



## International Covenant on Civil and Political Rights

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### Human Rights Committee

102nd session

11–29 July 2011

### Views

#### Communication No. 1611/2007

<i>Submitted by:</i>	Florentino Bonilla Lerma (not represented by counsel)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Colombia
<i>Date of communication:</i>	17 October 2006 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 8 October 2007 (not issued in document form)
<i>Date of adoption of Views:</i>	26 July 2011
<i>Subject matter:</i>	Refusal by the judicial authorities to enforce the payment of damages to the author
<i>Procedural issues:</i>	Substantiation of the complaint; abuse of the right to submit a communication
<i>Substantive issues:</i>	Right to a fair trial; right to an effective remedy
<i>Articles of the Optional Protocol:</i>	2 and 3
<i>Articles of the Covenant:</i>	2, paragraphs 1–3; 3; 5; 14, paragraph 1; 16; 26; and 27

On 26 July 2011, the Human Rights Committee adopted the annexed draft as its Views, under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 1611/2007. The text of the Views is appended to the present document.

[Annex]

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

## Annex

### **Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights (102nd session)**

concerning

#### **Communication No. 1611/2007\***

*Submitted by:* Florentino Bonilla Lerma (not represented by counsel)

*Alleged victim:* The author

*State party:* Colombia

*Date of communication:* 17 October 2006 (initial submission)

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

*Meeting* on 26 July 2011,

*Having concluded* its consideration of communication No. 1611/2007, submitted by Florentino Bonilla Lerma under the Optional Protocol to the International Covenant on Civil and Political Rights,

*Having taken into account* all written information made available to it by the author of the communication and the State party,

*Adopts* the following:

#### **Views under article 5, paragraph 4, of the Optional Protocol**

1. The author of the communication is Florentino Bonilla Lerma, a Colombian national born on 5 September 1956, who claims to be the victim of a violation by Colombia of articles 2, paragraphs 1–3; 3; 5; 14, paragraph 1; 16; 26; and 27 of the Covenant. The author is not represented by counsel. The Covenant and its Optional Protocol entered into force for Colombia on 23 March 1976.

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\* The following members of the Committee participated in the consideration of the present communication: Mr. Lazhari Bouzid, Mr. Cornelis Flinterman, Ms. Iulia Antoanella Motoc, Mr. Gerald L. Neuman, Mr. Fabián Omar Salvioli, Ms. Margo Waterval, Ms. Christine Chanet, Mr. Ahmad Amin Fathalla, Mr. Yuji Iwasawa, Ms. Helen Keller, Mr. Rajsoomer Lallah, Ms. Zonke Zanele Majodina, Mr. Michael O'Flaherty, Mr. Krister Thelin and Mr. Abdelfattah Amor.

Pursuant to rule 90 of the Committee's rules of procedure, Committee member Mr. Rafael Rivas Posada did not participate in the adoption of this decision.

The text of an individual opinion signed by Committee members Mr. Krister Thelin and Mr. Gerald L. Neuman are appended to the present Views.

### The facts as submitted by the author

2.1 The author and his family owned a fishing company called Incamar that was registered at the port of Buenaventura, Colombia. The company's assets included two industrial fishing motorboats, the *Puri* and the *Copescol Doce*. A suit was brought against the author for failing to meet a financial obligation. As a result, in December 1989 the *Puri* was seized, and in January 1990 it was placed in the custody of a court official pending the outcome of the proceedings. The court official began using the motorboat, making profits that he reported neither to the court hearing the suit nor to the author.

2.2 In judgements dated 10 May and 7 June 1995, the Second Civil Circuit Court of Cali, Valle, ruled in favour of the author and ordered the court official to return the boat and to pay for structural and mechanical damage inflicted upon the boat, as well as compensation for loss of profits. On 7 September 1995, the Eighth Civil Circuit Court of Cali informed the harbour master of the port of Buenaventura that the seizure order had been lifted and ordered the court official to account for his actions and to return the motorboat. When this ruling was ignored, the author applied for an injunction (*acción de tutela*) before the Civil and Labour Division of the High Court of the Popayán Judicial District, located in the department of Cauca.

