



International Covenant on Civil and Political Rights

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Human Rights Committee

Decision adopted by the Committee under the Optional Protocol, concerning communication No. 2122/2011^{*,**}

<i>Submitted by:</i>	M.A.B. (represented by Ignacio de Casas and Ignacio A. Boulín Victoria, Centro Latinoamericano de Derechos Humanos)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Argentina
<i>Date of communication:</i>	6 August 2010 (initial submission)
<i>Document references:</i>	Special Rapporteur's decision under rules 92 and 97, transmitted to the State party on 19 December 2011 (not issued in document form)
<i>Date of decision:</i>	30 March 2016
<i>Subject matter:</i>	Conduct of the judicial investigation in a criminal case
<i>Substantive issues:</i>	Access to effective judicial remedy; unfair trial
<i>Procedural issues:</i>	Abuse of the right of submission; lack of substantiation of claims
<i>Articles of the Covenant:</i>	2 (3) and 14
<i>Articles of the Optional Protocol:</i>	2 and 3

* Adopted by the Committee at its 116th session (7-31 March 2016).

** The following members of the Committee participated in the consideration of the present communication: Mr. Yadh Ben Achour, Mr. Lazhari Bouzid, Ms. Sarah Cleveland, Mr. Ahmed Amin Fathalla, Mr. Olivier de Frouville, Mr. Yuji Iwasawa, Ms. Ivana Jelić, Mr. Duncan Muhumuza Laki, Ms. Photini Pazartzis, Sir Nigel Rodley, Mr. Víctor Manuel Rodríguez-Rescia, Mr. Dheerujall B. Seetulsingh, Mr. Yuval Shany, Mr. Konstantine Vardzelashvili and Ms. Margo Waterval. Pursuant to rule 90 of the Committee's rules of procedure, Committee member Mr. Fabián Omar Salvioli did not participate in the consideration of the communication.



1. The author of the communication is M.A.B., an Argentine national of full age. The author claims that the State party has violated his rights under article 2 (3), read in conjunction with article 14, of the Covenant. The author is represented by counsel.¹

The facts as submitted by the author

2.1 The author's son, Jorge Luis Bonetto, served as an officer in the Mendoza police force and was 22 years old at the time of his death. On 2 November 1999, he was found with a bullet wound to the head, in a street in Luján de Cuyo, Mendoza province, Argentina, 50 metres from the house of a woman with whom he was having a relationship. He was at once taken to the Regional Clinic and then to the Central Hospital, where he died on 9 November 1999.

2.2 The Fifth Examining Court of Mendoza (Court No. 5) was placed in charge of investigating the death of the author's son. Initially, an expert report by Mendoza police concluded that he had committed suicide because of relationship problems. The judicial authorities registered the case as "suicide".

2.3 The author joined the proceedings as a private plaintiff. He claims that, as a result of his action, the judicial authorities reclassified the case as a "criminal inquiry".

2.4 The author alleges that police officer R.L. conducted an investigation into his son's death. According to this officer, the author's son had been murdered because he had been investigating alleged motorcycle trafficking involving the father of the person with whom he was having a relationship. The author also contends that, as a result of his involvement in the case, the Chief of the Police Homicide Division, Deputy Superintendent M.C. threatened to kill officer R.L., while the Chief of Police of Mendoza threatened to have her committed to a psychiatric hospital. The officer was forced to take sick leave for 45 days, and her parents received threats.

2.5 As a result of the investigations conducted by officer R.L., the Police General Security Inspectorate undertook an administrative inquiry, in the course of which 13 police officers of various ranks were investigated. The findings of that inquiry, which were referred to the Disciplinary Board, recommended that four police officers should be suspended for 20 days and one for 35 days, on the grounds that they had intentionally breached the principles of police conduct, because, among other things, on arrival at the scene of the events, they had failed to cordon off the area, had erased evidence and had spent over four hours searching a flat, while at the time they did so there were already other police officers present in the building. Nevertheless, the Disciplinary Board did not sanction any of them.

2.6 The author alleges that he tried unsuccessfully to expedite the judicial investigation and that, as a result, he received death threats and had to request protection from the police station in Dorrego (Guaymallén, Mendoza). According to the statement of two police officers in charge of the author's protection, the latter was subjected to persecution and intimidation; for example, one of the police officers stated that on 10 October 2000 he had observed that vehicles of the Investigation Division of the Provincial Police of Mendoza were following the author suspiciously. Also some witnesses received threats.

