



**International covenant
on civil and
political rights**

Distr.
RESTRICTED*

CCPR/C/87/D/1212/2003
8 August 2006

ENGLISH
Original: SPANISH

HUMAN RIGHTS COMMITTEE
Eighty-seventh session
10-28 July 2006

DECISION

Communication No. 1212/2003

Submitted by: María Concepción Lanzarote Sánchez, María del Pilar Lanzarote Sánchez and Ángel Raúl Lanzarote Sánchez (represented by counsel, Mr. Jose Luis Mazón Costa)

Alleged victims: The authors

State party: Spain

Date of communication: 7 September 2001 (initial submission)

Document references: Special Rapporteur's rule 97 decision, transmitted to the State party on 28 October 2003 (not issued in document form)

Date of adoption of decision: 25 July 2006

* Made public by decision of the Human Rights Committee.

<i>Subject matter:</i>	Probative value attributed to attestations but denied to certified copies of a document; impartiality of the court
<i>Procedural issues:</i>	Insufficient substantiation of the alleged violations
<i>Substantive issues:</i>	Equality before the courts, equality of arms, impartiality of the court
<i>Article of the Covenant:</i>	14, paragraph 1
<i>Article of the Optional Protocol:</i>	2

[ANNEX]

Annex**DECISION OF THE HUMAN RIGHTS COMMITTEE UNDER THE
OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT
ON CIVIL AND POLITICAL RIGHTS****Eighty-seventh session****concerning****Communication No. 1212/2003***

<i>Submitted by:</i>	María Concepción Lanzarote Sánchez, María del Pilar Lanzarote Sánchez and Ángel Raúl Lanzarote Sánchez (represented by counsel, Mr. Jose Luis Mazón Costa)
<i>Alleged victims:</i>	The authors
<i>State party:</i>	Spain
<i>Date of communication:</i>	7 September 2001 (initial submission)

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

Meeting on 25 July 2006,

Adopts the following:

Decision on admissibility

1. The authors of the communication, dated 7 September 2001, are María Concepción Lanzarote Sánchez, María del Pilar Lanzarote Sánchez and Ángel Raúl Lanzarote Sánchez, Spanish nationals who claim to be victims of violations by Spain of article 14, paragraph 1, of the Covenant. The Optional Protocol entered into force for the State party on 25 April 1985. The authors are represented by counsel, Mr. Jose Luis Mazón Costa.

* 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. Maurice Glèlè Ahanhanzo, Mr. Edwin Johnson, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Ms. Elisabeth Palm, Mr. Rafael Rivas Posada, Mr. Nigel Rodley, Mr. Ivan Shearer and Mr. Hipólito Solari-Yrigoyen.

Factual background

2.1 On 25 January 1985, the authors' father, Mr. Lanzarote, submitted an application for inclusion in the register of applications established under Act No. 37/1984 on recognition of the rights and services rendered by members of the armed forces during the Spanish civil war. The application, which was addressed to the Director-General of Personnel Costs in Madrid, had been signed by Mr. Lanzarote on 19 December 1984. When he received no response, Mr. Lanzarote sent his application again, by registered mail, on 21 April 1985.

2.2 On 23 April 1997, the Directorate General of Personnel Costs and Public Pensions of the Ministry of Finance decided to recognize Mr. Lanzarote's rights under Act No. 37/1984 in his capacity as a former major in the air force, with 31 May 1997 as his retirement date. He was granted a pension amounting to 90 per cent of his salary starting from 1 February 1997, the first day of the month following the application under consideration, which was dated 7 January 1997.

2.3 Mr. Lanzarote appealed to the Directorate General of Personnel Costs of the Ministry of Economic Affairs and Finance, requesting that the pension should be backdated to 25 January 1985, the date of the original application. Before taking a decision, the Directorate General of Personnel Costs asked Mr. Lanzarote to provide an attested photocopy of the January 1985 application, which he submitted. On 17 July 1997, the Directorate General of Personnel Costs of the Ministry of Economic Affairs and Finance rejected the appeal. According to the authors, the Directorate General of Personnel Costs deemed the attested photocopy of the January 1985 application invalid, even though the Ministry of Economic Affairs and Finance had itself authenticated the document on 4 September 1997 (sic). Mr. Lanzarote's appeal to the Central Economic Administrative Court was dismissed on 9 February 1999. On 15 April 1999, he appealed against this ruling to the administrative litigation division of the National High Court.

