UNITED
NATIONS

CCPR

International covenant on civil and political rights

Distr.
RESTRICTED*

CCPR/C/89/D/1213/2003
22 May 2007

ENGLISH
Original: SPANISH

HUMAN RIGHTS COMMITTEE
Eighty-ninth session
12-30 March 2007

DECISION

Communication No. 1213/2003

Submitted by:	Diego Sastre Rodríguez and Juan Diego Sastre Sánchez (represented by counsel, Mr. Miguel Angel Pouget Bastida)
Alleged victims:	The authors and Ms. Encarnación Sánchez Linares
State party:	Spain
Date of communication:	15 May 2002 (initial submission)
Document references:	Special Rapporteur's rule 97 decision, transmitted to the State party on 18 August 2005 (not issued in document form)
Date of decision:	28 March 2007

* Made public by decision of the Human Rights Committee.

Subject matter:	Administrative procedures for eviction from a previously expropriated home.
Procedural issues:	Exhaustion of domestic remedies.
Substantive issues:	Right to an effective remedy; right to a public hearing by a competent court; arbitrary and unlawful interference with the home.
Articles of the Covenant:	2, paragraph 3; 14, paragraph 1; and 17.
Articles of the Optional Protocol:	2 and 5, paragraph 2 (b)

[ANNEX]

Annex

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

Eighty-ninth session

concerning

Communication No. 1213/2003*

Submitted by:	Diego Sastre Rodríguez and Juan Diego Sastre Sánchez (represented by counsel, Mr. Miguel Angel Pouget Bastida)
Alleged victims:	The authors and Ms. Encarnación Sánchez Linares
State party:	Spain
Date of communication:	15 May 2002 (initial submission)

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

Meeting on 28 March 2007,

Adopts the following:

Decision on admissibility

1. The authors of the communication, dated 15 May 2002, are Diego Sastre Rodríguez, a Spanish national born on 21 July 1931, and Juan Diego Sastre Sánchez, a Spanish national born on 3 January 1972. They claim to be the victims of a violation by Spain of articles 2, paragraph 3, 14, paragraph 1, and 17 of the Covenant. The Optional Protocol entered into force for Spain on 25 April 1985. The authors are represented by counsel, Mr. Miguel Angel Pouget Bastida.

* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Maurice Glèlè Ahanhanzo, Mr. Yuji Iwasawa, Mr. Edwin Johnson, 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 and Sir Nigel Rodley, Mr. Ivan Shearer.

The facts as submitted by the authors

2.1 On 13 April 1989, the Cartagena City Council approved an urbanization plan that required the demolition of various houses located in the area where Encarnación Sánchez Linares, who died on 17 November 2001, lived with her husband, Diego Sastre Rodríguez, and their son, Juan Diego Sastre Sánchez. The aim of the plan was to build 1,692 homes. On 27 May 1991, Encarnación Sánchez Linares, as the owner of the property, received compensation and agreed to leave her home within four months of the City Council's giving notice to vacate it.

2.2 However, on 19 November 1991, the Administrative Chamber of the Murcia Superior Court of Justice ruled that the urbanization plan was invalid, and its implementation was abandoned in 1992. As a consequence, the authors did not vacate their house.

2.3 On 20 September 1993, Encarnación Sánchez Linares requested the City Council to declare null and void the measures taken in implementation of the urbanization plan. However, the authorities maintained that the ruling of the Administrative Chamber of the Murcia Superior Court of Justice invalidating the plan was not yet enforceable. On 27 December 1993, the Cartagena City Council adopted a modified plan correcting the faults that had led to its being declared invalid.

2.4 On 18 May 2000, Encarnación Sánchez Linares was given notice to leave her home within four months. Ms. Sánchez appealed to the City Council on 19 June 2000, asking for these decisions to be annulled to enable her to keep her home.

