



**International Covenant on
Civil and Political Rights**

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Human Rights Committee

Communication No. 1612/2007

**Decision adopted by the Committee at its 109th session
(14 October to 1 November 2013)**

<i>Submitted by:</i>	F. B. L. (not represented by counsel)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Costa Rica
<i>Date of communication:</i>	17 October 2006 (initial submission)
<i>Date of adoption of decision:</i>	28 October 2013
<i>Subject matter:</i>	Enforcement of a judgement (<i>exequatur</i>) issued by a foreign court
<i>Procedural issues:</i>	Insufficient substantiation of claims
<i>Substantive issues:</i>	Right to a fair trial, right to an effective remedy
<i>Articles of the Covenant:</i>	2; paragraphs 1-3; 3; 5; 14, paragraph 1; and 16
<i>Articles of the Optional Protocol:</i>	2

Decision on admissibility*

1. The author of the communication is Mr.F.B.L., a Colombian national born on 5 September 1956, who claims to be victim of a violation by Costa Rica of articles 2, paragraphs 1–3; 3; 4; 5; 14, paragraph 1; and 16, of the Covenant. The author is not represented by counsel.

The facts as presented by the author

2.1 The author owned a fishing company called *Incamar Ltda* that was registered at the port of Buenaventura, Colombia. A suit was brought against the author for failing to meet a financial obligation. As a result, in December 1989 a boat identified as *Puri* belonging to the company was seized, and in January 1990 it was placed in the custody of a court official pending the outcome of the proceedings. In 1995 and 1996, respectively, the Second Civil Circuit Court of Cali and the Popayán High Court ruled in favour of the author and ordered the return of the boat and payment of damages inflicted upon the boat, as well as compensation for loss of profits. Subsequently, the author unsuccessfully tried to enforce the Court of Cali's judgment in Colombia, through several applications filed before the Popayán High Court, the Administrative Court of Valle del Cauca, the Administrative Division of the Council of State, and the Constitutional Court¹.

2.2 At the end of 2005, the author and his family moved to Costa Rica. On 4 November 2005, the author filed an application before the Supreme Court of Costa Rica against the Republic of Colombia, for enforcement of the judgement (*exequatur*) of the Popayán High Court of 1996. The author requested the State Party's Supreme Court to order the return of the boat identified as *Puri* within the terms of the ruling of the Second Civil Circuit Court of Cali, and the payment of damages by USD 138,348,104.52.

2.3 On 8 March 2006, the Supreme Court rejected the author's application. It held that Costa Rica had no jurisdiction to deal with the matter, given that the judgment in question had been handed down by a Colombian court, which had absolute and sovereign authority to enforce it; that under the principle of jurisdictional immunity, the State party's courts could not examine disputes in which one party was a sovereign State, and, thus, his application did not fall under the grounds established by article 46 of the Code of Civil Procedure.

2.4 On 3 April and 24 July 2006, the author applied to the Supreme Court of Costa Rica for reconsideration. On 23 August 2006, the Supreme Court upheld its decision of 8 March 2006.

The complaint

3.1 The author claims to be the victim of a violation by Costa Rica of articles 2, paragraphs 1–3; 3; 4; 5; 14, paragraph 1; and 16, of the Covenant.

* The following members of the Committee participated in the examination of the present communication: Mr. Yadh Ben Achour, Mr. Lazhari Bouzid, Mr. Ahmad Amin Fathalla, Mr. Cornelis Flinterman, Mr. Walter Kaelin, Ms. Zonke Zanele Majodina, Mr. Khesoe Parsad Matadeen, Mr. Gerald L. Neuman, Sir Nigel Rodley, Mr. Victor Manuel Rodríguez-Rescia, Mr. Fabian Omar Salvioli, Ms. Anja Seibert-Fohr, Mr. Yuval Shany, Mr. Konstantine Vardzelashvili and Ms. Margo Waterval.

¹ See a detail description of the facts concerning the applications submitted by the author before Colombia's courts in communication No. 1611/2007, *Bonilla v. Colombia*, Views adopted on 26 July 2011.

3.2 The author argues that by rejecting his application for enforcement of the judgement of the Popayán High Court against the Republic of Colombia, the Supreme Court breached article 2, paragraphs 1, 2 and 3, of the Covenant, as domestic remedies in the State party were ineffective to have the Colombian judicial decision that granted him a restitution and compensation right enforced.

3.3 He also claims a violation of article 3 of the Covenant, since his right to equality before the law was not respected.

3.4 Given that the State party demonstrated through its judicial proceedings that it was not willing to comply with international treaties' obligations to which it is a party to, it has also violated article 5 of the Covenant.

3.5 As to article 14, paragraph 1, the author submits that the decision of the Supreme Court rejecting his requests constitutes unequal treatment before the courts and amounts to denial of justice.

3.6 The author claims a violation of article 16 of the Covenant on the grounds that the State party's judicial authorities did not recognize him as a person before the law.

Issues and proceedings before the Committee

4.1 Before considering any claim contained in a communication, the Human Rights Committee must determine whether it is admissible under the Optional Protocol to the International Covenant on Civil and Political Rights.

4.2 The Committee notes that the author's claims are related to facts occurred in Colombia which the Committee fully examined in its Views on Communication No. 1611/2007². It also notes that the author does not provide any substantiation of his claims under the articles of the Covenant in invoked by him. Further, the Committee observes that the author's application for enforcement of the judgment (*exequatur*) of the Popayán High Court was considered and rejected twice by the State party's Supreme Court; and that the author's allegations against these decisions relate primarily to the application of Costa Rican domestic legislation. In this respect, the Committee recalls its jurisprudence, according to which it is incumbent on the courts of States parties to evaluate the facts and evidence in a specific case, or the application of domestic legislation, unless it can be shown that such evaluation or application was clearly arbitrary or amounted to a manifest error or denial of justice.³ On the basis of the materials submitted by the author, including the Supreme Court's rulings, the Committee is not in a position to conclude that the Supreme Court acted arbitrarily or that its decisions entailed a manifest error or denial of justice. The Committee considers, therefore, that the author has failed to sufficiently substantiate his claims of violation of articles 2, paragraphs 1–3; 3; 4; 5; 14, paragraph 1; and 16, of the Covenant and that the communication is therefore inadmissible under article 2 of the Optional Protocol.

5. The Human Rights Committee therefore decides:

- (a) That the communication is inadmissible under article 2 of the Optional Protocol;
- (b) That the decision be transmitted to the State party and to the author.

² See communication No. 1611/2007, *Bonilla v. Colombia*, Views adopted on 26 July 2011.

³ See communications No. 1616/2007, *Manzano and others v. Colombia*, decision adopted on 19 March 2010, para. 6.4, and No. 1622/2007, *L.D.L.P. v. Spain*, decision adopted on 26 July 2011, para. 6.3.

[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.]