2.4 In the course of the appeal to the High Court, the authors' father died, and the authors found another attested photocopy (dated 19 January 1994) of his January 1985 application among his belongings. This photocopy was sent to the High Court on 5 July 2000. On 16 October 2000, the High Court rejected the appeal, considering that the submission of the application in January 1985 had not been substantiated, since attestations from the Regional Treasury of Murcia certified that there was no record of receipt of Mr. Lanzarote's applications. In the court's view, this evidence rendered the "confusing" documents provided by the authors invalid. The court concluded that article 7.2 of the State Pensioners Act, which stipulates that the economic consequences of a ruling take effect on the first day of the month following the submission of the relevant application, was applicable and that, in Mr. Lanzarote's case, only the application of 7 January 1997 was on record. The court added that it was for the authors, not the defendant (the Administration) as claimed by the authors, to prove the existence of the applications of January and April 1985. The authors claim that the High Court's ruling accepts as irrefutable evidence a unilateral declaration by the defendant, namely the attestation of the Regional Treasury of Murcia. The authors further argue that the ruling did not refer to the second attested photocopy. On 21 November 2000, the authors filed a petition for annulment of

the High Court's ruling, claiming that the attested photocopy of 1994 had not been taken into account. On 23 January 2001, the High Court rejected the petition for annulment, maintaining that it had examined the document in question thoroughly but had not attributed probative value to it in the light of the negative attestation provided by the Regional Treasury of Murcia.

2.5 In November 2000, the authors filed an *amparo* application with the Constitutional Court. They claimed that: (i) the High Court's failure to rule on the second attested photocopy was arbitrary; (ii) the High Court's refusal to attribute probative value to the attested photocopy was manifestly arbitrary and violated the right to equality of arms, since the negative attestation of the Regional Treasury of Murcia had been given inordinately favourable consideration. They referred to the jurisprudence of the European Court of Human Rights, which considers that assigning undue weight to evidence submitted by one of the parties amounts to a violation of the right to equality of arms.

2.6 In February 2001, the authors filed an appeal for prorogation of the *amparo* application in relation to the High Court's ruling of January 2001, in which it had rejected the petition for annulment. The authors complained that the High Court had ruled in an arbitrary and partial manner. On 24 April 2001, the Constitutional Court rejected the *amparo* application and the appeal for prorogation of the *amparo* application. According to the authors, the Court failed to address the complaint relating to equality of arms and accused the plaintiff's lawyer of presenting the complaint in a confusing manner. In connection with another case, the authors' lawyer had filed a complaint against two of the three judges who made up the chamber of the Constitutional Court that considered the *amparo* application. Despite this, they had not disqualified themselves from hearing the appeal. The Court had further considered that it could not examine the petition for annulment, since the legislation providing for this remedy, namely the Judiciary Organization Act, did not apply to the Constitutional Court.

2.7 In its judgement, the Constitutional Court considered that there was no reason for it to review the reasons why a judicial body should attach greater credibility to one piece of evidence than to another. It stated that the High Court had indeed properly examined the attested photocopy of 1994 and that it could not accept that there had been an omission that violated the right to effective legal protection.

The complaint

3.1 The authors allege several violations of article 14, paragraph 1, of the Covenant. They contend that the principle of equality of arms was violated, since the High Court, without any legal basis, had accepted the negative attestation of the Regional Treasury of Murcia as irrefutable evidence and had not attached any probative value to other official evidence, in the form of the attested photocopies. The authors cite a ruling of the European Court of Human Rights.