2.5 On 4 October 2000, the councillor responsible for town planning issued an order to vacate the premises within 10 days, invoking the urgent need for the land to be made available in order to build a sports centre. The authors were notified of the adoption of the order on 5 October. On 17 October 2000, Encarnación Sánchez Linares challenged the order, as well as various decisions and the planning regulations purportedly being implemented, before the Administrative Chamber of the Murcia Superior Court of Justice. She also requested an interim measure of protection suspending the eviction until a ruling was handed down. The same day, she submitted a written petition to the Administrative Courts and the Cartagena City Council, informing them of the lodging of an appeal and calling on the Administrative Courts to refrain from permitting the authorities to enter the property and carry out the eviction order.

2.6 On 18 October 2000, Administrative Court No. 1 of Murcia ruled that the petition should be returned to Encarnación Sánchez.

2.7 On 2 November 2000, following an application from the Cartagena City Council, Administrative Court No. 1 of Murcia ruled, without notifying or hearing the authors, that the property could be entered within 10 days to carry out the eviction, provided that no legal order to suspend these decisions had been made. The family were not informed of this decision either by the Court or by the City Council, and learned of its existence only from the radio.

2.8 On 10 November 2000, police officers arrived at the family's home and informed the authors that eviction would take place on 16 November. As a consequence, Encarnación Sánchez Linares requested the Administrative Court and the Administrative

Chamber of the Murcia Superior Court of Justice to adopt interim measures of protection. The latter ordered on 16 November 2000 that the eviction should be suspended, when it was just about to begin.

2.9 Three days earlier, on 13 November, Encarnación Sánchez Linares had challenged before the Administrative Court the decision of 2 November that permitted eviction to begin, on the grounds that it had been made without hearing the persons affected; the Administrative Court dismissed this appeal on 14 November 2000. On 23 November 2000, she lodged an appeal with the Administrative Chamber of the Murcia Superior Court of Justice against the same decision of 2 November 2000 authorizing entry to her property. This appeal cited the lack of a hearing, the lack of effective exercise of the remedy and the lack of enforceability of the administrative act. The court dismissed the appeal on 31 January 2001. An *amparo* application was then made to the Constitutional Court, but was declared inadmissible in a ruling on 26 November 2001.

2.10 On 17 November 2000, Encarnación Sánchez Linares appealed to the Administrative Court against the decision of 18 October 2000 that ordered the return of her petition to withhold authorization to evict. The court dismissed this appeal on 21 December 2000. The author then submitted an *amparo* application to the Constitutional Court, which was declared inadmissible on 16 July 2001, on the grounds that the lower court had not infringed any procedural rules.

2.11 On 23 November 2000, the Administrative Chamber of the Murcia Superior Court of Justice lifted the stay of eviction granted on 16 November and denied the petition to suspend the eviction order. On 13 December 2000, Ms. Sánchez appealed to the Administrative Chamber of the Supreme Court for judicial review of the decision to lift the interim measure of protection, requesting a decision on whether the order of 4 October 2000 could be carried out. On 15 January 2003, the Administrative Chamber of the Supreme Court dismissed the application for judicial review.

2.12 On 14 December 2000, the Cartagena City Council applied to the Administrative Court for renewed authorization to enter the property, which was granted on 26 December 2000. An appeal was lodged before the same Administrative Court, referring to the appeal against the 2 November 2000 decision to authorize entry, which was at the time still pending before the Administrative Chamber of the Murcia Superior Court of Justice, and again invoking, among other grounds, the lack of a hearing. On 22 January 2001, the Administrative Court dismissed the appeal, ruling that "… in issuing the order being challenged, it was unnecessary to notify the interested party, since even if the appellant had entered an appearance in the proceedings, the Jurisdiction Act does not provide for such notification, as the order authorizing entry did not involve an adversary procedure …", and that "the appeal lodged against the decision authorizing entry (2 November 2000) in no way affects the execution of this ruling, insofar as the leave to appeal is granted with devolutive effect, in accordance with article 80.1 (d) of the Jurisdiction Act".

2.13 Eviction took place on 29 January 2001, with the dwelling being sealed off before being demolished the following day. Encarnación Sánchez Linares, who was suffering from terminal cancer, died on 17 November 2001.

