



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE
Seventy-seventh session
17 March-4 April 2003

DECISION

Communication No. 1004/2001

<u>Submitted by:</u>	Mr. Luis Pascual Estevill (represented by Mr. Javier Pascual Franquesa)
<u>Alleged victim:</u>	The author
<u>State party:</u>	Spain
<u>Date of communication:</u>	12 March 2001
<u>Document references:</u>	Special Rapporteur's rule 91 decision, transmitted to the State party on 22 August 2001 (not issued in document form)
<u>Date of adoption of decision:</u>	25 March 2003

* Made public by decision of the Human Rights Committee

Annex

**DECISION OF THE HUMAN RIGHTS COMMITTEE ADOPTED
IN ACCORDANCE WITH THE OPTIONAL PROTOCOL TO
THE INTERNATIONAL COVENANT ON CIVIL AND
POLITICAL RIGHTS**

Seventy-seventh session

concerning

Communication No. 1004/2001*

Submitted by: Mr. Luis Pascual Estevill (represented by Mr. Javier Pascual Franquesa)

Alleged victim: The author

State party: Spain

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

Meeting on 25 March 2003,

Adopts the following:

Decision on admissibility

1. The author of the communication is Mr. Luis Pascual Estevill, a Spanish national. In his communication of 12 March 2001, he claims to be the victim of a violation by Spain of article 14, paragraph 5, of the International Covenant on Civil and Political Rights. The author is represented by counsel.

The facts as submitted by the author

2.1 On 4 July 1996, the Supreme Court sentenced Mr. Pascual Estevill, a member of the General Council of the Judiciary, to six years' suspension from the exercise of judicial functions for breach of public trust in combination with two offences of unlawful detention.

* 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. Franco Depasquale, Mr. Maurice Glèlè Ahanhanzo, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Mr. Rafael Rivas Posada, Mr. Nigel Rodley, Mr. Martin Scheinin, Mr. Ivan Shearer, Mr. Hipólito Solari Yrigoyen, Ms. Ruth Wedgwood, Mr. Roman Wieruszewski and Mr. Maxwell Yalden.

2.2 The author submitted an application for amparo to the Constitutional Court, claiming violation of his right to effective legal protection and infringement of his right to due process, insofar as the judgement handed down by the Supreme Court, acting as court of first instance, denied the author access to other remedies. His application was turned down on 17 March 1997.

2.3 The author took his case to the European Commission of Human Rights, claiming (a) a violation of article 13 of the European Convention on Human Rights and (b) a violation of article 2, paragraph 1, of Protocol No. 7 to the Convention and of articles 14 and 15 of the International Covenant on Civil and Political Rights. In a decision dated 6 July 1998, the Commission declared the application “manifestly ill-founded” and consequently inadmissible.¹

The complaint

3. The author claims a violation of article 14, paragraph 5, of the Covenant on the grounds that the judgements of the Supreme Court are without remedy, i.e. that in criminal proceedings against protected persons the principle of sole instance applies, which means that, as in the author’s case, the convicted person is denied access to the appeals machinery.

The State party’s observations on admissibility

4.1 In its observations dated 15 October 2001, the State party notes that criminal proceedings have been taken against Luis Pascual Estevill on a number of charges since late 1994 in connection with his conduct as a judge.

4.2 The State party challenges the admissibility of the communication on the basis of the reservation to article 5, paragraph 2 (a), that it entered on depositing its instrument of ratification of the Optional Protocol to the Covenant, and contends that the reservation prevents the consideration of a matter which has been previously submitted to another international investigation or settlement. The State party claims that the reservation applies in the present case because the author submitted the same matter to the European Commission of Human Rights, which, having considered the author’s complaint that he had no effective remedy against his sentence, concluded, in its ruling on inadmissibility, that since the author had submitted an application for amparo to the Constitutional Court, he had an effective remedy available before a domestic court.

4.3 The State party further considers that the communication should be declared inadmissible on the grounds that it constitutes an abuse of the right of submission, under article 3 of the Optional Protocol, since the author, who, as a former judge, undoubtedly has above-average legal qualifications, chose his own moment and submitted the communication 48 months after the final domestic judgement and 32 months after the European Commission’s decision.