3.2 The authors state that the arguments used by the National High Court in its judgement and decision concerning the petition for annulment were "manifestly arbitrary" and amounted to a "denial of justice". The High Court refuses, without reason, to recognize the probative value of the attested photocopies, which were official documents.

3.3 According to the authors, the High Court, by accepting the evidence provided by the defendant (the Administration) and rejecting that provided by the plaintiffs even though it consisted of official documents, acted in a partial manner and overstepped its competence. According to the authors, the negative attestation of the Regional Treasury certifying that the 1985 application did not appear in the official records only shows that it could have been misplaced or lost because of poor organization in the administrative services.

3.4 The authors point out that the Constitutional Court failed to resolve the complaint relating to equality of arms and groundlessly accused the authors' lawyer of presenting the case under the *amparo* procedure in a confusing manner. Also, its assertion that it could not admit the petition for annulment because the Judiciary Organization Act is not applicable to the Constitutional Court was untrue, since the Act had been applied in previous cases. They add that the Constitutional Court was not impartial, since two judges against whom the authors' lawyer had previously filed a complaint in respect of another case had participated in the proceedings in the authors' case.

State party's observations on the admissibility and merits of the communication and comments by the authors

4.1 On 7 January 2004, the State party affirmed that the communication constitutes an abuse of the right to submit communications and is manifestly groundless, since the authors are trying to use the Covenant's communications procedure to raise a matter that has been adequately and impartially examined and resolved with full respect for judicial guarantees. The authors have repeatedly been granted access to justice and have obtained fully reasoned decisions in which the judicial bodies have replied in detail to their allegations. The State party contends that the matter raised by the authors relates exclusively to the evaluation of evidence for the purpose of establishing the date on which their father submitted a given application to the authorities and that it is not for the Committee to take the place of domestic judicial bodies. The State party recalls that the authors have failed to submit the original of the photocopy attested in January 1994 to either the domestic courts or the Committee.

4.2 In its observations of 27 May 2004, the State party contends that the Spanish courts have respected the principle of equality of arms throughout the proceedings. With regard to the documents provided by the authors, the State party specifies that:

(a) The authors have provided neither the domestic courts nor the Committee with the original of the alleged document dated 25 January 1985;

(b) It transpires from the documentation provided by the authors that the alleged document is an almost illegible photocopy, which carries a stamp of which only the date (25 January 1985) is legible, and which is printed on top of another that is indecipherable;

(c) The authors claim that an attested photocopy of the original, dated 4 September 1997, does exist. However, the only document provided by them is a cover letter dated 4 September 1997 written by the authors' father and addressed to the Directorate General of Personnel Costs and Public Pensions stating that the certified copy is enclosed; however, there is no sign of this copy in the documentation provided other than the reference to it in the cover letter;

(d) The words “attestation overleaf” appear in the lower right margin of the document to which the authors refer as the certified copy they found among their father’s papers, but this formal attestation has never been made available to the State party;

(e) The document which the authors claim is dated 4 September 1997 was issued after the decision of the Directorate General of Personnel Costs and Public Pensions of the Ministry of Economic Affairs and Finance of 23 April 1997 granting the authors’ father the right to receive a pension payable as of 1 February 1997;

(f) When, on 22 October 1998, the Central Economic and Administrative Court asked Mr. Lanzarote to provide the original application of 25 January 1985, he claimed that “he was unable to provide the original because the black leather briefcase containing the document and other documents had been stolen when he was robbed on 5 September 1997 at 10.30 p.m. in the town of Villalba”. The first time Mr. Lanzarote was asked to provide the original application, he enclosed an alleged copy issued by an administrative body that had nothing to do with the issue under consideration (the land registry office) and not, as would have been appropriate, the original; the second time the same request was made, he enclosed a police statement reporting the theft of a briefcase, but the statement contained no information on the contents of the stolen item.

4.3 The State party notes that the matter raised by the authors relates to evidence; thus, the Committee should apply its repeatedly asserted principle that it is not for the Committee but for the relevant domestic courts to evaluate facts and evidence, unless their evaluation is manifestly arbitrary or amounts to a denial of justice. According to the State party, the communication constitutes an abuse of the right to submit communications and is incompatible with the provisions of the Covenant.