2.14 On 26 November 2001, the Constitutional Court ruled that the last two *amparo* applications submitted were inadmissible.

2.15 Given that the order of 4 October 2000 was carried out by the Cartagena City Council as a matter of urgency, the specific manner of its implementation was also challenged before the Administrative Chamber of the Murcia Superior Court of Justice on 20 February 2001 under appeal No. 398/2001, which also remains pending.

2.16 On 16 March 2006, the date of the last communication by the authors to the Committee, the urbanization plan had still not been put into effect.

The complaint

3.1 The authors' complaint relates exclusively to the ruling of Administrative Court No. 1 of Murcia on the Cartagena City Council's authorization to enter the property. They claim that these proceedings were challenged before the Spanish courts and that all domestic remedies in respect of them have been exhausted, including the *amparo* application to the Constitutional Court.

3.2 According to the authors, the decisions of Administrative Court No. 1 of Murcia have resulted in violations of the Covenant, as follows:

- Article 2, paragraph 3, given that the appeal against the decisions of the Administrative Courts did not suspend enforcement of the decision being challenged;

- Article 14, paragraph 1, because the administrative acts ordering eviction from a family home do not respect the affected parties' right to a hearing and defence. According to the authors, the court should have undertaken a balanced assessment of interests before authorizing entry;

- Article 17, given that, without prior hearing or possibility of effective remedy, they were subjected to forcible and summary eviction and immediate demolition of the dwelling that constituted the family home in pursuit of an urbanization plan that had been abandoned and invalidated. They maintain that, although they received compensation for the dwelling, such compensation corresponded to the need to occupy the land for the urbanization plan. They therefore contend that the court's decision permitted arbitrary and unlawful interference with their home.

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

4.1 The State party submitted its observations on the admissibility and merits of the communication on 15 February 2006. Concerning admissibility, it claims that the authors have not exhausted domestic remedies in accordance with article 5, paragraph 2 (b), of the Optional Protocol. Furthermore, the State party considers that the communication constitutes an abuse of the right to bring complaints before the Committee, under the terms of article 3 of the Protocol. With reference to the merits, the State party maintains that the facts as submitted do not reveal violations of the Covenant.

4.2 According to the State party, the communication is based on a challenge to the executive nature of administrative acts, i.e., the authors consider that giving the City Council the power to execute its decisions of its own volition, without the need to seek prior legal confirmation,

constitutes a violation of the Covenant. In this context, it is the authors' view that appeals to administrative courts must, as a matter of principle, have a suspensive effect on administrative acts.

4.3 The State party indicates that the situation under the Spanish system is common to the vast majority of legal systems. It maintains that, moreover, the Spanish legal system grants special protection, since in addition to the provision that enables courts to suspend acts as a precautionary measure when a legal challenge is in progress, in cases where administrative acts require entrance into a home, it also calls for authorization from a judge. This authorization is independent of the process of reviewing the decision or of any interim measures of protection that may be adopted. The judge's authorization simply ensures that entrance to the home does not stem from actions that involve taking the law into one's own hands without a well-founded administrative decision, and that it is carried out by way of a procedure that prima facie appears correct. The State party refers to the ruling of the Administrative Chamber of the Murcia Superior Court of Justice, as well as the subsequent Supreme Court ruling in this case.

4.4 The State party notes that the authors received appropriate compensation for their home and had undertaken to leave it since before 1991, that is to say, 10 years prior to eviction. It also indicates that the authors unsuccessfully challenged the urbanization plan that gave rise to the eviction, as well as the Cartagena City Council order of 4 October 2000, under which the eviction order was placed before three separate courts, the Administrative Court of Murcia, the Administrative Chamber of the Murcia Superior Court of Justice and the Supreme Court, none of which found grounds to suspend the enforceability of the corresponding administrative act. The case then went before the Constitutional Court, which upheld the measure on three occasions following appeals that failed to invoke the inviolability of the home, referring only to infringement of the right to "effective legal protection" for lack of a hearing and due cause, among other things.

