



## International Covenant on Civil and Political Rights

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### Human Rights Committee

### Communications Nos. 1822–1826/2008

#### Views adopted by the Committee at its 105th session, 9–27 July 2012

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| <i>Submitted by:</i>                     | J.B.R., L.M.O.C., A.M.A.R., G.E.O.S. and B.E.L. (1822); S.M.R.M. (1823); A.D.O., E.S.C., F.O.Q. and G.G.R. (1824); E.M.C.B., M.C.P.J. and R.S.S.N. (1825); G.M.V. and N.C.P. (1826); (represented by counsel, Mr. Alberto León Gómez Zuluaga) |
| <i>Alleged victims:</i>                  | The authors   |
| <i>State party:</i>                      | Colombia  |
| <i>Date of communications:</i>           | 11 June 2008 (initial submissions)  |
| <i>Document references:</i>              | Special Rapporteur's rule 97 decision, transmitted to the State party on 2 December 2008 (not issued in document form)  |
| <i>Date of adoption of Views:</i>        | 23 July 2012  |
| <i>Subject matter:</i>                   | Refusal to authorize the establishment of a trade union   |
| <i>Procedural issue:</i>                 | Exhaustion of domestic remedies   |
| <i>Substantive issue:</i>                | Freedom of association  |
| <i>Articles of the Covenant:</i>         | Article 2, paragraphs 2 and 3; article 14, paragraph 1; article 22, paragraph 1; article 26   |
| <i>Article of the Optional Protocol:</i> | Article 5, paragraph 2 (b)  |

[Annex]

## Annex

### **Decision of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights (105th session)**

concerning

#### **Communication Nos. 1822–1826/2008\***

*Submitted by:* J.B.R., L.M.O.C., A.M.A.R., G.E.O.S. and B.E.L. (1822); S.M.R.M. (1823); A.D.O., E.S.C., F.O.Q. and G.G.R. (1824); E.M.C.B., M.C.P.J. and R.S.S.N. (1825); G.M.V. and N.C.P. (1826); (represented by counsel, Mr. Alberto León Gómez Zuluaga)

*Alleged victims:* The authors

*State party:* Colombia

*Date of communications:* 11 June 2008 (initial submissions)

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

*Meeting* on 23 July 2012,

*Adopts* the following:

#### **Decision on admissibility**

1.1 The authors of the communications are J.B.R., L.M.O.C., A.M.A.R., G.E.O.S. and B.E.L. (1822); S.M.R.M. (1823); A.D.O., E.S.C., F.O.Q. and G.G.R. (1824); E.M.C.B., M.C.P.J. and R.S.S.N. (1825); G.M.V. and N.C.P. (1826), all of whom are Colombian nationals of full age. They claim to be victims of a violation by the State party of the rights established in article 2, paragraphs 2 and 3; article 14, paragraph 1; article 22, paragraph 1; and article 26 of the Covenant. The Covenant and the Optional Protocol entered into force for the State party on 23 March 1976.

1.2 On 23 July 2012, pursuant to rule 94, paragraph 2, of the Committee's rules of procedure, the Committee decided to join the five communications for decision in view of their substantial factual and legal similarity.

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\* The following members of the Committee participated in the examination of the present communication: Mr. Yadh Ben Achour, Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Ahmad Amin Fathalla, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Mr. Walter Kälin, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Mr. Gerald L. Neuman, Mr. Michael O'Flaherty, Sir Nigel Rodley, Mr. Fabian Omar Salvioli, Mr. Marat Sarsembayev, Mr. Krister Thelin and Ms. Margo Waterval.

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

**The facts as submitted by the authors**

2.1 The authors were all employees of the National Training Service (SENA), which is part of the Ministry of Social Protection, and were working in different centres and regional offices around the country. As career public servants, their tenure was guaranteed except in the event of unsatisfactory performance, misconduct or other legally established grounds.