4.4 With regard to the alleged violation of the principle of equality of arms, the State party observes that the authors were repeatedly granted access to justice, and the competent domestic judicial bodies took action on their claim on numerous occasions. The domestic courts examined the documents provided by Mr. Lanzarote and the authors, including the certified copies of the alleged original document. The fact that their evaluation of the evidence did not support the authors’ claims does not mean that it was not evaluated. The unreliability of the documents in question led not only the Directorate General of Personnel Costs but also the Central Economic and Administrative Court, the National High Court and the Constitutional Court to attach no weight to them and to find the negative attestations stating that there were no public records of the 1985 application more credible than the dubious photocopies submitted by the authors.

4.5 The State party considers that the authors’ allegation that the second attested photocopy found among their father’s papers was not taken into account is untrue. In the initial stages of the proceedings, an attested photocopy dated 4 September 1997 was submitted but was deemed insufficient by both the Directorate General of Personnel Costs and the Central Economic and Administrative Court. The authors subsequently submitted another attested photocopy of the alleged original document, this time dated 19 January 1994, to which the High Court accorded the same probative value as the previous copy. As the Constitutional Court pointed out during the *amparo* proceedings, this does not mean that the second document was not evaluated; it was merely deemed insufficient to outweigh the other evidence, according to which the only confirmed application was the one dated 7 January 1997. The fact that the National

High Court's ruling does not expressly refer to the new document submitted by the authors (the 1994 copy), which they themselves say was identical to the first photocopy (of 1997), can by no means be construed as an omission amounting to a violation of the principle of equality of arms.

4.6 With respect to the authors' claim of manifest arbitrariness on the part of the National High Court, the State party maintains that the authors are confusing the right to access to justice and the right to submit legitimate evidence in their defence with obtaining a favourable decision from the domestic courts. The notion that the National High Court's evaluation of the evidence produced during the proceedings is arbitrary if it fails to yield the desired result is contrary to the very essence of the right to effective legal protection. The State party adds that using the Covenant to raise a matter that has been examined at length and resolved with due respect for all judicial guarantees constitutes an abuse of the right to submit communications.

4.7 In relation to the right to a hearing by a competent and impartial tribunal, the State party reiterates that it is not true that the Provincial High Court acted arbitrarily. The State party dismisses the authors' claim that the Constitutional Court failed to rule on the complaint relating to equality of arms. The Constitutional Court clearly decided that the High Court's evaluation of the evidence was in no way prejudicial to the authors and did not leave them defenceless, notwithstanding the fact that it was not in their favour. The State party is therefore of the view that the Constitutional Court clearly ruled on the right to equality of arms. The State party notes that the Constitutional Court's opinion that the authors presented their case in the *amparo* proceedings in a confusing manner can in no way be seen as tendentious or biased. With regard to the Constitutional Court's dismissal of the authors' petition for annulment, the State party explains that, contrary to the authors' claims, there is no provision for this type of petition in the domestic procedural legislation applicable to proceedings before the Constitutional Court.

4.8 With regard to the allegation that the Constitutional Court was partial because it included two judges against whom the authors' lawyer had previously filed a complaint in connection with another case, the State party makes the following observations: (i) the allegation of partiality made by the authors' representative concerns himself and not the authors; (ii) the action brought against the judges bears no relation to the authors' case; it was submitted by the authors' representative in relation to another case, where the Court had refused to change its decision to declare inadmissible an *amparo* application filed by the representative because he had failed to produce, despite being ordered to do so, a power of attorney that entitled him to take part in court proceedings; (iii) that complaint was rejected; (iv) the complaint against the judges and the decision to reject it predate the filing of the *amparo* application with the Constitutional Court; the authors' representative cannot claim he did not know which judges would be considering the *amparo* application, unless he knows absolutely nothing about the way in which State courts function and pays no attention to the notices sent to him by the office of the Constitutional Court; (v) the authors' representative is making these allegations for the first time before the Committee, never having made them before the domestic courts; (vi) after the *amparo* application was rejected, the authors' representative could have placed on record that he had been unaware of the court's composition, but he did not do so at any point. The State party contends that the impartiality of a court should be considered from both a subjective and an objective angle. As regards the subjective aspect, there is nothing to indicate that the composition of the Court might have been prejudicial to the authors' interests; any other conclusion would be tantamount to admitting that the identity of the authors' representative was