4.5 Moreover, the specific manner of the eviction was also challenged before the Administrative Chamber of the Murcia Superior Court of Justice, a step that can only be considered as a judicial review of the lawfulness and validity of the eviction. As a consequence, this step taken by the authors must be viewed as intended to redress the violation that they report to the Committee before the domestic courts have concluded their examination and issued a ruling on the matter.

4.6 The State party considers, therefore, that the requirements of article 5, paragraph 2 (b), have not been met, since the authors have not exhausted all domestic remedies to redress the alleged violation.

4.7 With reference to the merits, the State party maintains that in the case in question, the authors have had access to all forms of reasonably available legal recourse. They have challenged each act of the proceedings, the action of implementation and even what they call the "specific manner of its implementation". Likewise, the proceedings relating to the contested acts have been carried out at their instigation and with their constant involvement. In these circumstances, it appears difficult to maintain that there has been a violation of the Covenant, since it is not laid down that the protective intervention of the Administrative Court judge, which

the Covenant does not require and which is not a review mechanism but a simple precaution that in no way limits judicial review of the administrative act through its own channels, calls for the involvement of the interested party, as though it were a genuine trial.

4.8 According to the State party, the Covenant does not require that administrative acts should be preceded by court proceedings in order to be executed. This is without prejudice to judicial review of such acts and, if necessary, reparation of any harm that their implementation may have caused. Nor does the Covenant require every remedy against a legal ruling to have a suspensive effect. In this particular case, the judicial authorization did not breach the right of defence or cause any harm since it is an additional safeguard and not a substitute for judicial review of the acts. Thorough judicial review has taken place and is continuing, since the decision not to suspend the authorized measures as a precaution, which also pre-dated implementation and was independent of the authorization, contained a full statement of the grounds for non-suspension. The State party pointed out, moreover, the reparable nature of the alleged harm suffered in the event that the pending appeals are upheld.

Authors' comments

5.1 In their comments dated 16 March 2006, the authors point out that more than five years have elapsed since their home was demolished, following the forcible and summary eviction of a family with serious health problems before the courts had ruled on the appeal against the eviction authorization. They add that, five years later, the plot on which the house had stood remains empty.

5.2 They reject the State party's assertion that the Spanish legal system affords special protection by virtue of the fact that, in addition to the protective measures involving a stay of execution that a court may order when hearing an appeal against an administrative act, it also requires authorization by an Administrative Court judge for entry into a home. According to the authors, authorization to enter a home was designed for cases in which no administrative appeal against the act to be implemented is available and which call for waiver of the inviolability of the home.

5.3 The authors reaffirm that Administrative Court No. 1 of Murcia improperly intruded on the jurisdiction of the Administrative Chamber of the Murcia Superior Court of Justice by authorizing entry into a home with a view to its demolition without hearing them. Similarly, they repeat that they were not informed of the existence of the City Council's application or given the opportunity to submit arguments. Nor were they notified of the authorization granted.

5.4 The authors likewise point out that the compensation received in 1991 was for the vegetation and structures hindering the implementation of a plan that was never carried out. There was therefore no reason to possess the plot urgently. According to the authors, they have for five years been deprived of the land upon which their demolished house was built, and the money that they received as compensation was insufficient.

5.5 Lastly, they state that on 21 October 2005, the Administrative Chamber of the Murcia Superior Court of Justice ruled that the appeal against the order of 4 October 2000 was inadmissible (see paragraph 2.5). On 9 January 2006, one of Encarnación Sánchez Linares' daughters applied to the Supreme Court for judicial review, and this appeal remains pending.

Issues and proceedings before the Committee

6.1 Before considering any claim 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 Covenant.

6.2 The Committee has ascertained that the same matter is not being examined under another procedure of international investigation or settlement, so that the provisions of article 5, paragraph 2 (a), of the Optional Protocol do not preclude its consideration of the complaint.