2.3 In a judgement dated 5 September 1996, the Popayán High Court granted the injunction and ordered "The State – Judicial Branch" (of which the court official was a member) to return the motorboat. It also ordered the administrative court to carry out the corresponding settlement procedures to enforce the payment of damages to the author. The main case file was referred to the Constitutional Court on 12 September 1996 to conduct the necessary legal procedures for a possible judicial review. The Popayán High Court refrained from initiating procedures to order payment of the settlement until the case file had been returned by the Constitutional Court. The latter decided not to review the judgement and remanded the case to the Popayán High Court on 17 January 1997.

2.4 The author claims that, when the case was before the Constitutional Court, the secretary of the Popayán High Court, acting on his own initiative, sent a copy of the judgement dated 5 September 1996, without any annex, without the authorization of the judges and without notifying the parties, to the Cali branch of the Administrative Court of Valle del Cauca, with a note stating that it should act on "point 4".<sup>1</sup> The author heard rumours that a copy of the judgement had reached the Administrative Court of Valle del Cauca, which is located far from the judicial district of Popayán. The author claims that he complained about this to the reporting judge of the Popayán High Court, who responded that the court had never ordered the judgement to be transmitted to the Administrative Court of Valle del Cauca and that he should not be involved in those proceedings. The author, who is not a lawyer, sent a letter to the Administrative Court of Valle del Cauca on 19 September 1996, which read as follows: "I hereby withdraw from the proceedings to prepare and implement a motion for settlement of damages as ordered in a writ (*despacho comisario*) issued by the Popayán High Court. For this reason, I respectfully request that you return the aforementioned writ to the court from which it originated, in accordance with article 344 of the Code of Civil Procedure."

2.5 On 17 January 1997, the Popayán High Court instructed the Administrative Court of Cauca to order payment of the damages to the author. On 28 January 1997, the Administrative Court refused to enforce the judgement, on the ground that the request for withdrawal submitted by the author to the Administrative Court of Valle del Cauca meant that he had renounced all his claims, and that those claims could therefore not be exercised

<sup>1</sup> Point 4 states as follows: "Notify the Administrative Court of the above decision for action."

under the same procedure. The Court also reasoned that the acceptance by the Administrative Court of Valle del Cauca of the request for withdrawal had the effect of *res judicata*.

2.6 The author appealed to the Administrative Division of the Council of State, which upheld the decision of the Administrative Court of Cauca, basing its decision on the author's withdrawal. The Council of State referred the author to the Administrative Court of Cauca to submit a petition for annulment. However, that court set aside the case, in a decision that was subsequently upheld by the Council of State. Later, the author submitted numerous appeals to various bodies, including the Constitutional Court, claiming a violation of his rights to due process and access to justice. On 21 February 2003, the Constitutional Court rejected the author's claims, concluding that the author "withdrew his claims for damages before the Administrative Court of Valle del Cauca, thereby cancelling the motion for settlement of damages, and allowed considerable time to pass before reopening procedures that had already been completed. The various decisions handed down in response to the author's multiple petitions after the request for withdrawal had been accepted constitute a valid and reasonable premise on which to conclude that the motion for settlement of damages had already been voluntarily cancelled by the concerned party himself."

2.7 At the end of 2005, the author and his family obtained refugee status in Costa Rica, where he filed a claim for enforcement of the judgement with the First Division of the Supreme Court against the Republic of Colombia. On 8 March 2006, the Supreme Court rejected his claim, arguing that the jurisdiction of Costa Rica did not cover disputes between an individual and a sovereign Government or nation. Furthermore, the Court reasoned that the right being asserted could not be upheld by any Costa Rican court, given that the decision had been handed down by the courts of Colombia, which had absolute and sovereign authority to enforce it. That decision was upheld on 23 August 2006 by the same Court.