of relevance to the court's decision, which has never been demonstrated. The State party points out that an objective evaluation of impartiality would require proof of certain facts that would justify questioning the Court's impartiality. In this connection, the State party notes that all the successive bodies that dealt with the matter rendered the same judgement on the key issue, namely the evaluation of the evidence, and that the Constitutional Court found them to have acted in accordance with the law. The State party concludes that there is no evidence to suggest that the Constitutional Court showed any partiality.

5.1 In their reply of 31 December 2004, the authors insist that the State party violated their right to equality of arms, because the domestic courts put the defendant, that is, the Administration, at an advantage by attributing probative value to the attestations it provided and refusing to attribute probative value to the attested photocopies, which under Spanish law have the same value as an original document. The authors cite Spanish case law, according to which attested photocopies have the same probative value as the original document, and article 8.3 of Royal Decree No. 772/1999, which was in force when the National High Court rendered its judgement, and which establishes that an attested photocopy has the same validity as the original document. They further mention that the validity of attested photocopies is recognized in the State party's administrative practice. The forging of an attested photocopy is an offence; therefore, if the High Court had any doubts about the authenticity of the two attested photocopies, it should have suspended its consideration of the case and referred it to a criminal court. The High Court was not competent to declare a document that by law is considered official as invalid. In its decision, the Constitutional Court also failed to mention that they were official documents and misrepresented them as private documents that the court was free to evaluate. The authors add that, on 23 July 1997, the Ministry of Economic Affairs and Finance requested submission of the original document or a duly attested photocopy of the application of 25 January 1985. Thus, the administrative body itself acknowledged that a certified copy has the same value as an original.

5.2 The authors claim that the State party's comments on the documents they provided (see paragraph 4.2 above) are inaccurate. For example, the State party states that the stamp on the attested photocopy of the original document is virtually illegible, whereas, according to the authors, the High Court found it to be legible. The photocopy attested in January 1994 was issued by the Directorate General of Land Registries, which is attached to the Ministry of Economic Affairs and Finance, and not, as the State party claims, "an administrative body that has nothing to do with the issue under consideration".

5.3 The authors insist that the National High Court omitted to mention the attested photocopy issued by the Directorate General of Land Registries on 9 January 1994, which the authors' representative submitted during the final stages of the proceedings as an unexpected finding of crucial relevance to the case. The authors view this omission as a violation of their right to due process.

5.4 The authors stress that the High Court's refusal to recognize the official nature of the two attested photocopies, considering them as simply private documents, is manifestly arbitrary and amounts to a denial of justice, in violation of article 14, paragraph 1, of the Covenant. Furthermore, the judges' power to evaluate the documents is subject to formal limitations, which were overstepped in the present case.

5.5 The authors state that the High Court's refusal to acknowledge the probative value of the two attested photocopies violates the right to be heard by a competent and impartial tribunal; the High Court should have been aware that it is not within its competence to rule on the alleged forgery of official documents, which is a matter for the criminal courts.

