



**International Covenant on Civil and Political Rights**

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**Human Rights Committee**  
**Ninety-eighth session**  
8-26 March 2010

**Decision**

**Communication No. 1624/2007**

Submitted by:	Mr. José Conrado Seto Martínez (represented by counsel, Mr. Miquel Nadal Borrás)
Alleged victim:	The author
State Party:	Spain
Date of communication:	27 June 2007 (initial submission)
Date of adoption of the Decision:	19 March 2010

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\* Made public by decision of the Human Rights Committee.

Subject matter:	imposition of prison sentence for non-payment of alimony
Procedural issues:	Non-substantiation of claim; evaluation of facts and evidence, incompatibility <i>ratione materiae</i>
Articles of the Covenant:	11 and 14, paragraph 2
Article of the Optional Protocol:	3

**[Annex]**

## Annex

### **Decision of the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights (ninety-eighth session)**

concerning

#### **Communication No. 1624/2007\*\***

Submitted by:	Mr. José Conrado Seto Martínez (represented by counsel, Mr. Miquel Nadal Borrás)
Alleged victim:	The author
State Party:	Spain
Date of communication:	27 June 2007 (initial submission)

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

Meeting on 19 March 2010,

Adopts the following:

#### **Decision on admissibility**

1. The author of the communication, dated 27 June 2007, is José Conrado Seto Martínez, a Spanish national born in 1948. He claims to be victim of a violation by Spain of articles 11 and 14, paragraph 2, of the Covenant. He is represented by counsel, Mr. Miquel Nadal Borrás. The Optional Protocol entered into force for Spain on 25 April 1985.

#### **Factual background**

2.1 The author and his wife separated by mutual agreement in 1997. On 15 November 2002, the criminal court No. 7 of Barcelona found the author guilty of the offence of failure to pay alimony (*abandono de familia*) under article 227 of the Spanish Criminal Code and sentenced him to twelve weekends' imprisonment and reimbursement of the sums owed to his ex-wife.

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\*\* The following members of the Working Group of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Mahjoub El Haiba, Mr. Ahmad Amin Fathalla, Mr. Yuji Iwasawa, Ms. Helen Keller, Mr. Rajsoomer Lallah, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Mr. Michael O'Flaherty, Mr. José Luis Pérez Sanchez-Cerro, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabian Omar Salvio and Mr. Krister Thelin.

2.2 On 11 March 2003, the Barcelona Provincial Court (*Audiencia Provincial de Barcelona*) upheld the earlier ruling, while limiting the payment to the amounts outstanding for the period from July 1997 to March 2002.

2.3 On 25 July 2003, the author appealed (*amparo*) to the Constitutional Court, claiming a breach of constitutional provisions, such as the presumption of innocence and article 11 of the Covenant, which is considered to be part of Spanish law. On 25 January 2005, the Constitutional Court rejected the appeal. With respect the presumption of innocence, it considered the claim unsubstantiated in view of the evidence available on file, which had been obtained lawfully. As regards the claim on article 11 of the Covenant, the Court noted first, that alimony payments could not be characterized as “contractual” obligations, and second, that it was proven that the author had sufficient financial means to fulfil his alimony obligation.

2.4 On 16 May 2007, the European Court of Human Rights declared the author’s case inadmissible on the ground that the facts presented by him did not appear to constitute a violation of any of the articles of the European Convention on Human Rights and its Protocols.

### **The complaint**

3.1 The author alleges a violation of article 11 of the Covenant, insofar as he was sentenced to deprivation of liberty for a debt which he had failed to pay solely for lack of financial resources and not deliberately.

3.2 He also claims a violation of article 14, paragraph 2, of the Covenant, as the existence of sufficient financial means was not duly proven in the Spanish courts.

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

4.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with article 93 of its Rules of Procedure, decide whether or not the communication is admissible under the Optional Protocol to the Covenant.

4.2 The Committee has ascertained that the author has exhausted all available domestic remedies, as required under article 5, paragraph 2 (b), of the Optional Protocol.

4.3 With regard to the alleged violation of article 11 of the Covenant by the imposition of a custodial sentence for failure to pay alimony, the Committee notes that the case concerns a failure to meet not a contractual obligation but a legal obligation, as provided in article 227 of the Spanish Criminal Code. The obligation to pay alimony is derived from Spanish law and not from the separation or divorce agreement signed by the author and his ex-wife.<sup>1</sup> Consequently, the Committee finds the communication incompatible *ratione materiae* with the provisions of article 11 of the Covenant, and thus inadmissible under article 3 of the Optional Protocol.

4.4 With regard to the claim under article 14, paragraph 2, the author claims that it has not been proven in court that he had sufficient financial means to fulfil his

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<sup>1</sup> Communication No. 1333/2004, *Calvet Rafols v. Spain*, inadmissibility decision of 25 July 2005, para. 6.4.

alimony obligations. In this regard, the Committee recalls its jurisprudence<sup>2</sup> that it is generally for the domestic courts to evaluate facts and evidence in a particular case, unless it can be ascertained that such evaluation was clearly arbitrary or amounted to a denial of justice. The material before the Committee does not show that the conduct of the trial suffered from any such defects. Accordingly, this part of the communication is inadmissible as incompatible with the provisions of the Covenant, pursuant to article 3 of the Optional Protocol.

4.5 The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under article 3 of the Optional Protocol;

(b) That the decision be transmitted to the State Party, to the author and to his counsel.

[Adopted in English, French and Spanish, the English 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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<sup>2</sup> See Communication No. 541/1993, *Errol Simms v. Jamaica*, inadmissibility decision of 3 April 1995, para. 6.2.