
1) Reference Details

Jurisdiction: UN Human Rights Committee, eightieth session
Date of Decision: 30 March 2004

2) Facts

The author was the firstborn daughter of Mr Alfonso de Hoyos y Sánchez, who died on 15 July 1995. Subsequently, she applied to the King for succession to the ranks and titles held by her father, including the Dukedom of Almodóvar del Río, with the rank of Grandee of Spain. She asserted that she made a formal application with the intention of placing on record her greater right to succession to the title in question.

In an Order published in the Boletín Oficial del Estado of 21 June 1996, succession to the title of Duke of Almodóvar del Río was granted to the author's brother, Isidoro Hoyos y Martínez de Irujo. The author asserted that, although as firstborn daughter she had the greater right, she had agreed to renounce the title under an agreement she had made with her brothers on the distribution of their father's titles of nobility. She asserted that at the time this took place, the criterion established by the judgment of the Supreme Court of 20 June 1987, pronouncing the precedence for males in succession to titles of nobility discriminatory and unconstitutional, was in force. However, the Constitutional Court's judgment of 3 July 1997 abrogated that decision; it stated that male primacy in the order of succession in respect of the Acts of 4 May 1948 and 11 October 1820, was neither discriminatory nor unconstitutional, given that Article 14 (equality before the law) of the Spanish Constitution was not applicable in view of the historical and symbolic nature of the institution. The author contended that this led to her brothers initiating legal proceedings to strip her of her titles.

As a result, in June 1999, the author instituted legal proceedings against her brother Isidoro in the Majadahonda Court of First Instance, asserting that she had a greater right to the title. In its judgment of 11 May 2000, the Majadahonda Court dismissed the claim, in accordance with the Constitutional Court's judgment of 3 July 1997. The judge said, however, that she sympathised with the author's position but she could not deviate from the interpretation that the Constitutional Court had given to the laws and provisions of the legal regime.

3) Laws

National Law

- Article 14 of the Spanish Constitution (equality before the law)

International Law

- Article 3 of the International Covenant on Civil and Political Rights (The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant)
• Article 17 of the International Covenant on Civil and Political Rights (right to recognition before the law)
• Article 26 of the International Covenant on Civil and Political Rights (right to non-discrimination)

4) Legal Arguments

The Author

The author maintained that the State party is in violation of Article 26 of the International Covenant on Civil and Political Rights (the Covenant), which guarantees that all persons are equal before the law, and prohibits any discrimination, inter alia, on the ground of sex. She asserted that the law governing succession to titles of nobility discriminated against her merely because she is a woman, since the title was granted to her younger brother owing to male primacy. In her view, succession to titles is regulated by the law and the judge of first instance failed to apply Article 26 of the Covenant.

Furthermore, the author asserted that Article 3 of the Covenant had also been violated, in conjunction with Article 26, since States parties have the obligation to grant equality to men and women in the enjoyment of civil and political rights. She claimed that the foregoing may be linked to Article 17 of the Covenant since, in her opinion, a title of nobility is an element of the private life of the family group of which it forms part.

In this regard, she recalls that, in its General Comment No 28 concerning Article 3 of the Covenant, the Human Rights Committee (the Committee) stated: "Inequality in the enjoyment of rights by women throughout the world is deeply embedded in tradition, history and culture..." She also put forth that, in paragraph 4 of the same comment, the Committee established that "Articles 2 and 3 mandate States parties to take all steps necessary, including the prohibition of discrimination on the ground of sex, to put an end to discriminatory actions, both in the public and the private sector, which impair the equal enjoyment of rights".

The State

The State argued that the communication should be declared inadmissible by virtue of Article 2 and Article 5, paragraph 2(b) of the Optional Protocol, since domestic remedies have not been exhausted. It asserted that the author had an appeal pending with the Madrid Provincial High Court.

The State pointed out that judicial proceedings and possible successive appeals are regulated under the Spanish legal regime. It set out that after the judgment of the Court of First Instance, it was possible to appeal to the Provincial High Court, whose decision can in turn be appealed to the Supreme Court and if it is considered that some fundamental right has been violated, an application for amparo can be lodged with the Constitutional Court.

The State argued that "to lodge and uphold an appeal only in order to mark time until the Committee expresses its views on this case, and to simultaneously submit a communication to the Committee, whose future comments in this connection will provide valid substance for the appeal, is to seek undue interference by the Committee with a domestic court, which would come within the competence of the Special Rapporteur on the independence of judges and lawyers".
The State asserted that the same matter was submitted by other women to the European Court of Human Rights, which declared these applications inadmissible _ratione materiae_, for the reason that the use of a title of nobility fell outside the purview of the right to privacy and family life.

*The Author’s Response*

In response the author argued that it was futile to make a further submission to the domestic courts, since Article 38, paragraph 2, and Article 40, paragraph 2, of the Constitutional Court Organization Act pre-empt reopening the consideration of the constitutionality of the Spanish legal system as it relates to succession to titles of nobility. For that reason, despite the fact that the judge of First Instance in Majadahonda had expressed her personal sympathy for the author’s case, she said that she had no option but to dismiss her action, in view of the Spanish Constitutional Court’s position in that regard.

The author emphasised that she continued with domestic remedies to avoid the case being declared _res judicata_, thereby preventing possible views by the Committee against the State party from being made effective.

Furthermore, the author argued that if the Committee found in her favour, for example, before the Supreme Court concluded its consideration of her application for judicial review, she could enter the decision as evidence with sufficient force to permit a return to the former jurisprudence of equality of men and women in succession to titles of nobility, thereby obtaining effective redress for the injury done to her fundamental right to non-discrimination. She maintained that, in accordance with the Committee’s often stated jurisprudence, the victim is not obliged to use remedies that are ineffective.

5) Decision

The Committee held that the communication was inadmissible under Article 3 of the Optional Protocol.

Despite the Committee noting that while the State had argued that hereditary titles of nobility were devoid of any legal and material effect, they were nevertheless recognised by the State’s laws and authorities, including its judicial authorities. And despite it recalling its established jurisprudence the Committee reiterated that Article 26 of the Covenant is a free-standing provision which prohibits all discrimination in any sphere regulated by a State to the Covenant. It considered that Article 26 could not be invoked in support of claiming a hereditary title of nobility, an institution that, due to its indivisible and exclusive nature, lies outside the underlying values behind the principles of equality before the law and non-discrimination protected by Article 26. Therefore the author’s communication was incompatible _ratione materiae_ with the provisions of the Covenant.