4.4 Lastly, the State party argues that it was the author himself who, given his position as member of the General Council of the Judiciary, insisted on being tried by the Supreme Court, which he considered the competent judicial body. Consequently, on 7 November 1994, he submitted a written application to the High Court of Catalonia for the criminal proceedings against him to be transferred to the Second Division of the Supreme Court. When that application was rejected, he submitted an application for reconsideration, which was also

rejected by the High Court. Finally, on 14 November 1994, he submitted an application to the Supreme Court requesting it to assume jurisdiction to investigate and try him; the Supreme Court's response was to declare itself competent "in accordance with the request". To summarize, the State party argues that the author cannot call into question his own actions and complain to the Committee that he has been tried in sole instance by the Supreme Court, when in domestic procedures all his efforts were directed towards ensuring that he would in fact be tried by that Court and, having attained that objective, he submitted not the slightest complaint in that regard during the proceedings.

The author's comments on the State party's observations on admissibility

5.1 In his comments of 11 January 2002 in response to the State party's observations on admissibility, the author argued that the information provided by the State party concerning the criminal proceedings against him has no bearing on the grounds on which the claim of inadmissibility is based.

5.2 With regard to the State party's reservation, the author states that a matter may be brought before the Committee even if it has been submitted to the European Court of Human Rights provided that, as in this case, the Court has not considered the merits of the case. He claims that the Committee's case law is "constant" (sic) in holding that a matter has not been considered if an application under another international procedure has been declared inadmissible and has not been considered on the merits, and he refers to the Committee's Views in the case of Casanovas v. France.² He further claims that the decision on inadmissibility in his case was based on article 27, paragraph 2, of the European Convention, which reads as follows: "The Commission shall consider inadmissible any petition submitted under article 25 which it considers incompatible with the provisions of the present Convention, manifestly ill-founded or an abuse of the right of petition", which leaves no room for doubt that his case was not considered on the merits. Lastly, the author claims that his application for amparo to the Constitutional Court was also declared inadmissible, that therefore it was not considered on the merits and there was no review of the judgement handed down in first instance.

5.3 With regard to the inadmissibility of the communication under article 3 of the Optional Protocol, the author states that the article should be given a more restrictive interpretation than that applied by the State party. He also claims that requiring a given individual, as in this case, to subject himself to time frames in the light of personal and professional circumstances, is a violation of the principle of legality and equality, since the Optional Protocol sets no deadlines whatsoever for submission of a complaint to the Committee.

5.4 Lastly, the author informs the Committee that in Spain it is not the accused who chooses the courts but the courts that are stipulated by the law.³

The Committee's deliberations on admissibility

6.1 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 the communication is admissible under the Optional Protocol to the Covenant.

6.2 The only complaint by the author is related to article 14, paragraph 5, of the Covenant, which stipulates that “Everyone convicted of a crime shall have the right to his conviction and sentenced being reviewed by higher tribunal.” The Committee notes that the State party’s legal system would have granted the right of appeal if the author had been tried by the High Court of Catalonia. However, it was the author himself who repeatedly insisted that he be tried directly by the Supreme Court. Bearing in mind that the author is a former judge with a great deal of experience, the Committee considers that, by insisting on being tried only by the Supreme Court, the author has renounced his right of appeal. The Committee considers that, in the circumstances, the allegation by the author constitutes an abuse of the right to submit communications, in accordance with article 3 of the Optional Protocol.

6.3 Consequently, the Committee does not deem it necessary to consider whether the submission of one and the same matter to the European Commission of Human Rights prevents consideration of the case in question on the basis of the State party’s reservation concerning article 5, paragraph 2 (a), of the Optional Protocol.

7. Accordingly, the Committee decides,

- (a) That the communication is inadmissible under article 3 of the Optional Protocol;
- (b) That this decision shall be communicated to the State party and the author.

[Adopted in Spanish, French and English, 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.]

Notes

¹ Decision of the European Commission of Human Rights dated 6 July 1998 (No. 38224/97), in which it was held that Protocol No. 7 to the European Convention for the Protection of Human Rights could not be invoked by the author, since Spain had not ratified the Protocol.

² Communication No. 441/1990, Casanovas v. France, findings adopted on 19 July 1994

³ According to article 57, paragraph 1, of the Judiciary (Organization) Act of 6 July 1985, “The Criminal Division of the Supreme Court shall be competent to: (2) investigate and try cases against the President of the Government, the Presidents of the Congress and the Senate, the Presidents of the Supreme Court and of the General Council of the Judiciary, the President of the Constitutional Court, members of the government, Deputies and Senators, members of the General Council of the Judiciary (...).”