2.2 Decrees Nos. 248, 249 and 250, issued on 28 January 2004, made changes to the structure of SENA that entailed the abolition of the authors' posts and the adoption of a new staffing structure. The decrees established that the posts available within the new structure would be assigned by the Director General of SENA on the basis of internal organizational considerations, service requirements and the organization's plans and programmes.

2.3 On 28 February 2004, 70 public servants, including a number of the authors, resolved to establish the Union of Employees and Workers of SENA (SINDETRASENA). Several other authors joined the union in the days that followed. On 1 and 4 March 2004, the Cundinamarca Regional Directorate of Collective Labour Issues of the Ministry of Social Protection and the Human Resources Division of the Directorate General of SENA were informed of the union's establishment and approval was sought for the union's registration in the trade union register. Between 3 March and 23 April 2004, the union provided the Ministry of Social Protection with a list of its members. According to the authors, under Colombian law the union's founders and members benefited from trade union privileges (*fuero sindical*) until the union was registered, for a maximum period of six months. For this reason, they could not be dismissed, demoted or transferred without prior court approval.

2.4 On 19 March 2004, the Inspectorate of the Labour, Employment and Social Security Unit of the Cundinamarca Regional Labour Directorate of the Ministry of Social Protection ("the Inspectorate") issued a statement of objections to the registration application submitted by the union, accompanied by a list of clarifications and corrections that needed to be made to its internal rules. These included a request to amend one of the internal rules to provide that the national assembly of delegates should meet at least once every six months, as established by law. Also included was a reminder that the registration application must be accompanied by a copy of the internal rules authenticated by the secretary of the executive board. The trade union was given two months to make the corresponding corrections.

2.5 On 26 April 2004, the Director General of SENA informed the authors that their posts had been abolished and that they had not been allocated positions within the new staffing structure. Also on 26 April 2004, the Ministry of Social Protection rejected the application for the union's registration in the trade union register, stating, in its decision, that the union's registration had been requested after the date of the decrees announcing the reorganization of SENA and its new staffing structure and that, by introducing administrative restrictions and future obligations for the organization, it would cause unjustified harm to the organization. The decision also stated that the right to freedom of association was not absolute and that it should not be safeguarded in this case, especially since its purpose was being distorted with the sole aim of securing job stability and impeding the reorganization.

2.6 On 17 May 2004, the union filed a request for review of, and in the alternative an appeal against, the decision to refuse registration issued on 26 April 2004. On 29 June 2004, the Ministry of Social Protection upheld the contested decision.

2.7 In an injunction (*tutela*) issued on 8 July 2004, Bogotá Circuit Criminal Court No. 13 ordered the annulment of the decision to refuse the union's registration.

2.8 On 22 July 2004, in accordance with the injunction ruling, the Inspectorate issued a further statement regarding the registration application and again denied the union's registration.

2.9 On 12 August 2004, a request for review and, in the alternative, an appeal against the decision to refuse registration issued on 22 July 2004 were filed with the Ministry of Social Protection. On 16 September 2004, the Ministry granted the appeal request and referred the case to the Coordinating Council of the Ministry's Labour, Employment and Social Security Unit ("the Coordinating Council").

2.10 On 25 November 2004, the Coordinating Council upheld the decision to refuse registration, indicating that the relevant authority had rejected the application for union registration on 26 April 2004 because the union's internal rules contained provisions contrary to those of the Substantive Labour Code.

*Communication No. 1822/2008*

2.11 The authors — J.B.R., L.M.O.C., A.M.A.R., G.E.O.S. and B.E.L. — worked as secretaries at the regional office of SENA in the city of Cali in Valle del Cauca department.

2.12 On 3 May 2004, they submitted to the Directorate General of SENA a request for review of the administrative act abolishing the posts they occupied within the organization. They claimed that their dismissal was arbitrary, was not based on any technical studies, failed to respect their right to equal treatment and their status as career public servants, and arbitrarily favoured other persons in similar situations who were assigned to other posts. Furthermore, since, as founders or members of the union, they benefited from trade union privileges, their dismissal without prior court approval was in direct violation of their right to freedom of association and their right to exercise the corresponding activities. On 22 June 2004, the Directorate General of SENA ruled that, in accordance with its Decree No. 250, requests for review through government channels were not permissible since the contested act was established by peremptory decree of the President of the Republic in exercise of his powers.

