



**International Covenant
on Civil and Political
Rights**

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HUMAN RIGHTS COMMITTEE
Seventy-eighth session
14 July - 8 August 2003

DECISION

Communication No. 1013/2002

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| <u>Submitted by:</u> | Jacek Boboli |
| <u>Alleged Victim:</u> | The author |
| <u>State party:</u> | Spain |
| <u>Date of communication:</u> | 19 August 1997 (initial submission) |
| <u>Prior decisions:</u> | Special Rapporteur's rule 91 decision, transmitted to the State party on 18 September 2001 (not issued in document form) |
| <u>Date of decision:</u> | 30 July 2003 |

[ANNEX]

* Made public by decision of the Human Rights Committee.

Annex

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

Seventy-eighth session

concerning

Communication No. 1013/2002**

Submitted by: Jacek Boboli
Alleged Victim: The author
State party: Spain
Date of communication: 19 August 1997 (initial submission)

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

Meeting on: 30 July 2003

Adopts the following:

Decision on admissibility

1. The author of the communication dated 19 August 1997 is Jacek Boboli, a Belgian citizen residing in Zaragoza, Spain, who claims to be a victim of violations by the Spanish State of articles 14 and 26 of the International Covenant on Civil and Political Rights.¹ He is not represented by counsel. The Optional Protocol to the Covenant entered into force for Spain on 25 January 1985.

The facts as submitted by the author

2.1. As a result of disputes arising out of breaches of contracts concluded with various transport companies, the author filed a suit with the Zaragoza Transport Arbitration Board,

** The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Alfredo Castillero Hoyos, Mr. Franco Depasquale, Mr. Maurice Glèlè Ahanhanzo, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Martin Scheinin, Mr. Ivan Shearer, Mr. Hipólito Solari Yrigoyen, Mr. Roman Wieruszewski and Mr. Maxwell Yalden.

¹ The author, who is not represented by counsel, does not base his claim on these articles; the reference was supplied on the Secretariat's initiative.

which handed down an arbitral award (No. 59/93) on 6 October 1993 that was contrary to the author's interests. On 29 November 1993, the Board also handed down three decisions in which it declared that it was not competent to settle some of the author's disputes.

2.2. The author filed an appeal against arbitral award No. 59/93. On 27 May 1994, Section V of the Zaragoza Provincial High Court rejected his appeal and so notified him on 1 June 1994. The author mailed an application for amparo against this ruling that was registered as No. 2261/94. On 30 January 1995, the Second Chamber of the Constitutional Court declared the application inadmissible on the grounds that it had been submitted late, arguing that the author had had 20 days as from the day following the date of the notification of the Provincial High Court's ruling in which to file an application for amparo and that the deadline had passed.

2.3. The author states that the date of delivery of the application to the porter of the Court indicated in the postal acknowledgement of receipt is Friday, 24 June 1994, the last day on which to file an application. However, the application reached the Constitutional Court on Monday, 27 June,² as shown by the court's registry stamp.

2.4. With regard to the three decisions handed down by the Zaragoza Transport Arbitration Board on 29 November 1993, the author also appealed to Zaragoza Court of First Instance No. 1, which rejected the appeal in a ruling dated 2 June 1994. The author therefore appealed to the Second Section of the Zaragoza Provincial High Court, which rejected his appeal on 23 January 1995. The procurator (procurador) in the case was notified of the decision on 24 January 1995.

2.5. According to the author, neither the procurator nor the legal aid notified him of the decision. He states that he tried on a number of occasions to contact his lawyer, without success, and that it was not until 28 February 1996 that he learned that she no longer worked in the same office and that a ruling had been handed down against him some time earlier. He requested a copy of the ruling from the Provincial High Court and received it by mail on 7 May 1996.

2.6. On 29 May 1996, the author filed another application for amparo (registered as No. 2214/96) with the Second Chamber of the Constitutional Court, which rejected it on 30 September 1996 on the grounds of late submission.

2.7. The author submitted a complaint against the procurator, María Dolores Sanz Chandro, and the lawyer, María Pilar España Bardají, to the governing body of the Association of Procurators and to the Royal Association of Lawyers. The former agreed on 22 May 1996 that the procurator had acted properly from the standpoint of professional ethics and recommended shelving the record of proceedings. The latter agreed on 18 April 1996 to the discontinuance of proceedings and shelving of the case.

2.8. The author appealed to the General Council of Procurators, which on 5 December 1996 decided that the procurator's action had been valid and consistent with the law.

² The interpretation, *sensu contrario*, of article 182 of the Judicial Power Organization Act and article 130 of the Civil Proceedings Act must be that Saturday is a working day: "Non-working days are Sundays, national holidays and other holidays in the respective autonomous communities or localities."