6.3 The Committee takes note of the general argument of the State party that in this case domestic remedies have not been exhausted, given that a series of appeals remain pending before the domestic courts, which would provide an appropriate means of redress against the alleged violations. Concerning the authors' claims in relation to article 17 of the Covenant, the Committee, noting that neither the alleged violation of this article, nor the existence of arbitrary and unlawful interference with their home, were drawn to the attention of the domestic courts, declares this part of the communication inadmissible under article 5, paragraph 2 (b), of the Optional Protocol.

6.4 Concerning the authors' claims in relation to article 14, paragraph 1, the Committee notes that the appeals relating to the alleged lack of a hearing and the lack of suspensive effect of the appeals lodged with the Administrative Court were dismissed on three different occasions by the Constitutional Court. In those circumstances, the Committee considers that the authors have done all that can be reasonably required of them to exhaust domestic remedies in respect of their complaint in relation to article 14, paragraph 1.

6.5 The Committee notes that article 14, paragraph 1, of the Covenant does not oblige States parties to provide avenues for redress in respect of judgements relating to the determination of civil rights and obligations. However, it considers that if a State party provides for such redress, the guarantees of a fair trial implicit in the article must be respected in that process.[1] The Committee considers that the question of whether these procedures comply with the requirements of the Covenant must be looked at globally, in the light of the particular aspects of the case.[2] The Committee notes the authors' complaint that administrative acts ordering eviction from a home do not respect the right of the persons concerned to a hearing, and that appeals against the rulings of the Administrative Courts do not have a suspensive effect. The Committee also notes the State party's argument that the Administrative Court judge's authorization in cases of implementation of administrative acts requiring entry into a home is a limited procedure that does not affect judicial review of those acts. The authors do not dissent from this view, but consider that such a situation violates the rights and guarantees established by the Covenant.

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[1] See communication No. 1183/2003, *Martínez Puertas v. Spain*, decision of 27 March 2006, para. 6.4.

[2] See communication No. 112/1981, *Y.L. v. Canada*, decision of 8 April 1986, para. 9.3, and the Committee's analysis in communication No. 1060/2002, *Deisl v. Austria*, decision of 27 July 2004, para. 10.7.

The Committee likewise observes that, as the Constitutional Court noted,[3] in this specific case the authors had the opportunity to participate actively in the various proceedings they initiated relating to the eviction, and that they even obtained interim measures of protection that suspended eviction for some time. As a consequence, the Committee considers that the authors have not sufficiently substantiated their allegations for the purposes of admissibility, and conclude that this part of the communication is inadmissible under article 2 of the Optional Protocol.

6.6 As regards the alleged violation of article 2, paragraph 3, the Committee notes that article 2 can be invoked only in conjunction with other articles of the Covenant. It observes that article 2, paragraph 3 (a), stipulates that each State party undertakes to ensure that "any person whose rights or freedoms […] are violated shall have an effective remedy".[4] However, article 2, paragraph 3 (b), obliges States parties to ensure determination of the right to such remedy by a competent judicial, administrative or legislative authority, a guarantee which would be void if it were not available where a violation had not yet been established. While a State party cannot reasonably be required, on the basis of article 2, paragraph 3 (b), to make such procedures available no matter how unmeritorious such claims may be, article 2, paragraph 3, provides protection to alleged victims if their claims are sufficiently well founded to be arguable under the Covenant.[5] Considering that the authors of the present communication have failed to substantiate, for purposes of admissibility, their claims under article 14, paragraph 1, their allegation of a violation of article 2 of the Covenant is also inadmissible under article 2 of the Optional Protocol.

7. 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 State party and to the authors.

[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.]

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[3] See Constitutional Court Supplement 3237/2001, 26 November 2001.

[4] See communications Nos. 275/1988, *S.E. v. Argentina*, decision of 26 March 1990, para. 5.3, and 1192/2003, *M. de Vos v. The Netherlands*, decision of 25 July 2005, para. 6.3.

[5] See communication No. 972/2001, *Kazantzis v. Cyprus*, decision of 7 August 2003, para. 6.6.