2.13 On 22 and 23 June 2004, the authors filed administrative complaints with the Directorate General of SENA, citing a violation of trade union privileges and seeking reinstatement to their posts and the payment of back wages. On 14 July 2004, the Directorate General of SENA informed Ms. O.S. that since the trade union was established on 28 February 2004, after the decrees announcing the reorganization of SENA had been issued, "it can be concluded that the goal sought in establishing a new trade union was not to exercise the constitutional right to freedom of association, but to secure job stability in the reorganization process, in clear abuse of this right. This was the Ministry of Social Protection's understanding and for this reason ... it decided: Not to enter the trade union organization named ... 'SINDETRASENA' in the trade union register."

2.14 In the meantime, the authors petitioned the labour courts for reinstatement on the grounds of trade union privileges; their petition was found to be admissible on 23 August 2004. On 21 June 2005, Bogotá Circuit Labour Court No. 5 dismissed the request on the grounds that the Ministry of Social Protection had refused to register the union on 22 July 2004, that the refusal had subsequently been upheld by all the administrative authorities, and that it was not proven that the employer had been notified of the union's establishment and provided with a comprehensive list of founders and members. The authors appealed against the ruling. On 15 September 2005, Bogotá High Court upheld the lower court's ruling. While acknowledging that the employer was notified of the union's establishment and had received a list of founders and members, the High Court ruled that, since the union's registration had been refused on the grounds that the prerequisites established for

such purpose were not met, the union could not function or exercise any of its rights and the authors were not therefore protected by trade union privileges.

*Communication No. 1823/2008*

2.15 Ms. S.M.R.M. worked as an assistant in the Guajira regional office of SENA until 29 April 2004.

2.16 On 5 May 2004, she filed with the Directorate General of SENA a request for review of the administrative act that abolished the post she occupied on the grounds that her dismissal was arbitrary, was not based on any technical studies, failed to respect her right to equal treatment and her status as a career public servant, and arbitrarily favoured other persons in similar situations who were assigned to other posts. Furthermore, since, as a member of the union, she was protected by trade union privileges, her dismissal without prior court approval was in direct violation of her right to freedom of association and her right to exercise the corresponding activities. On 21 July 2004, she lodged an administrative complaint with SENA.

2.17 On 20 August 2004, the author, together with three other SENA employees, applied for reinstatement on the grounds of trade union privileges. On 25 September 2006, Bogotá Circuit Labour Court No. 10 dismissed the author's application, stating that the action was time-barred since the law established a maximum period of two months for filing claims invoking trade union privileges. The author appealed against the ruling. On 30 April 2007, Bogotá High Court ruled that the action was not time-barred but dismissed the application nonetheless. The High Court found that since the complainants were well informed about the SENA reorganization and other trade unions were active at the time the new union was formed, the establishment of SINDETRASENA had to be viewed as an attempt to secure job stability and protect its members from any redundancies that might result from the reorganization, and that this constituted an abuse of the right to freedom of association.

*Communication No. 1824/2008*

2.18 The authors — A.D.O., E.S.C., F.O.Q. and G.G.R. — worked as secretaries in the SENA regional office in the city of Cali in Valle del Cauca department.

2.19 On 3 May 2004, they filed with the Directorate General of SENA a request for review of the administrative act abolishing the posts that they occupied on the grounds that their dismissal was arbitrary, was not based on any technical studies, failed to respect their right to equal treatment and their status as career public servants, and arbitrarily favoured other persons in similar situations who were assigned to other posts. Furthermore, since, as founders or members of SINDETRASENA they were protected by trade union privileges, their dismissal without prior court approval was in direct violation of their right to freedom of association and their right to exercise the corresponding activities. On 22 and 28 June 2004, the Directorate General of SENA ruled that, in accordance with its Decree No. 250, requests for review through government channels were not permissible since the contested act was established by peremptory decree of the President of the Republic in exercise of his powers.