2.8 In his communication, the author criticizes the conduct of the Colombian judicial system.

### **The complaint**

3.1 The author maintains that the State party violated article 2, paragraphs 1, 2 and 3, of the Covenant, given that, despite the judgement handed down by the Popayán High Court on 5 September 1996, the subsequent judicial remedies were not effective in enforcing that judgement. He also claims a violation of article 3 of the Covenant, because his right to equality before the law was not respected.

3.2 The author claims a violation of article 5 of the Covenant, given that the State party demonstrated through its judicial proceedings that it was not willing to comply with the international treaties to which it is a party.

3.3 The author alleges that he is the victim of a violation of article 14, paragraph 1, of the Covenant because, in the judicial proceedings that he initiated in an effort to assert his civil rights as a proprietor and businessman in Colombia, he did not receive equal treatment in relation to other plaintiffs in similar cases. Moreover, he did not enjoy the minimum guarantees of an independent and impartial trial, since his appeals were not dealt with in an effective or timely manner. According to the author, the primary aspect of the violation is a misunderstanding of the principle of *res judicata*.

3.4 The author claims a violation of article 16 of the Covenant on the grounds that the judicial authorities of Colombia did not recognize him as a person before the law.

3.5 The author also alleges that he is the victim of a violation of article 26 of the Covenant, as he considers that the reason that the judgement of the Popayán High Court was not enforced was because he is a person of African descent. He asserts that an adviser to the president of the Constitutional Court told him informally that he had heard the judges say: "How can we rule in favour of this black man, Bonilla? For one thing, Colombia would have to pay him a lot of money and, for another, we would be passing judgement on our fellow judges from the Council of State."

3.6 Lastly, the author claims a violation of article 27, basing his argument on reasons involving racial discrimination in the State party.

#### **State party's observations on admissibility**

4.1 In a note verbale dated 8 January 2008, the State party maintains that the communication is inadmissible.

4.2 The author's petition asks the Committee to review or reassess acts already examined and ruled upon by the Colombian courts with a view to obtaining compensation for which he voluntarily and expressly withdrew his claim. The State party draws attention to the jurisprudence of the Committee and the Inter-American Court of Human Rights, according to which communications should be rejected if they seek a reassessment of acts that have already been examined and ruled upon by the domestic courts of States parties.

4.3 The State party recounts the facts and asserts that, in its judgement dated 10 May 1995, the Second Civil Circuit Court of Cali ordered an officer of the court to pay the author a sum of money in cash for his loss of profits from the operation of the *Puri* motorboat from 1990 to 1995. The motorboat had been seized from the author in the course of proceedings that ended with a decision in the author's favour. Since the officer of the court neither paid the sum of money to the author nor returned the motorboat to him as ordered, the author sought an injunction against him at the Popayán High Court. The court ordered the defendant to hand over the motorboat and the profits he had earned from it. It also ordered the administrative court to execute the decisions of the Eighth and Second Civil Circuit Courts of Cali to enforce the payment of damages. The Court sent a copy of the relevant decision to the Administrative Court of Valle del Cauca. On 19 September 1996, the author wrote to the latter stating: "I hereby withdraw from the proceedings to prepare and implement a motion for settlement of damages as ordered ... by the Popayán High Court. For this reason I respectfully request that you return the aforementioned writ to the court from which it originated."

4.4 In a decision dated 27 September 1996, the Administrative Court of Valle del Cauca accepted the withdrawal and ordered that the case should be closed following cancellation of the motion, and that the Popayán High Court should be informed of the withdrawal. On 5 December 1996, the author petitioned the Civil and Labour Division of the Popayán High Court to transfer to the administrative courts the motion for settlement of the damages to which he was entitled. On 17 January 1997, the Civil and Labour Division referred the case to the Administrative Court of Cauca to settle the payment of the corresponding damages. On 28 January 1997, this court rejected the case on the ground that the author had withdrawn the motion for settlement of damages. This decision was upheld by the Council of State. Subsequently, the author filed a complaint claiming conflict of jurisdiction; on 22 March 2001, the Constitutional Court decided not to rule on the issue on the ground that no conflict had actually occurred. It considered that the Administrative Court of Cauca had never claimed not to have jurisdiction to hear the motion for settlement of damages; rather, it had simply refrained from processing the motion owing to the author's withdrawal of his