2.7 On 29 December 2000, Court No. 5, under Judge M.P., decided to close the judicial investigation for lack of evidence. The court drew up a file of the collected evidence, including statements by several persons, the expert's report on the firearm found at the scene, the report of the autopsy carried out on the body by members of the Forensic and Criminal Medical Unit, the report of officer R.L. and the crime reconstruction report; it

¹ The Optional Protocol to the International Covenant on Civil and Political Rights entered into force for the State party on 11 November 1986.

concluded that it had been demonstrated that the author's son had a relationship with a woman, and that, as a result of a rift in the relationship, he had committed suicide; and that there was no indication that any third parties had been involved. In addition, the Court ordered the removal of the police protection granted to the author.

2.8 On 28 March 2001, the author filed an appeal for annulment of the decision and a request to reopen the case before Court No. 5. The author alleged, among other things, that the decision was not duly substantiated in accordance with the rules of sound judgment and that there was evidence showing that the conclusion on which the closure of the case had been based was wrong. The Public Legal Service requested the rejection of the author's appeal for annulment on the grounds that the decision of Court No. 5 was duly substantiated.

2.9 On 11 April 2001, Judge M.P., of Court No. 5, rejected the annulment plea lodged by the author. The Court found that there had been no failure to comply with safeguards that might have vitiated the decision to close the case, since that decision was based on a reasonable assessment of different forms of evidence available in the case, such as a visual inspection of the scene, expert reports, technical reports and statements by witnesses. The author alleges that he subsequently managed to have some additional evidence admitted before Court No. 5 and that no further proceedings have taken place, at least since 11 April 2003, for no apparent reason.

2.10 The author alleges that as a result of the administrative inquiry against the police officers, the First Examining Court of Mendoza opened an investigation for the offence of concealment or suppression of evidence. However, the case was dismissed and closed on 11 September 2003.

2.11 With regard to the requirement laid down in article 5 (2) (b) of the Optional Protocol, the author alleges that the authorities never issued a final decision that could be appealed by the author. Unlike a decision to dismiss or to acquit, a decision to close a case is a form of termination of a criminal investigation that is not final, i.e., it does not prevent a judge or prosecutor from reopening the case if new evidence becomes known after the decision to close the case has been taken. The criminal investigation into the death of his son fell under a mixed legal regime, as it was governed partly by the old Code of Criminal Procedure, adopted under Act No. 1908, and partly by the new Code, adopted under Act No. 6730. While under both Acts the closure of a case was provided for on the same grounds (when the act does not constitute an offence or when the case cannot proceed any further), under Act No. 1908, which is applicable in the case of the author's son, the plaintiff could not challenge the judge's decision to close the case; only the prosecutor could do so.

2.12 With regard to the delay in submitting the communication, the author maintains that he did not approach the Committee earlier for security and health reasons. The author reiterates that he was the subject of threats during the police and judicial investigation, which is why he was granted police protection; that other witnesses were also threatened; and that after the case of his son's death had been closed, he continued to receive threats until 2009. He adds that these threats were related to a complaint which the author filed against Superintendent C.O.C., who was one of the persons leading the investigation into his son's death. Moreover, the author suffered serious health problems on account of this situation. On 19 April 2005, he underwent heart surgery, in the course of which he had six coronary bypasses; he subsequently suffered three heart attacks and finally a cardiologist certified that he had a disability of more than 80 per cent for any type of work.

The complaint

3.1 The author claims that the State party has violated his rights under article 2 (3), read in conjunction with article 14, of the Covenant.

3.2 The author made efforts to expedite the judicial investigation into the death of his son. However, the acts or omissions of the authorities amount, in practice, to a denial of justice. The author argues that the State party is under an obligation to take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to provide the victim with adequate compensation.