2.20 On 22, 23 and 25 June 2004, the authors filed administrative complaints with the Directorate General of SENA citing a violation of trade union privileges and seeking reinstatement to their posts and the payment of back wages. On 14 July 2004, the Directorate General of SENA informed Ms. D.O. that since the trade union was established on 28 February 2004, after the decrees concerning the reorganization of SENA had been issued, "it can be concluded that the goal sought in establishing a new trade union was not to exercise the constitutional right to freedom of association, but to secure job stability in the institutional reorganization, in clear abuse of this right. This was the Ministry of Social

Protection's understanding and for this reason ... [the Directorate General of SENA] resolved: Not to enter the trade union organization named ... 'SINDETRASENA' in the trade union register."

2.21 On 20 August 2004, the authors' request for reinstatement on the grounds of trade union privileges was accepted. On 19 January 2005, Bogotá Circuit Labour Court No. 3 granted protection (*amparo*) on the grounds of trade union privileges and ordered the authors' reinstatement to their posts and the payment of back wages, since they had been dismissed without prior court approval, as required in application of legal provisions concerning workers protected by trade union privileges. SENA appealed against the ruling. On 31 May 2005, Bogotá High Court overturned the lower court's ruling and dismissed the authors' application. The High Court found that since the trade union was formed after the promulgation of the decree announcing the abolition of posts in the reorganization of SENA and therefore after the authors became aware of this fact, the sole goal pursued in establishing the new union was to secure job stability for its members and prevent the employer from implementing the decision taken previously, and that this constituted an abuse of the right to freedom of association.

*Communication No. 1825/2008*

2.22 The authors — E.M.C.B., M.C.P.J. and R.S.S.N. — worked as a clerk, assistant and secretary, respectively, in the Nariño regional office of SENA.

2.23 On 24 June 2004, they filed administrative complaints with the Directorate General of SENA citing a violation of trade union privileges and seeking reinstatement to their posts and the payment of back wages.

2.24 On 24 August 2004, the authors filed a request for reinstatement on the grounds of trade union privileges since they had been dismissed without prior court approval. On 12 July 2005, Pasto-Nariño Circuit Labour Court No. 1 dismissed the request on the grounds that the Ministry of Social Protection had refused the union's registration on 22 July 2004, that the refusal had subsequently been upheld by all the administrative authorities and that, since the union did not therefore exist, it could not be invoked as a source of trade union privileges. The authors filed an appeal against the ruling with Pasto High Court. On 24 August 2005, the High Court ruled that the action was time-barred.

*Communication No. 1826/2008*

2.25 Mr. G.M.V. and Ms. N.C.P. worked as a clerk and assistant, respectively, in the SENA regional office in Cali in Valle del Cauca department.

2.26 On 3 May 2004, they filed with the Directorate General of SENA a request for review of the administrative act abolishing the posts they occupied on the grounds that their dismissal was arbitrary, was not based on any technical studies, failed to respect their right to equal treatment and their status as career public servants, and arbitrarily favoured other persons in similar situations who were assigned to other posts. Furthermore, since, as members of SINDETRASENA, they were protected by trade union privileges, their dismissal without prior court approval was in direct violation of their right to freedom of association and their right to exercise the corresponding activities. On 28 June 2004, the Directorate General of SENA ruled that, in accordance with its Decree No. 250, requests for review through government channels were not permissible since the contested act was established by peremptory decree of the President of the Republic in exercise of his powers. On 25 June 2004, they filed administrative complaints with the Directorate General of SENA, citing a violation of trade union privileges and seeking reinstatement to their posts and the payment of back wages. However, both claims were dismissed.