claim for damages. The author later filed for an injunction to protect his rights to due process, to a defence and to the ownership of private property. This action was rejected by the Council of State and the Constitutional Court. The latter considered that there was no violation of the author's fundamental rights, since he had withdrawn his claim for damages before the Administrative Court of Valle del Cauca, thereby voluntarily cancelling the motion for settlement of damages.

4.5 The author is seeking to have the Committee act as a court of fourth instance by reassessing acts that have already been examined and ruled upon by the domestic courts in order to revive a claim for damages that he has voluntarily and expressly withdrawn, this withdrawal having been accepted by the domestic courts.

4.6 International bodies are competent to declare a communication admissible and to issue their findings on the merits of a case if it involves a judgement by a national court that was arrived at without due process of law, which would appear to violate any other right guaranteed in international treaties. If, on the other hand, the international body simply asserts that the judgement itself was wrong or unjust, then the communication should be rejected. The role of international bodies is to ensure the observance of obligations undertaken by States parties to treaties; they cannot act as a court of appeal to examine alleged errors of law or of fact that may have been committed by national courts acting within the limits of their jurisdiction. The Inter-American Court of Human Rights has also clearly stated (in the case of *Cantos v. Argentina*) that a judgement must be arbitrary in order to constitute per se a violation of the Convention.

4.7 The author had access to all the mechanisms provided for in the Constitution and in the law, and at no point was he restricted in his right to apply to judicial bodies or to exercise the remedies he considered viable to assert his claims. On the contrary, the author initiated numerous legal proceedings and obtained substantive decisions based on the law. Consequently, the State party considers the communication inadmissible under article 2 of the Optional Protocol.

4.8 The author merely lists the rights that he believes to have been violated, without explaining his reasons for believing so and without providing evidence to substantiate his claim. Therefore, the communication should be declared inadmissible for lack of substantiation. Moreover, it constitutes an abuse of the right to submit communications, given that the author submitted incomplete, false and ill-considered information to the Committee. The author's withdrawal of his claim was not the result of a legal mishap, but rather a conscious choice that he made. Thus, he is not providing the Committee with accurate information.

4.9 The State party alleges that, if the author believed at the time that it was not within the jurisdiction of the Administrative Court of Valle del Cauca to process the settlement for damages, there was a domestic legal remedy available to him that would have made it possible to rectify the alleged jurisdictional error, as pointed out by the Constitutional Court in its ruling on the author's application for an injunction.

4.10 The State party points out that, for the purpose of supporting the admissibility of his claim, the author has not substantiated his allegation that he was threatened and harassed by public officials; nor has he provided even prima facie evidence that he suffered racial discrimination.

#### **Author's comments on the State party's submission on admissibility**

5.1 On 11 February 2008, the author submitted his comments on the State party's submission. He maintains that the Popayán High Court did not transmit a copy of the judgement dated 5 September 1996 to the Administrative Court of Valle del Cauca. Rather, this was an arbitrary action carried out by a junior employee of the court. This was why the

judges of the High Court, when they discovered that there was a copy of the judgement in another city, recommended on 16 September 1996 that the author should withdraw his participation in that “non-delegated motion” and should request that the copy of the judgement be returned to the court from which it originated, given that any action taken would be null and void owing to lack of jurisdiction. The author followed this advice. Meanwhile, the judgement of the Popayán High Court was reviewed by the Constitutional Court, which upheld the decision and returned it to the Popayán High Court on 16 January 1997.