2.9. The author also requested action by the Ombudsman, who informed him on 15 July 1996 that relations between him and his lawyer and procurator were of a legal-private nature and that the Ombudsman's Office therefore lacked competence to intervene.

2.10. In respect of the decision by the General Council of Procurators, the author applied on 28 October 1997 for an administrative remedy from the Ninth Section of the Administrative Chamber of the Madrid Superior Court of Justice on which a decision has still not been taken.

The complaint

3.1. The author claims a violation of the right to an effective legal remedy, as provided for in article 14, paragraph 1, on the grounds that the rejection of the application for amparo registered as No. 2261/94 against the ruling by Section V of the Zaragoza High Court was the result of the fact that the application reached the Constitutional Court three days after it was sent by mail and was therefore registered after the deadline.

3.2. The author also claims a violation of the right to equality before the law, as provided for in article 26 of the Covenant, on the grounds that the foregoing facts establish territorial discrimination because private individuals who do not live in Madrid have to go there and submit an application in person, since that is the only way of making sure that such application will undergo the legal procedure before the deadline.

3.3. In addition, the author claims that the procurator imposed by the Aragón Superior Court of Justice did not fulfil her obligations because she did not communicate the ruling by the Second Section of the Zaragoza Provincial High Court to the author, with the result that the Constitutional Court rejected application for amparo No. 2214/96 on the grounds of late submission. According to the author, that was not his fault and it was a violation of his right to an effective judicial remedy, as provided for in article 14 of the Covenant.

Observations by the State party on admissibility and the merits

4.1. In its comments on admissibility of 25 October 2001, the State party argues that the rejection of application for amparo No. 2261/94 on the grounds of late submission was in conformity with the law because the application was submitted after the 20-day time limit for applications for amparo and that the communication is therefore inadmissible.

4.2. The State party also affirms that, in accordance with article 238,³ paragraph 1, of the Judicial Power Organization Act, procedural legal certainty is what determines that the date of the receipt of documents by court secretariats is the date that must be taken into account. The State also claims that Mr. Boboli did not supply evidence that he sent the application

³ The text of article 238 of the Judicial Power Organization Act relates to "the invalidity of judicial acts" and has no bearing on what the State party was referring to: "Judicial acts shall be invalid in the following cases: 1. When they take place with an obvious lack of objective or functional jurisdiction; 2. When they involve violence or are carried out under a rational and well-founded threat of serious and imminent harm; 3. When the basic rules of procedure established by law are completely and totally ignored or the principles of a fair trial, assistance and defence are violated, provided that there has actually been a breach of the right of defence".

on 21 June 1994 or that it was received by the Constitutional Court on 24 June 1994. The only thing shown in the file is that the application was received on 27 June 1994.

4.3. The State party also requests that the author's complaint should be declared inadmissible because of the rejection of application for amparo No. 2214/96 on the grounds of late submission, arguing that the rejection was in keeping with article 43, paragraph 2, of Constitutional Court Organization Act No. 2/1979. The State party affirms that the court ruling referred to in the application was communicated to Mrs. Sanz Chanero, Mr. Boboli's legal representative, on 24 January 1995 and that the application for amparo was not filed until 27 May 1996, i.e. one year and four months later, whereas the time limit for an application for amparo is 20 days.

4.4. The State party also indicates that, according to article 6 of the Civil Proceedings Act, "The procurator shall consider and sign notifications of all kinds, including decisions, which must be addressed to the party concerned during the proceedings, such steps having the same legal validity as if the principal had taken them himself".

4.5. The State party maintains that Mr. Boboli's legal representative was properly notified of the court ruling in question and that, once she was so notified, she sent it to the author and his lawyer and none of these letters was returned by the postal service; in addition, Mr. Boboli explicitly admitted that the letter sent to the lawyer reached the addressee.

4.6. The State party also says that it is the established practice of the Constitutional Court and the European Court of Human Rights that the notification which is valid for the purpose of calculating the deadline for the filing of an application for amparo is the notification to the procurator, the author's legal representative.

4.7. The State party affirms that the author has not exhausted domestic remedies, since there is no indication that he instituted liability proceedings of any kind against the procurator and, according to article 442 of the Judicial Power Organization Act,⁴ "In the exercise of their functions, procurators may incur civil, criminal and disciplinary liability, as appropriate".

4.8. In the comments on the merits it made on 12 March 2002, the State party stresses that application for amparo No. 2261/94 was duly rejected because it was submitted late and that the author contradicts himself by stating in his communication that he sent the application by registered mail on 21 June 1994, since the date which appears at the end of the application is 22 June 1994.

4.9. With regard to the sender's postal receipt and the acknowledgment of receipt submitted by the author, the State party says that the photocopy is illegible and that the writing and the type of pen used for the date and for the addressee's name, signature and national identification document number are different. There is also no postal service stamp, whereas the two stamps and the writing in the Constitutional Court's registry are quite clear.

