



# Economic and Social Council

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## Committee on Economic, Social and Cultural Rights

### Communication No. 12/2016<sup>1</sup>

#### Views adopted by the Committee at its fifty-eighth session (6 to 24 June 2016)

<i>Submitted by:</i>	J.M.R.H. et al. (represented by counsel Antonio Álvarez-Ossorio Gálvez)
<i>Alleged victim:</i>	The authors
<i>State party:</i>	Spain
<i>Date of communication:</i>	15 July 2015
<i>Date of adoption of Views:</i>	20 June 2016
<i>Subject matter:</i>	Supplementary social benefits established in a collective agreement
<i>Substantive issues:</i>	Right to the enjoyment of just and satisfactory conditions of work; right to social security
<i>Procedural issues:</i>	Submission of the communication within one year after the exhaustion of domestic remedies; Committee's competence <i>ratione temporis</i> ; Committee's competence <i>ratione materiae</i>
<i>Articles of the Covenant:</i>	7 and 9
<i>Articles of the Optional Protocol:</i>	2 and 3, paras. 2 (a) and (b)

<sup>1</sup> In accordance with rule 5 (1) (c) of the provisional rules of procedure under the Optional Protocol, Committee member Mr. Mikel Mancisidor de la Fuente did not take part in the examination of the communication.

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## **Decision on admissibility**

1.1 The authors of the communication are Mr. J.M.R.H., Mr. G.A.G.F. and Mr. F.L.L.L. all of whom are Spanish nationals of legal age. The authors submit that the State party violated their rights under articles 7 and 9 of the International Covenant on Economic, Social and Cultural Rights.<sup>2</sup> They further allege that the State party violated their rights under articles 12 (1), and 26 of the International Covenant on Civil and Political Rights. The authors are represented by counsel.

1.2 On 10 February 2016, the Working Group on Communications, acting on behalf of the Committee, decided that observations from the State party were not needed to ascertain the admissibility of the present communication. Accordingly, the present communication was not transmitted to the State party, in accordance with article 6, paragraph 1, of the Optional Protocol.

### **The facts as submitted by the authors**

2.1 The authors had worked in a bank (the bank) for several decades, each having begun employment at different dates between 1967 and 1977. Mr. Rey Hellín was dismissed by the bank on 26 February 1996 and Mr. Ávila González-Fierro on 12 June 1996. Mr. F.L.L.L. departed voluntarily on 6 November 1988.

2.2 At the time of termination of each of the authors' employment, the bank had social security arrangements in place for its staff pursuant to a series of collective labour agreements that had been negotiated in the private banking sector, namely Banking Sector Collective Agreements Nos. XIII, XV, XVI and XVII. All the Agreements had been published at the time required in the Official Gazette. Under the Agreements, the bank was under an obligation to supplement the social security benefits paid to its employees or other persons entitled in the event of illness, permanent disability, retirement or death of the employees. The bank established an accounting provision in the form of a general internal fund to cover these supplementary benefits.

2.3 The authors allege that pursuant to Royal Decree No. 1588/1999, between 2001 and 2002 the bank took out a collective insurance policy with insurance companies to secure the supplementary payments for its staff and beneficiaries. The authors were included among the beneficiaries.

2.4 Subsequently, the authors requested the bank to pay out the surrender value of the mathematical reserve corresponding to their accrued pension benefits, a request which the bank rejected.

2.5 On 28 November 2008, the authors brought an action against the bank in Madrid Labour Court No. 15 (hereinafter Court No. 15) and requested a declaration of entitlement to the cash surrender value of their individual endowments in the fund at the date of termination of their employment relationship with the bank.

2.6 On 10 July 2009, Court No. 15 dismissed the authors' action. The Court ruled *inter alia* that the agreement established a right for employees to receive an allowance (supplementary benefits) once the event giving rise to this right had occurred; that nothing in the agreements established a right to redeem the corresponding amount in the event that a person's employment relationship ceased to exist prior to the event giving rise to the right to a benefit; and that, therefore, until such event occurred, the employee had only an

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<sup>2</sup> The Optional Protocol entered into force for the State party on 5 May 2013.

expectation of a right. On 15 September 2009, the authors lodged an appeal with the Madrid High Court.

2.7 On 18 June 2010, the Madrid High Court dismissed the authors' appeal and upheld the ruling of Court No. 15.

2.8 On 10 August 2011, the authors lodged an application with the European Court of Human Rights, alleging a violation of their rights under articles 6, paragraph 1, and 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), article 1 of Protocol No. 1 to the Convention and article 1 of Protocol No. 12 to the Convention. On 15 December 2011, the Court declared the application inadmissible on the grounds that it was not competent to consider the alleged violations and that it found no evidence of any violation of the rights and liberties guaranteed under the Convention and its Protocols. On 11 July 2014, the authors requested that the Court state the reasons why their petition had been declared inadmissible. The authors allege that they are submitting the present communication to the Committee because they have received no reply from the European Court of Human Rights and that the applicable date for calculating the one-year period established in article 3 (2) (a) of the Optional Protocol is 11 July 2014.

### **The complaint**

3.1 The authors assert that the State party violated their rights under articles 7 and 9 of the Covenant. They further allege that the State party also violated their rights under articles 12 (1) and 26 of the International Covenant on Civil and Political Rights.

3.2 The authors request that the Committee find that the articles invoked have been violated and award compensation for damages and legal costs.

### **Issues and proceedings before the Committee**

#### *Consideration of admissibility*

4.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 9 of its provisional rules of procedure under the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (E/C.12/49/3), whether the communication is admissible or not under the Optional Protocol.

4.2 The Committee is competent *ratione materiae* to consider allegations of a violation of any of the economic, social or cultural rights set forth in the International Covenant on Economic, Social and Cultural Rights. The Committee therefore finds that the authors' allegations filed with regard to articles 12 (1) and 26 of the International Covenant on Civil and Political Rights are inadmissible under article 3 (2) (d) of the Optional Protocol.<sup>3</sup>

4.3 The Committee recalls that the Optional Protocol entered into force for the State party on 5 May 2013 and that, in accordance with article 3 (2) (b) of the Optional Protocol, the Committee must declare a communication inadmissible when the facts that are the subject of the communication occurred prior to the entry into force of the Optional Protocol for the State party concerned, unless those facts continued after that date. In the present case, the Committee observes that the events that are the subject of the communication, including all the relevant judicial decisions of the Spanish authorities, occurred prior to 5 May 2013. No grounds can be derived from the information submitted by the authors for concluding that any new events have occurred subsequent to the entry into force of the

<sup>3</sup> See Communication No. 6/2015, *V.T.F. and A.F.L. v. Spain*, decision of inadmissibility of 24 September 2015, para. 4.2; and communication No. 8/2015, *L.A.M.C. v. Spain*, decision of inadmissibility of 24 September 2015, para. 4.2.

Optional Protocol that could, in themselves, be considered to constitute a violation of the Covenant. Consequently, the Committee considers that it is precluded *ratione temporis* from examining the present communication and that the communication is inadmissible under article 3 (2) (b) of the Optional Protocol.<sup>4</sup>

5. The Committee therefore decides:

- (a) That the communication is inadmissible under article 3, paragraph 2 (b) and (d), of the Optional Protocol; and
  - (b) That this decision should be transmitted to the State party and to the authors.
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<sup>4</sup> See Communication No. 6/2015, para. 4.3; and communication No. 8/2015, para. 4.3.