5.2 On 17 January 1997, the Popayán High Court ordered that the motion for settlement of damages should be handled by the Administrative Court of Cauca (Popayán) and sent a copy of the case file to that court. However, the court took the decision already outlined above. The author cites various legal provisions to substantiate his claim that he never renounced his right to compensation and that his supposed “withdrawal” should be declared null and void. The author reiterates that the facts referred to in his communication constitute a violation of articles 14 and 26 of the Covenant.

#### **Additional observations by the State party on admissibility**

6.1 On 14 May 2008, the State party submitted additional observations, in which it restated the arguments already formulated and asserted that the case file was sent by the Civil and Labour Division of the Popayán High Court to the Administrative Court of Valle del Cauca in accordance with the judgement dated 5 September 1996, which ordered “the administrative court to settle the [sic] within six months in order to enforce the payment of damages to Mr. Florentino Bonilla Lerma, so as to prevent irreparable harm”. It follows from this that the transfer of the case file was not an arbitrary action by an employee, but rather the result of a court order. As stated by the Constitutional Court, if the author believed at the time that the Administrative Court of Valle del Cauca did not have jurisdiction, “the appropriate procedural remedy would have been to file a complaint for lack of jurisdiction at the time, or to express this idea clearly and specifically”.

6.2 The State party reiterates that the fact that court rulings went against the author cannot be interpreted as racial discrimination against him.

#### **State party’s observations on the merits**

7.1 On 11 July 2008, the State party submitted its observations on the merits. With regard to the author’s claim of a violation of article 2 of the Covenant, the State party draws attention to the Committee’s jurisprudence, which indicates that this provision constitutes a general obligation of States parties and can only be considered to have been violated if a right recognized in the Covenant has been violated, or if the necessary measures were not taken at the domestic level to protect the rights enshrined in the Covenant. Regarding the alleged violation of article 5, the State party points out that this provision does not give rise to any specific individual right, but is rather a cross-cutting provision on the scope of human rights and the obligations of States parties. Consequently, the author’s complaints made on the basis of these provisions should be rejected.

7.2 The author’s allegations of a violation of articles 3 and 26 of the Covenant are unfounded, since he has not provided evidence to show that the alleged acts occurred. The author’s claim of a violation of article 3 is not appropriate in this case, given that he is male. If the author considers that the institutions of Colombia prevented him from enjoying the same rights as women, in his communication he has not explained, even briefly, how he considers this right to have been violated. Regarding article 26, the author cannot argue that this article was violated simply because the courts did not decide in his favour, and he cannot claim racial motivation when the judicial decisions were reasonable and well-founded (de facto equality). Nor has any alleged de jure inequality been demonstrated,

given that the norms applied by the Colombian courts respect the principle of non-discrimination set out in article 26. Moreover, the author did not indicate in any of the actions he brought before the domestic courts that the latter had acted in any way that discriminated against him on the ground of his race. The court decisions were based on the author's free and voluntary withdrawal; therefore, they constitute neither racial discrimination nor a violation of the right to equality before the law.

7.3 With regard to the alleged violation of article 14, paragraph 1, of the Covenant, the State party maintains that the complaint does not contain any evidence from which to conclude that the author's right to due process was violated during the civil proceedings. In relation to the Committee's interpretation of the conditions that must be met in civil proceedings, such as equality of arms, respect for adversarial proceedings, flexible legal procedures and the prohibition of ex officio increases in sentences, all of those conditions were met in the proceedings involving the author. He had the opportunity to be heard before various bodies to dispute the withdrawal that he had submitted, and he received appropriate, reasonable, objective and timely responses. Regarding the author's claim that it took approximately 17 years to process his petitions, the State party points out that his withdrawal was accepted in the judgement dated 27 September 1996. The subsequent legal actions, including petitions for annulment, appeals, actions to have court officials disqualified and applications for injunctions, were submitted on the author's own initiative in order to revive his chances of receiving the compensation to which he had withdrawn his claim. The State party reiterates that international bodies cannot act as appeal courts and examine alleged errors of law or of fact that may have been committed by national courts acting within the limits of their jurisdiction.

