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HUMAN RIGHTS COMMITTEE
Forty-eighth session

DECISIONS

Communication No. 467/1991

Submitted by: V.E.M.
[represented by counsel]

Alleged victim: The author

State party: Spain

Date of communication: 27 May 1991 (initial submission)

Documentation references: Prior decisions
- Special Rapporteur's rule 91 decision,
transmitted to the State party on 8 August 1991
(not issued in document form)

Date of present decision: 16 July 1993

Decision on admissibility

[Annex]

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ANNEX */

**Decision of the Human Rights Committee under the Optional Protocol
to the International Covenant on Civil and Political Rights
- Forty-eighth session -**

concerning

Communication No. 467/1991

Submitted by: V.E.M. (name deleted)

Alleged victim: The author

State party: Spain

Date of communication: 27 May 1991 (initial submission)

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

Meeting on 16 July 1993,

Adopts the following:

Decision on admissibility

1. The author of the communication is V.E.M., a Spanish citizen born in 1935, currently residing in Barcelona. He claims to be a victim of violations by Spain of articles 3, 7, 14, paragraphs 1, 2, 3(a) to (e), 5, 17 and 26 of the International Covenant on Civil and Political Rights. He is represented by counsel. The Optional Protocol entered into force for Spain on 25 April 1985.

The facts as submitted by the author :

2.1 In 1975, the author, a former military officer, was excluded from service in the Spanish Army by decision of a special tribunal (Tribunal de Honor), which found him guilty of having tolerated the alleged dishonourable lifestyle of his wife. According to the author, the charges against him were fabricated and unsubstantiated, and the tribunal was constituted for reasons totally different from those that led to his discharge from the army. He submits that the

*/ Made public by decision of the Human Rights Committee.

principal witness before the Tribunal committed perjury, and that letters attributed to the author which accused high-ranking military officers of corruption - letters of which he claims to have no knowledge - were used as evidence against him. Under article 40, *litera* (a), of the (old) Code of Military Procedure (1945), the Tribunal's decision could not be appealed.

2.2 In 1985, the author learned that the above provision of the Code of Military Procedure had been declared unconstitutional. He therefore filed an application for revision of the decision of 1975 with the Ministry of Defence. This was followed by an administrative complaint filed with an administrative tribunal (*audiencia nacional*), requesting a declaratory judgement to the effect that the decision of 1975 had been null and void. He claimed, in particular, that the proceedings before the Tribunal de Honor had failed to observe the minimum guarantees of the defence.

2.3 On 28 June 1988, the Military Chamber of the Supreme Court (*Sala de lo Militar*) dismissed the case on the ground that the conditions of article 127 of the law governing administrative procedures for the revision of final (judicial) decisions had not been met. The judgement further held that the author's appeal was inadmissible because it fell under the relevant statutes of limitations, since the deadline for filing the appeal had begun to run from the date of entry into force of the Constitution (1978); two judges of the Supreme Court appended dissenting opinions to the judgement of 28 June 1988.

2.4 The author further appealed to the Constitutional Tribunal (*recurso de amparo*). This was declared inadmissible by decision (*auto*) of the Constitutional Court on 23 February 1989.

2.5 On 22 April 1989, the author filed a complaint under article 6 of the European Convention on Human Rights (guarantee of a fair trial) with the European Commission of Human Rights. On 15 June 1989, the Commission registered it as case No. 15.124/89. On 11 October 1989, the case was declared inadmissible because the Commission held that the guarantee of article 6 of the Convention did not cover disputes about public service, neither the question of access to it nor the dismissal from it.

The complaint:

3. The author contends that the facts described above constitute violations of the following provisions of the Covenant:

- (a) Article 3, since the State party never guaranteed the equal enjoyment of his or of his wife's rights under the Covenant;
- (b) Article 7, since the fact of being accused without so much as the possibility of defending himself against the charges is said to amount to an attack on his honour and to constitute degrading treatment;

- (c) Article 14, paragraph 1, since he was never afforded equality before the courts, either before the Tribunal de Honor or the Military Chamber of the Supreme Court, as neither of them heard him publicly and allegedly were partial to the arguments of the military prosecutors;
- (d) Article 14, paragraph 2, since he was deemed guilty in the absence of tangible proof;
- (e) Article 14, paragraph 3(a) to (e), since the minimum rights of the defence, such as adequate time for the preparation of his defence and the right to choose his own counsel or to call witnesses, were not respected;
- (f) Article 14, paragraph 5, because he was unable to appeal the decision of the Tribunal de Honor;
- (g) Article 17, because he suffered unlawful attacks on his honour and his reputation as a result of the very procedure before the Tribunal de Honor and the latter's decision;
- (h) Article 26 because, as the result of unjust and partial judicial decisions, he has been subjected to discrimination.

The State party's information and observations and author's comments :

4.1 In its submission under rule 91 of the rules of procedure, the State party contends that the communication is inadmissible under article 5, paragraph 2(a), of the Optional Protocol, as the same matter was already examined and declared inadmissible by the European Commission of Human Rights. It recalls that upon ratifying the Protocol, Spain entered a reservation in respect of article 5, paragraph 2(a), to the effect "... that the Committee shall not consider any communication from an individual unless it has ascertained that the same matter has not been submitted or is not being examined under another procedure of international investigation or settlement" ("*... que el Comité de Derechos Humanos no considerará ninguna comunicación de un individuo a menos que se haya cerciorado de que el mismo asunto no ha sido sometido o no lo esté siendo a otro procedimiento de examen o arreglo internacionales*").

4.2 In his comments, the author concedes that his complaint to the European Commission of Human Rights was based on the same facts as his communication to the Human Rights Committee, but contends that the European Commission never "examined" the matter, since it simply dismissed the complaint as not within the scope of protection of the European Convention on Human Rights.

Issues and proceedings before the Committee :

5.1 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.

5.2 The Committee has taken note of the parties' arguments relating to the applicability of article 5, paragraph 2(a), of the Optional Protocol. It notes that the Spanish reservation on article 5, paragraph 2(a), precludes the examination of the same matter if it had been *submitted* to the European Commission. Notwithstanding that the author's case before the European Commission was summarily dismissed as inadmissible under the Convention, it had none the less been "submitted" thereto. Accordingly, in the light of the Spanish reservation to article 5, paragraph 2(a), of the Optional Protocol, the Committee is precluded from considering the communication.

6. The Human Rights Committee therefore decides:

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

[Done in English, French and Spanish, the English text being the original version.]

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