2.27 The authors then submitted a request for reinstatement on the grounds of trade union privileges. On 7 October 2005, Bogotá Circuit Labour Court No. 8 dismissed the request on the grounds that the Ministry of Social Protection had refused the union's registration on 22 July 2004, that the refusal had subsequently been upheld by all the administrative authorities and that, since the union did not therefore exist, trade union privileges could not be granted to its founders and members. Moreover, the purpose of privileges was to safeguard the existence of trade unions and the right to freedom of association and not under any circumstances to preserve workers' job stability. On 11 October 2005, the authors appealed against the ruling. On 31 January 2006, Bogotá High Court upheld the lower court's ruling.

2.28 The authors maintain that their communications comply with the admissibility criteria established under the Optional Protocol.

### **The complaint**

3.1 The authors claim that the facts described constitute a violation of article 2, paragraphs 2 and 3; article 14, paragraph 1; article 22, paragraph 1; and article 26 of the Covenant.

3.2 With regard to the right to freedom of association recognized in article 22, paragraph 1, of the Covenant, the authors maintain that the refusal by the Ministry of Social Protection to enter the union in the trade union register was arbitrary and in violation of their right to form and/or join the organization or organizations of their choice. The margin of discretion accorded to the State party cannot be extended so far as to prevent the authors from choosing which trade union or unions to join or from establishing or becoming members of a new union. Furthermore, it assumes compliance with legally established safeguards such as the trade union privileges of founders and members of new trade unions – precisely the safeguard that was violated when SENA decided to dismiss the authors without prior court approval. The authors further maintain that the purpose of the trade union is to safeguard members' interests and that preserving members' jobs is a legitimate interest. They assert that, according to the Constitutional Court, trade union privileges are established by the simple fact of the organization's foundation and must be respected by the employer while the registration process is under way, beginning from the date of notification of establishment and submission of the list of founders and members. Lastly, they contend that the legally established restrictions authorized in article 22, paragraph 2, of the Covenant are not applicable in this case, especially since paragraph 3 of the same article, invoking the relevant International Labour Organization (ILO) Convention, establishes heightened protection for freedom of association.

3.3 The authors maintain that the State party violated the right to equality before the courts and the right to a fair and public hearing by an independent and impartial tribunal, as established in article 14, paragraph 1, read in conjunction with article 2, paragraphs 1, 2 and 3. The court decisions that denied privileges in the context of the requests for reinstatement on the grounds of trade union privileges run counter to the law and previous Constitutional Court decisions, amount to a denial of justice and implicitly constitute a manifest violation of due process, judicial safeguards and equality before the law. The Ministry of Social Protection's erroneous interpretation of the injunction (*tutela*) issued on 8 July 2004, resulting in its refusal to register the union, was applied in violation of the right to due process, since it was based on a non-existent inconsistency between certain provisions of the union's internal rules, the Constitution and the law. It failed to take account of the fact that an injunction could have the effect of preventing the union from complying with requirements, extemporaneously reinstated a decision overturned by the court that issued the injunction, and allowed the employer to oppose the union's registration and act as judge and party in the proceedings even though, since SENA was affiliated to the Ministry of

Social Protection, the Ministry should not have been permitted to take decisions concerning the registration of a union composed of SENA employees.

3.4 In relation to the allegations of a violation of article 26 of the Covenant, the authors contend that the refusal by the Ministry of Social Protection to register the trade union cannot be justified under any of the specific grounds for refusal of registration established in Act No. 584. It therefore constituted a violation of the authors' right to join the union of their choice and, by extension, of the State party's obligations under article 26 of the Covenant, since the authors were not granted the protection that the Constitution and the law afford workers for the establishment of trade unions. They add that the Constitutional Court has ruled in similar cases that actions of this kind on the part of an administrative authority constitute a violation of the right to equality and non-discrimination.

3.5 The authors maintain that freedom of association is a human right that should be interpreted in light of the principles underlying the guarantee of fundamental rights and a restrictive interpretation of any limitation or prohibition. The ILO Governing Body's Committee on Freedom of Association and Committee of Experts on the Application of Conventions and Recommendations indicate that responsibility for the resolution of legal disputes concerning a restriction of the right to freedom of association lies with an independent authority – meaning, in the authors' opinion, the judiciary.

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

4.1 The State party submitted its observations on the admissibility of the communications in notes verbales dated 3 February 2009.