3.3 In the case of his son's death, the criminal investigation could not proceed on account of lack of diligence in the police investigation. The judge of Court No. 5 decided to close the case on the grounds that the judicial investigation lacked evidence as a result of an inadequate police investigation. The lack of diligence on the part of the judicial authorities deprived the author of access to an effective judicial remedy, which would have clarified the causes of his son's death and punished those responsible.² The author contends that certain facts and evidence pointed to the conclusion that the cause of his son's death had not been suicide. In particular, the paraffin gunshot residue test found no traces of gunpowder on either of his son's hands; according to the statement of the doctor who attended his son, the latter had no burn mark on the head (Fish ring), as there would have been in the case of suicide by gunshot to the head; although when he was attended by doctors he only had a minimum of brain matter on the head, practically no brain matter was found at the scene of the event; no blood stains were found on the walls despite the narrowness of the passageway; and the projectile that had been fired was never found, which would be illogical in view of the path of the shot and tightness of the space. In addition, the first witness stated that there was no smell of gunpowder; another witness stated that, according to the doctor who attended the author's son, the bullet had entered on the left side and emerged on the right side of his head, which was impossible, inasmuch as he used the gun with his right hand; and none of the 10 witnesses within 50 metres of where the body was found heard the gunshot.

3.4 Purely disciplinary and administrative remedies cannot be deemed to constitute adequate and effective remedies within the meaning of article 2 (3) of the Covenant, in the event of particularly serious violations of human rights, such as an alleged violation of the right to life.³ Therefore, the authorities are bound ex officio to investigate and punish those responsible for human rights violations. The investigation must be carried out within a reasonable time, effectively, impartially and diligently, in accordance with due process and judicial safeguards. In order to fulfil its obligation to investigate and punish those responsible, the State party must, among other things, remove all the de facto and de jure obstacles that maintain impunity; use all available means to expedite the investigation and judicial proceedings; and grant guarantees of adequate safety to victims, investigators, witnesses, human rights defenders, judicial employees, prosecutors, judges, magistrates and all other judicial personnel.⁴

² The author refers to article 8 of the Universal Declaration of Human Rights, article 13 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination, as well as principles 4 and 16 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions.

³ The author refers to the Committee's jurisprudence with regard to communications No. 563/1993, *Bautista de Arellana v. Colombia*, Views of 27 October 1995, para. 8.2.; No. 612/1995, *Vicente et al. v. Colombia*, Views of 29 July 1997, para. 8.2; and No. 778/1997, *Coronel et al. v. Colombia*, Views of 24 October 2002, para. 6.4.

⁴ The author refers to the jurisprudence of the Inter-American Court of Human Rights, in particular to the *Case of the Massacre of Mapiripán v. Colombia*, Judgment of 15 September 2005; the *Case of the*

3.5 The author did not have access to effective judicial protection, insofar as the authorities did not provide the protections and safeguards to which any complainant is entitled under due process. All the author's efforts to expedite the investigation were thwarted. As a result of his participation in the criminal proceedings as a private plaintiff he received threats to his life, which was why he was given personal police protection.

3.6 The author asks the Committee to establish the international responsibility of the State party and to recommend, as measures of non-recurrence, the removal of judge M.P., of Court No. 5, and a just solution to his case.

State party's observations on admissibility

4.1 On 24 October 2012, the State party submitted its observations on the admissibility of the communication. It contends that the communication should be declared inadmissible because an unreasonable time elapsed between the date of exhaustion of domestic remedies and the submission of the communication to the Committee, which affects the exercise of the right of defence of the State party.

4.2 The State party submits that, in the documents transmitted by the Committee, there is no record of the date of the initial submission of the communication and that only the date of receipt of a subsequent correspondence from the author of 21 June 2011 is mentioned. Taking the latter date as reference and the fact that the last action in the proceedings in relation to the death of his son took place in April 2003, more than eight years elapsed before the author formalized his complaint before the Committee.

4.3 Although the Optional Protocol does not set a deadline for the submission of communications to the Committee, in the author's case, the delay was unreasonable. The submission of a complaint within a reasonable time is a standard principle of law. The State party adds that delays in the submission of a communication can make it more difficult for the State party to respond adequately. Nevertheless, when the author was invited to explain the reasons for this delay, he simply invoked reasons of personal safety and health.

Author's comments on the State party's observations on admissibility

5.1 On 25 December 2012, the author replied to the State party's observations on the admissibility of the communication. The author maintains that his initial communication was submitted on 6 August 2010 and that this is the date that must be taken into account, even though there had been subsequent submissions in order to expand information and/or clarify certain points, at the request of the Committee.

