

Cristina Muñoz-Vargas y Sainz de Vicuña v Spain (Communication No. 7/2005)

1) Reference Details

Jurisdiction: United Nations Committee on the Elimination of Discrimination against Women

Date of Decision: 9 August 2007

Link to full case:

<http://daccessdds.un.org/doc/UNDOC/GEN/N07/495/62/PDF/N0749562.pdf?OpenElement>

2) Facts

The author was the first-born daughter of Enrique Muñoz-Vargas y Herreros de Tejada, who held the nobility title of “Count of Bulnes”. In accordance with article 5 of the Law on the Order of Succession to Titles of Nobility (1948), the first-born inherits the title, but a woman inherits the title only if she does not have any younger brothers. The author’s younger brother, José Muñoz-Vargas y Sainz de Vicuña, succeeded to the title upon the death of their father on 23 May 1978. On 30 December 1988, the author, as first-born, initiated legal action against her younger brother, José Muñoz-Vargas y Sainz de Vicuña, claiming the title of “Countess of Bulnes”. The author based her claim on the principle of equality and non-discrimination on the grounds of sex proclaimed in article 14 of the Constitution of Spain of 1978 and articles 2(c) and 2(f) of the Convention on the Elimination of All Forms of Discrimination against Women (the Convention).

The Madrid Court of First Instance dismissed the author’s claim on 10 December 1991. The Provincial High Court of Madrid and the Supreme Court also dismissed her appeals. The author appealed to the Constitutional Court (*recurso de amparo*) against the judgement of the Supreme Court on both procedural and substantive grounds. By a decision of 20 May 2002, the Constitutional Court set aside the judgment of the Supreme Court of 13 December 1997 and sent it back to the Supreme Court for reconsideration. The Supreme Court issued a new judgement again denying the author’s claims. On 17 October 2002, the author lodged a new *amparo* appeal before the Constitutional Court claiming, among other things, that the judgement of the Supreme Court of 17 September 2002 violated article 14 of the Constitution and articles 1, 2 and 15 of the Convention on the Elimination of All Forms of Discrimination against Women. On 24 March 2003, the Constitutional Court rejected her *amparo* appeal for lack of constitutional content.

3) Law

- UN Convention on the Elimination of All Forms of Discrimination against Women, articles 2(c) and 2(f).

4) Legal Arguments

The Author

The author submitted that the State party had discriminated against her on the basis of sex by denying her right, as the first-born child, to succeed her late father to the title of *Count of Bulnes*. She alleged that male primacy in the order of succession to titles of nobility

constitutes a violation of the Convention in general, and specifically of its article 2(f). She asserted that Spain had an obligation under the Convention to amend or revise the laws of 4 May 1948 and 11 October 1820 which established male primacy in the order of succession to titles of nobility.

Concerning the admissibility of the communication, the author claimed that, by virtue of the judgment of the Constitutional Court of 3 July 1997, she had exhausted all domestic remedies as it definitely settled the matter of male primacy in succession to titles of nobility, in her opinion ensuring that no *amparo* appeal on the question could be successful and thereby rendering such a remedy ineffective.

The State

The State party requested that the communication be rejected as inadmissible on the grounds that the same question had already been examined by the Human Rights Committee in its communications 1008/2001 and 1019/2001, and that the author had failed to exhaust domestic remedies as a *recurso de amparo* lodged by the applicant was still ongoing before the Constitutional Court. The State party further submitted that, with the enactment of the new legislation pertaining to succession to titles of nobility, the author would benefit from an additional domestic remedy.

5) Decision

The Committee declared the communication inadmissible under article 4, paragraph 2(e) of the Optional Protocol on the grounds that the event which was the basis of the author's complaint occurred and was completed at the time of the issuance of the decree, therefore taking place before the Optional Protocol entered into force for the State party. The Committee also considered that any discriminatory effect that the Spanish legislation of the time may have had on the life of the author would not justify a reversal of the royal decree of succession at the present time.

Committee members Magalys Arocha Dominguez, Cees Flinterman, Pramila Patten, Silvia Pimentel, Fumiko Saiga, Glenda P. Simms, Anamah Tan, and Zou Xiaoqiao issued a separate concurring opinion. They submitted that the communication should have been declared inadmissible under article 4, paragraph 2(b) of the Optional Protocol on the grounds that it was incompatible with the provisions of the Convention, considering that claims of succession to such titles of nobility are not compatible with the provisions of the Convention, which are aimed at protecting women from discrimination which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women on a basis of equality of men and women, of human rights and fundamental freedoms in all fields.