4.2 The termination of the authors' employment was a consequence of the reorganization of SENA which, as SENA is a State institution operating at the national level, was authorized by Act No. 790 of 2002. The posts occupied by the authors were abolished in the reorganization, in accordance with legal procedures and respecting the acquired rights established by law. The State party maintains that the constitutionality of Act No. 790 was verified by the Constitutional Court, which declared the Act enforceable in a ruling dated 1 October 2003. The Act, together with Act No. 489 of 1998, authorizes the abolition or merger of non-essential posts, in accordance with official labour regulations.

4.3 Decree No. 248 amending the nomenclature and classification of public service jobs within SENA, Decree No. 249 amending the organizational structure of SENA, and Decree No. 250 on workforce rationalization at SENA, were issued on 28 January 2004 following technical studies and after completion of the relevant legal processes. Subsequently, as required by law, the Director General of SENA issued decisions Nos. 647, 658 and 677 of 22, 23 and 26 April 2004, respectively, allocating posts to SENA staff. In deciding which SENA public servants should be given posts in the new organizational structure and which should be made redundant because their posts had been abolished, the Directorate General took into account objective, legally established criteria, such as the requirement to give priority to staff close to retirement, pregnant women and mothers and fathers who are heads of household. Any positions subsequently still available were assigned to career public servants who did not meet any of the aforementioned criteria.

4.4 The State party maintains that on 28 February 2004, after the publication of Decrees Nos. 248, 249 and 250 on the reorganization of SENA, a group of public servants who believed their posts to be among those due to be abolished formed the new trade union SINDETRASENA with the sole aim of securing the job stability afforded by trade union privileges, and that this constitutes an abuse of the right to form a trade union. It is incorrect to maintain that unionized workers were dismissed, since on the date on which the decrees concerning the reorganization and the abolition of jobs were issued, neither SENA nor any



other public body was aware that this trade union was going to be established. If the intent of the public servants concerned had been simply to join a trade union in order to exercise trade union rights, they could have joined one of three unions already active in SENA that were duly registered with the Ministry of Social Protection – the Union of Public Employees of SENA (SINDESENA), the Union of Public Sector Workers (SINTRASENA), and the Union of Employees and Workers of SENA (SETRASENA).

4.5 In addition, the trade union formed by these workers did not meet the legal prerequisites for registration in the trade union register of its constituent instrument, internal rules and executive board, as was established by the Ministry of Social Protection in its decision to deny trade union registration dated 22 July 2004. In similar cases the Constitutional Court has found that forming trade unions for purposes other than to guarantee the right to freedom of association, including for the purpose of obtaining trade union privileges and preventing termination of employment, is unconstitutional.<sup>1</sup>

4.6 The communication is inadmissible due to a failure to exhaust domestic remedies, as provided for in article 2, paragraph 2 (b), of the Optional Protocol. In the action for reinstatement on the grounds of trade union privileges in which the authors claimed to have been unilaterally dismissed without prior court approval, in rulings issued on 31 May 2005 (1824/2008), 15 September 2005 (1822/2008), 31 January 2006 (1826/2008) and 30 April 2007 (1823/2008), Bogotá Judicial District High Court ordered their reinstatement either to their previous post or to a similar one and the payment of all back wages due since their dismissal. However, in a ruling on appeal issued on 24 August 2005 (1825/2008), Pasto High Court dismissed the applications in accordance with the law and without violating any of the authors' rights. Subsequently, J.B.R. and B.E.L. (1822/2008) and A.D.O., E.S.C., F.O.Q. and G.G.R. (1824/2008) applied to the Administrative Court for restitution of their rights and annulment of the decision that removed them from their posts, seeking their reinstatement within the workforce. These applications were under consideration at the time the State party submitted its observations. E.M.C.B. and R.S.S.N. (1825/2008) filed similar applications, which were dismissed by the Administrative Court on 18 May and 13 November 2007 respectively. Subsequently, in September 2008, the latter application was upheld on appeal.