7.4 With regard to the alleged violation of article 16 of the Covenant, the State party maintains that a violation of this right must entail denying an individual the opportunity to be a holder of rights and obligations, which did not occur at any point in the author's case. On the contrary, he had the opportunity to undertake legal proceedings to explain why he disagreed with the decision to deny compensation. Therefore, there was no violation of this provision.

7.5 With regard to the alleged violation of article 27, the author mentions only that he belongs to a certain minority (persons of African descent), but does not explain what specific right of this minority he was prevented from exercising. Therefore, the alleged violation is unfounded.

#### **Author's comments on the State party's submission on the merits**

8.1 In his communication dated 5 September 2008, the author reiterates that he is the victim of a miscarriage of justice. He asserts that the Civil and Labour Division of the Popayán High Court was the competent court in the principal proceedings but that its decision was not respected by the judge of the Administrative Court, who acted arbitrarily and in flagrant violation of due process. The author maintains that Colombian legislation does not in any way stipulate that the "withdrawal from legal proceedings" after an enforceable judgement has been submitted to a judge who lacks territorial jurisdiction and has not been officially appointed to hear the case should have the effect of nullifying an obligation. The judge should have refrained from presiding over the legal proceedings brought before him and should have requested that the copy of the decision be returned to the court from which it originated. The author points out that the actions of the Administrative Court were unlawful, as it refused, on the basis of unfounded arguments, to execute the motion for settlement of damages as ordered by the Popayán High Court.

8.2 The author reiterates that his withdrawal did not imply that he had renounced his rights as recognized in the decision of 5 September 1996, but rather was a withdrawal from the legal proceedings initiated by the Administrative Court of Valle del Cauca, which the author had been told was not competent to decide on the settlement. The author also maintains that, in order for the withdrawal to be considered valid, it would have to have been submitted with the defendant's consent before the decision of the Popayán High Court was handed down on 5 September 1996, and the parties would have to have been notified.

8.3 The author requests that the Committee declare the State party responsible for the facts described above, and that the State party establish the necessary mechanisms to grant the author the damages to which he is entitled in accordance with the judgement of 5 September 1996.

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

#### *Consideration of admissibility*

9.1 Before considering any claim contained in a communication, the Human Rights Committee must decide, in accordance with rule 93 of its rules of procedure, whether the communication is admissible under the Optional Protocol to the International Covenant on Civil and Political Rights.

9.2 As required under article 5, paragraph 2 (a), of the Optional Protocol, the Committee has ascertained that the same matter is not being examined under another procedure of international investigation or settlement.

9.3 The Committee takes note of the State party's observation that the communication should be considered inadmissible for lack of substantiation and because the Committee cannot assess facts that have already been examined and ruled upon by domestic courts. The State party also asserts that the author submitted incomplete, false and ill-considered information to the Committee and that the communication should therefore be considered inadmissible because it constitutes an abuse of the right to submit communications. The Committee does not share the State party's view as regards abuse, in the light of the information and evidence submitted by the author.

9.4 With regard to the alleged violation of articles 2, 3, 5, 16, 26 and 27, the Committee notes that the author invokes these articles in a general manner, without adequately explaining why he considers that the alleged acts constitute specific violations of these articles. Therefore, the Committee considers this part of the communication to be inadmissible for lack of substantiation under article 2 of the Optional Protocol.

9.5 Regarding the author's claim of a violation of article 14, paragraph 1, of the Covenant, the Committee considers that this claim has been sufficiently substantiated and that the other admissibility requirements have been met. The Committee therefore considers the claim admissible and proceeds to its consideration of the merits.

#### *Consideration of the merits*

10.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as required under article 5, paragraph 1, of the Optional Protocol.