⁴ Organization Act No. 6/1985 of 1 July 1985.

4.10. As to application for amparo No. 2214/96, the State party emphasizes that the procurator was notified of the court ruling and sent it to the author and also that domestic remedies were not exhausted.

Comments by the author on the State party's observations on admissibility and the merits

5.1. In his letter dated 28 November 2001, the author maintains that his application for amparo reached the Constitutional Court by the deadline and argues that holidays should not be counted. He submits copies of the sender's receipt and the acknowledgment of receipt which were made available to him by the Spanish postal service and which show that he sent a document on 23 June 1994 that was received by court officials the following day.

5.2. He alleges that the "legal certainty" referred to by the State party does not provide protection for persons who would like to file an application for amparo with the Constitutional Court and who live in parts of the national territory far from Madrid.

5.3. He says that, by not having accepted the application for amparo, the Constitutional Court caused him serious harm, especially as it sided with the applicant in a case similar to the one dealt with in his application.

5.4. With regard to the rejection of application for amparo No. 2214/96, the author argues that the notification of the ruling was not returned by the postal service because it was never sent and that there is also no proof of the genuineness of the originals of the copies the procurator allegedly used to confirm that the notification was sent, since they could have been drafted at any time.

5.5. In his letter of 25 May 2002, the author refers to the State party's comments as to the merits, arguing that the date that must be taken into account for the deadline for filing an application for amparo must be the date on which the Constitutional Court received the application, not the date on which the application was sent, although according to the author this is unfair.

5.6. In respect of the State party's argument that the court's stamp does not appear on the sender's postal receipt and the postal acknowledgement of receipt, the author alleges that the Constitutional Court's stamps never appear on acknowledgements of receipt and, as evidence, he puts forward several which relate to cases other than his own. In connection with the State party's observation on the two types of writing and pens used in those documents, the author states that this is normal, since the boxes are intended for two different persons: the addressee and the postal employee.

Issues and proceedings before the Committee

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 it is admissible under the Optional Protocol to the International Covenant on Civil and Political Rights.

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

6.3. With regard to the applicant's allegation that application for amparo No. 2261/94 was improperly rejected by the Constitutional Court, the Committee notes that article 135 of the Civil Proceedings Act⁵ provides that the place for the submission of documents is the secretariat of the court, which must issue a receipt indicating the date and time of the submission of the documents, the purpose of which can be interpreted as serving as proof when there is a time limit, as in the present case. However, even where this provision allows the use of means of sending and normally receiving documents, including documents sent by mail, it also states that this must be done in such a way that "the authenticity of the communication is guaranteed and there is reliable evidence of the sending and receipt of the documents in full and of the date on which they were sent and received".⁶ On the basis of the information available to the Committee, it thus appears that the only date indicating receipt of the application for amparo is that of general registration in the Constitutional Court on 27 June 1994. Because there is insufficient evidence to substantiate the admissibility of the complaint, this part is therefore declared inadmissible under article 2 of the Optional Protocol.

6.4. With regard to the alleged violation of the right to equality before the law, as provided for in article 26 of the Covenant, the Committee notes that the complaint relates not to one case in particular, but to civil procedure in Spain or, in other words, to a system of law in general. The Committee therefore considers that, for the purposes of admissibility, the author has not substantiated his allegation of a violation of article 26 of the Covenant as required by article 2 of the Optional Protocol.

6.5. As to the alleged violation of the right to an effective judicial remedy as a result of the alleged breach of their obligations by the procurator and the author's legal aid, the Committee notes that the author filed an administrative remedy with the Superior Court of Justice against the agreement of the General Council of Procurators. However, the file does not show that this remedy has been ruled on. Because it is still under consideration and therefore does not meet the requirements of article 5, paragraph 2 (b), of the Optional Protocol, this part of the complaint is inadmissible.

⁵ Article 135: "Submission of documents for the purposes of the time limit for procedural acts. 1. When the submission of the document is subject to a time limit, it may be submitted within 15 days of the working day following that of the expiration of the time limit, at the secretariat of the court or, as appropriate, at the central registry office, if one has been established; 2. In proceedings before the civil courts, the submission of documents shall not be allowed in the duty magistrate's court; 3. Court secretaries or officers appointed by them shall take steps to have confirmed the date and time of submission of applications and documents, initiation of the procedure and any other submission which is subject to a specified deadline; 4. In any event, the party shall receive a receipt for any documents he submits, with an indication of the date and time of submission. The receipt of photocopies of documents submitted by the party may also be recorded."

⁶ Article 135: "5. When the courts and the parties to proceedings have technical means at their disposal for sending and receiving documents so that the authenticity of the communication is guaranteed and there is reliable evidence of the sending and receipt of documents in full and of the date on which they were sent and received, documents may be sent by such means."

7. The Human Rights Committee therefore decides:

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

[Done 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.]