4.7 If the authors considered the decisions issued by the high courts of Bogotá and Pasto judicial districts to be in violation of their right of access to justice, due process and equality before the law and their right to freedom of association, they could have applied for an injunction (*tutela*) or for protection of their constitutional rights (*amparo*).<sup>2</sup> Injunction proceedings are an appropriate and effective remedy for seeking protection of the aforementioned rights.<sup>3</sup>

4.8 The communication is inadmissible even if the authors are considered to have exhausted all domestic remedies since it is an attempt to use an international body as a level of jurisdiction (“court of fourth instance”) in addition to those available under the domestic legal system. The State party recalls that the Committee cannot substitute its views for decisions issued by the domestic courts after evaluating the facts and the evidence of a

<sup>1</sup> The State party refers to Constitutional Court ruling T-077 of 5 February 2003.

<sup>2</sup> Constitution, article 86: “Any person may apply for an injunction (*tutela*) to claim before the courts, at any time and in any place, through a preferential and summary proceeding instituted by themselves or another party acting on their behalf, immediate protection for their fundamental constitutional rights whenever any of those rights are violated or threatened by the action or omission of any public authority ...”.

<sup>3</sup> The State party refers to Constitutional Court rulings T-31 of 2001, T-029 of 2004, and T-1108 of 2005, which involved applications for *amparo* in relation to the right to freedom of association and the right to trade union protections.

given case unless it is proven that the conduct of the courts was manifestly arbitrary or amounted to a denial of justice.

5. The Committee asked the authors to submit their comments regarding the State party's observations on the admissibility of the communication on 9 February 2009, 11 February 2010, 20 December 2010 and 4 August 2011 but has received no information in this connection.

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

#### *Consideration of admissibility*

6.1 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 Covenant.

6.2 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.

6.3 With regard to the requirement to exhaust domestic remedies, the Committee notes the State party's contention that the communications do not meet the requirements of article 5, paragraph 2 (b), of the Optional Protocol and should therefore be declared inadmissible. The Committee notes the information provided by the State party in relation to the applications for annulment and restitution of rights that some of the authors filed with the Administrative Court to challenge the decision that removed them from their posts and which were under consideration when the State party submitted its observations on 9 February 2009. The Committee also notes the State party's contention that the communications should be declared inadmissible on the grounds of failure to exhaust domestic remedies since, after the High Courts of Bogotá and Pasto judicial districts issued rulings dismissing the applications for reinstatement on the grounds of trade union privileges, the authors could have initiated either injunction (*tutela*) or *amparo* proceedings. According to the State party, injunction proceedings are an appropriate and effective remedy for seeking protection for the rights of access to justice, due process and equality before the law and the right to freedom of association. The Committee notes that the authors did not contest the State party's observations regarding the suitability and efficacy of injunction proceedings in their case.

6.4 The Committee recalls that for the purposes of article 5, paragraph 2 (b), of the Optional Protocol, in addition to ordinary judicial and administrative appeals, the authors should also avail themselves of all other judicial remedies, in order to meet the requirement of exhaustion of all available domestic remedies, insofar as such remedies appear to be effective in the given case and are de facto available to them.<sup>4</sup> Therefore, in the absence of an explanation from the authors to demonstrate that, in their case, this remedy was not available or was not effective, the Committee concludes that the authors have not exhausted all domestic remedies.

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<sup>4</sup> See communication No. 433/1990, *A.P. v. Spain*, decision on admissibility adopted on 25 March 1994, para. 6.2; communication No. 1003/2001, *P.L. v. Germany*, decision on admissibility adopted on 22 October 2003, para. 6.5; communication No. 1188/2003, *Riedl-Riedenstein v. Germany*, decision on admissibility adopted on 2 November 2004, para. 7.2; communication No. 1747/2008, *Marielle Boisvert v. Germany*, decision on admissibility adopted on 19 March 2010, para. 7.3.

7. The Committee therefore decides:

(a) That the communications are inadmissible under article 5, paragraph 2 (b), of the Optional Protocol;

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

[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.]

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