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Economic and Social Council

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Committee on Economic, Social and Cultural Rights

Views adopted by the Committee under the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights concerning communication No. 18/2016*, **

Submitted by:	F.M.B. et al. (represented by counsel Antonio Álvarez-Ossorio Gálvez)
Alleged victims:	The authors
State party:	Spain
Date of communication:	23 September 2016
Date of adoption of Views:	22 February 2017
Subject matter:	Supplementary social benefits established in a collective agreement
Procedural issues:	Submission of the communication within one year after the exhaustion of domestic remedies; Committee's competence *ratione temporis*; Committee's competence *ratione materiae*
Substantive issues:	Right to the enjoyment of just and satisfactory conditions of work; right to social security
Articles of the Covenant:	7 and 9
Articles of the Optional Protocol:	2 and 3 (2) (a) and (b)

* Adopted by the Committee at its sixtieth session (20-24 February 2017).

** 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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1.1 The authors of the communication are F.M.B., J.M.H.B., J.M.G.S., V.B.B. and L.A.V.A, 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 Covenant. The Optional Protocol entered into force for the State party on 5 May 2013. 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 2 December 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 (1) of the Optional Protocol.

A. Summary of the information and arguments submitted by the parties

The facts as submitted by the author

2.1 The authors had worked in a bank for several decades, each having begun employment at different dates between 1974 and 1979. The bank unfairly dismissed J.M.H.B., J.M.G.S., V.B.B., F.M.B. and L.A.V.A. on 1 April 1976, 15 April 1996, 17 April 1998, 18 May 1999 and 13 March 2000, respectively.

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. All those agreements were published in the Official Gazette at the time required. Under those 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 accordingly established an accounting provision in the form of a general internal fund to cover the supplementary benefits.

2.3 Subsequent to their dismissal, 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.

2.4 On 28 November 2008, F.M.B. and J.M.H.B. filed a suit against the bank before Labour Court No. 33 of Madrid 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. On 5 December 2008, J.M.G.S., V.B.B. and L.A.V.A. filed a similar suit before Court No. 33. On 8 January 2009, the Court agreed to combine the two suits so that they could be resolved in a single ruling.

2.5 On 4 March 2009, Court No. 33 dismissed the authors' suits, pointing out that the collective agreements 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 an event occurred, the employee merely had an expectation of a right. On 21 April 2009, the authors lodged an appeal with the Madrid High Court.

2.6 On 16 November 2009, the Madrid High Court dismissed the appeal and upheld the decision of Court No. 33. In its ruling, the Madrid High Court indicated that the ruling could be appealed for unification of doctrine by filing an application for appeal with the Madrid High Court itself, within 10 days of the issuance of the ruling.

2.7 On 10 December 2009, the authors filed a notice of appeal for unification of doctrine before the Supreme Court. On 18 December 2009, the Madrid High Court issued a ruling upholding its decision of 16 November 2009; it was transmitted to the parties on 23 December 2009. On 30 December 2009, the Madrid High Court received the appeal application and, on 4 January 2010, issued a decision refusing the application for appeal in cassation for unification of doctrine.

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2.8 On 20 January 2010, the authors filed an appeal before the Madrid High Court against the decision of 4 January 2010. On 4 February 2010, the Madrid High Court dismissed the authors' appeal and decided to refuse the appeal for unification of doctrine. The Madrid High Court considered that, although the application for appeal was filed within the statutory period, it was filed with the wrong jurisdiction, a procedural error that the authors had failed to rectify. On 10 February 2010, the authors filed an application for review before the Madrid High Court, which was rejected on 22 February 2010. Subsequently, the authors lodged a complaint with the Supreme Court, which was refused on 13 July 2010.

2.9 The authors allege that they submitted a note to the European Court of Human Rights on 1 March 2011, stating their intention of lodging an application, and that the secretariat of the Court acknowledged receipt of the note and sent them a copy of the official application form.

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.

B. Committee's 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, 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.[1]

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 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.[2]

4.4 The Committee notes that under article 6 of the Optional Protocol, it can consider a communication inadmissible without reference to the State party concerned. In the present case, the grounds on the basis of which it concludes that the present communication is inadmissible do not form part of the conditions of admissibility which the State party can waive, as might be the conditions listed in article 3 (1) (2) (a), (c), (e), (f) or (g).

[1] 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.

[2] Communication No. 6/2015, para. 4.3; and communication No. 8/2015, para. 4.3.

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C. Conclusion

5. The Committee on Economic, Social and Cultural Rights therefore decides:

(a) That the communication is inadmissible under article 3 (2) (b) and (d), of the Optional Protocol; and

(b) That this decision shall be transmitted to the State party and to the authors.

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