984 de Reforma de la Función Pública) was enacted. This Act was the legal basis for the promotion of a wide range of civil servants. The complementary regulations introduced by the Amendment Act established different criteria which governed the promotion of various categories of civil servants.

2.5 The author alleges that he was unjustly discriminated against, as other civil servants were promoted without sitting competitive examinations, while he had to sit three different examinations. He also claims that while some civil servants were promoted without having to prove that they had a college degree, others, like himself, were required to provide proof of college education.

2.6 After the denial of his promotion in 1991 the author filed an administrative complaint (recurso contencioso administrativo) with the High Court (Audiencia Nacional) in Madrid. On 5 December 1994, the High Court (Audiencia Nacional) upheld the decision of the Ministry of Public Affairs; the Court was of the opinion that the Ministry of Public Affairs decision was in total conformity with law. On 13 March 1995, the author's further appeal (recurso de amparo) to the Constitutional Court was declared inadmissible.

The complaint:

3.1 Counsel contends that the facts as described above constitute a violation of articles 25 (c) and 26 of the Covenant.

3.2 The author notes that he passed the first two parts of the competitive examination but failed the third, which in his opinion was unnecessary. He claims that he was discriminated against because in the following year, the third phase of this examination was abolished. To him, this situation constitutes a violation of his right to have access, on general terms of equality, to public service in his country, as provided for in article 25 (c) of the ICCPR.

3.3 Counsel further claims a violation of article 14, paragraph 1, in respect of the denial of his client's appeal (recurso de amparo) by the Constitutional Court. In this respect, he alleges that the judges on the Constitutional Court do not themselves decide the question of inadmissibility, but that decisions are routinely prepared by a team of lawyers (cuero de letrados) who work for the Constitutional Court, and that the judges simply sign the decisions. Counsel claims that the lack of clear language in the Constitutional Court's decision, also implies a violation of article 14, paragraph 1. Finally, Counsel claims that the author was denied a fair hearing by the Constitutional Court when it dismissed his request for amparo, as only the Public Prosecutor's Office (Ministerio Fiscal) is given the possibility to appeal (recurso de suplica).

Issues and proceedings before the Committee:

4.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

4.2 The Committee considers that the author's allegations of discrimination and denial of his right to access, on general terms of equality, to public service in his country have not been substantiated for the purposes of admissibility: the allegations before the Committee do not disclose the link between these and how the author's rights under articles 25 (c) and 26 of the Covenant might have been violated. In this respect, therefore, the Committee concludes that the author has failed to advance a claim within the meaning of article 2 of the Optional Protocol.

4.3 With regard to the author's claim of a violation of article 14, paragraph 1, of the Covenant in respect of the dismissal of his appeal by the Constitutional Court, the Committee has carefully examined the material submitted by the author. It considers that the author's counsel does not substantiate, for purposes of admissibility, how the fact that the Office of the Public Prosecutor (Ministerio Fiscal), in defence of the general interest of the public, may appeal against the rejection of a recurso de amparo or how the way in which the Constitutional Court organises its agenda and conducts its hearings would constitute a violation of the author's right to a fair hearing within the meaning of article 14, paragraph 1, of the Covenant.

5. 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, his counsel and, for information, to the State party.

[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 annual report to the General Assembly.]