10.2 The Committee must decide whether the domestic courts' decisions to refuse to grant the author the compensation ordered by the Popayán High Court in its judgement of 5 September 1996 constitute a violation of article 14, paragraph 1, of the Covenant. The Committee notes the State party's argument recalling the Committee's jurisprudence, according to which it is the responsibility of domestic courts to review the facts and

evidence in each particular case. The Committee recalls, however, that this jurisprudence provides for an exception when it is demonstrated that the evaluation was clearly arbitrary or amounted to a manifest error or denial of justice.<sup>2</sup>

10.3 In the present case, the Committee notes that the decision of the Popayán High Court dated 5 September 1996 was referred for execution to the Administrative Court of Valle del Cauca. Neither the State party nor the domestic courts have stated that this court was competent to process the case; it can therefore be concluded that this referral was carried out in error – an error that is not attributable to the author. The latter, having discovered that the Administrative Court did not have jurisdiction, and clearly believing that he was doing what was right, submitted a written statement of withdrawal. Furthermore, the information provided to the Committee by the parties does not contain any evidence that the author intended to renounce his rights as recognized in the judgement of 5 September 1996. On the contrary, the author had given many indications that he wished to recover his motorboat; he had received a favourable decision in the previous legal proceedings, resulting in the cancellation of the seizure order, and he had applied for an injunction, resulting in the judgment of 5 September 1996. At the same time, it is hard to believe that the “withdrawal of all claims to compensation”, which the domestic courts hold against the author, could be accepted, with all the resulting legal implications, by a court (the Administrative Court of Valle del Cauca) that clearly was not competent to decide on matters of compensation. It is also hard to believe that it was up to the author and not the courts involved to notice the error and take measures to safeguard his rights in the light of that error. The information provided by the parties leads to the conclusion that when, on 17 January 1997, the Popayán High Court finally ordered the competent court — the Administrative Court of Cauca (Popayán) — to enforce the settlement and ensure the payment of damages, it did so in all legality and without reproaching the author for any improper action on his part. The Administrative Court of Cauca nevertheless declined, on 28 January 1997, to act on the High Court’s order because it regarded the judgement of the Administrative Court of Valle del Cauca of 27 September 1996, in which it accepted the author’s withdrawal, as *res judicata*.

10.4 On the basis of the above, the Committee concludes that the domestic courts’ refusal to enforce the payment of damages to the author constitutes a violation of article 14, paragraph 1, of the Covenant.<sup>3</sup>

11. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it disclose a violation of the rights of the author under article 14, paragraph 1, of the Covenant.

12. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy, including adequate compensation. The State party is also under an obligation to take steps to prevent similar violations in the future.

13. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether or not there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant, the Committee wishes to receive from

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<sup>2</sup> See general comment No. 32, entitled “Article 14: Right to equality before courts and tribunals and to a fair trial” (CCPR/C/GC/32), para. 26.

<sup>3</sup> See communication No. 1089/2002, *Rouse v. Philippines*, Views of 25 July 2005, para. 7.2.

the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views.

[Adopted in English, French and Spanish, the Spanish 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.]

## Appendix

### **Individual opinion of Committee members Mr. Krister Thelin and Mr. Gerald L. Neuman (dissenting)**

The Committee has found the author's claim of a violation of article 14, paragraph 1, admissible. We respectfully disagree.

The Committee is not a court of fourth instance. It is, as laid down in the Committee's established jurisprudence, generally for the courts of States parties to the Covenant to review facts and evidence, or the application of domestic legislation, in a particular case, unless it can be shown that such evaluation or application was clearly arbitrary or amounted to a manifest error or denial of justice.<sup>4</sup>

It is the task of the Committee simply to determine whether, in assessing the author's "withdrawal of all claims of compensation", the domestic courts failed this test. In our view, while mindful of the regrettable consequences of the author's procedural action, the facts before the Committee do not permit it to conclude — other than by resorting to numerous conjectures (see paragraph 10.3 of the majority decision) — that the domestic courts' evaluation or the way in which they applied domestic law amounted to a denial of justice. The Committee should therefore have also found the communication inadmissible with respect to an alleged violation of article 14, paragraph 1.

*(Signed)* Krister **Thelin**

*(Signed)* Gerald L. **Neuman**

[Done 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>4</sup> See general comment No. 32, para. 26.