5.6 The authors state that they first became aware of the identity of the *three* members of the Constitutional Court chamber that ruled on the *amparo* application when they were notified that the application has been rejected. The authors' lawyer had previously filed a complaint against these *three* judges in the context of a criminal trial for defamation, after they had made allegedly defamatory accusations against him when ruling on an *amparo* application filed in connection with a case other than the authors'. The complaint of defamation was handled in accordance with established procedure. The parties were summoned to conciliation proceedings; the judges appeared before a conciliation court and were represented by a State advocate. The judges had reported the authors' lawyer to the bar association, which decided not to institute disciplinary proceedings against him. Although no formal complaint was filed against the judges, a criminal action had been brought against them and in spite of this they participated in the Constitutional Court's decision to reject the authors' *amparo* application. The authors state that the Constitutional Court has ruled in an earlier case that when there is enmity between a lawyer and the judge, the judge is not obliged to withdraw from the case; rather, the interested party represented by the lawyer decides whether or not to change counsel. The authors claim that the Constitutional Court never informed them of the identity of the members of the Court who would be hearing the *amparo* application. They further claim that certain expressions used in the ruling on the *amparo* application, like the one describing it as confusing, are evidence of the judges' partiality. As further evidence of the Constitutional Court's partiality, the authors add that in one case the Supreme Court had allowed a civil-liability claim against 11 of the 12 Constitutional Court judges for handing down a manifestly unlawful judgement; the judges in question had filed an *amparo* application against the decision to the Constitutional Court - in other words to themselves. The authors add that the Constitutional Court rejects around 97 per cent of *amparo* applications without examining the merits of the case, and that that it ignores the Committee's views on complaints lodged against the State party in relation to article 14, paragraph 5, of the Covenant.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any allegations contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not the communication is admissible under the Optional Protocol to the International Covenant on Civil and Political Rights.

6.2 The Committee has ascertained that the same matter is not being examined under another procedure of international investigation or settlement, in accordance with article 5, paragraph 2 (a), of the Optional Protocol.

6.3 The Committee considers that the allegation regarding the failure to accord probative value to the two attested photocopies refers in essence to the evaluation of the facts and evidence by the Spanish courts. The Committee recalls its jurisprudence in this respect and reiterates that,

generally speaking, it is for the relevant domestic courts to review or evaluate facts and evidence, unless their evaluation is manifestly arbitrary or amounts to a denial of justice. The Committee notes that, in its dismissal of the authors' petition for annulment, the National High Court expressly stated that it had evaluated and rejected the probative value of the attested photocopy of 19 January 1994 and that the Constitutional Court rejected the appeal for prorogation of the *amparo* application relating to the petition for annulment. It further observes that the Constitutional Court found that the High Court had indeed evaluated the document provided by the authors and that the Court's evaluation of the evidence was not prejudicial to the authors and did not leave them without a defence. The Committee is therefore of the view that the authors have not sufficiently substantiated their claim that there was arbitrariness or a denial of justice in the present case. It thus considers that the part of the communication relating to the alleged violation of the principle of equality of arms and the alleged arbitrariness of the National High Court's ruling should be declared inadmissible under article 2 of the Optional Protocol.

6.4 With regard to the complaint relating to the alleged lack of impartiality on the part of the Constitutional Court, the Committee notes that in April 2000 the Second Chamber of the Constitutional Court dismissed an appeal lodged by the authors' lawyer in relation to another case in which the *amparo* application filed by the lawyer had been rejected because he did not meet the legal requirements to be appointed as an attorney before the court. The Chamber stated that the lawyer, through his conduct, had deliberately caused prejudice to the rights of the individual who had entrusted the lawyer with his defence and ordered that a copy of the record of the proceedings be submitted to the Murcia bar association for it to examine the professional conduct of the authors' lawyer. The Committee also takes note of the authors' argument that, although their lawyer brought a criminal action against the judges of the Second Chamber for allegedly defamatory statements, the action was discontinued. The Committee considers that the authors have not sufficiently substantiated, for the purposes of admissibility of the communication, their claim that the decision taken by the judges of the Second Chamber and the circumstances that led to a criminal complaint that was discontinued had affected the Court's impartiality in its decision on the authors' *amparo* application and appeal for prorogation. The Committee concludes that this part of the complaint is inadmissible under article 2 of the Optional Protocol.

7. The Committee therefore decides:

- (a) That the communication is inadmissible under article 2 of the Optional Protocol;
- (b) That the present decision should be communicated to the State party and the authors of the communication.

[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.]