5.2 The reasonableness of the time period between April 2003 and August 2010, which was over seven years, must be examined by the Committee in the light of the particular circumstances of the case and taking into account the fact that the Optional Protocol does not establish any deadline for the submission of the complaint. The author reiterates that he was not in a position to submit the communication any earlier owing to the situation of threats and insecurity to which he was exposed, which put his life at risk, and his fragile state of health. As a result, he could only submit the present communication when the risk and fear had diminished.

5.3 Although the submission of a communication within a reasonable time is a rule which is derived from general principles of law, the specific nature of international human rights law requires that the reasonableness in this case be seen from the point of view of the pro persona principle and not that of the right of defence of the State party. The fact that the delay may have made it more difficult for the State party to respond adequately does not

Ituango Massacres v. Colombia, Judgment of 1 July 2006; and the *Case of the Massacre of La Rochela v. Colombia*, Judgment of 11 May 2007.

ipso facto lead to the inadmissibility of the communication, even more so considering that it was the State party itself, by act or omission, which added to the complainant's delay.

5.4 The author requests the Committee to find a violation of his and his son's rights and to recommend that the State party should, among other things, provide the following reparations: compensation for the harm suffered as a result of his efforts to expedite the judicial investigation, for the effects on his health and for the death of his son of 60,000, 80,000 and 350,000 Argentine pesos, respectively. As measures of non-recurrence, the conduct of the judge of Court No. 5 and judicial independence in general should be investigated and the case reopened. As measures of satisfaction, the author requests that his son should be granted police honours for his death on active service, and that the State party should recognize its international responsibility.

State party's observations on the merits

6.1 On 11 February 2013, the State party submitted its observations on the merits and reiterated its view that the communication should be declared inadmissible. Even if the Committee should consider the author's communication to be admissible, the facts presented do not disclose a violation of the Covenant.

6.2 Initially, the death of the author's son was investigated as an act of suicide, but the authorities later decided to reclassify the investigation and facts as a "criminal inquiry" concerning J.L.B.

6.3 Article 2 (3) of the Covenant establishes the right to an "effective remedy" in order to ensure protection of the rights and freedoms set out therein. However, unlike article 25 of the American Convention on Human Rights, it does not refer explicitly to a judicial remedy, but only requires States parties to provide an effective remedy, regardless of its judicial or administrative nature.

6.4 The judicial proceedings were conducted within the existing legal framework and observed judicial safeguards. The author's efforts within the framework of the investigations were not hindered by the judicial authorities, insofar as in the course of the judicial proceedings several evidence gathering and procedural measures were ordered and carried out, whose results served as a basis for the decision of Court No. 5.

6.5 The case file contained the investigation report of the Mendoza police, various expert reports and pieces of evidence, including in particular the expert report which concludes that it could be assumed that the death of the author's son had been caused by suicide. On the other hand, the report of officer R.L. supported the theory of homicide. In the light of this theory, the judge summoned a number of witnesses mentioned in the report; nevertheless, he concluded that their statements did not contribute any further information that might have supported the theory of officer R.L., and thus alter the finding of the expert report. Furthermore, the expert report prepared by the crime reconstruction expert also noted that the causes of death of the author's son were solely and exclusively related to a case of suicide or self-elimination through the use of the son's service firearm.

6.6 The judge finally concluded that the death of the author's son was due to suicide through the use of a firearm, without the intervention of third parties; and he therefore considered that the facts did not constitute an offence and that he should close the case.

6.7 With regard to the alleged irregularities committed by police personnel involved in the investigation, the State party maintains that an administrative investigation was conducted by the General Security Inspectorate of the Ministry of Justice and Security of the province of Mendoza, in order to establish any possible responsibility on the part of the police officers. In the course of those administrative proceedings, the investigator

recommended a suspension of up to 35 days in some cases. However, the Disciplinary Board decided not to apply sanctions to any police officer.

6.8 Through the present communication, the author expects the Committee in practice to act as a court of fourth instance and review the standard of proof used by the judicial authorities involved in the judicial proceedings. The State party maintains that it is not for an international human rights body to act as a court of fourth instance and to review rulings by the national courts.

Author's comments on the State party's observations on the merits

7.1 In a letter dated 13 May 2013, the author submitted comments on the merits of the communication. He reiterates that he suffered a violation of article 2 (3), read in conjunction with article 14, of the Covenant. The rights set forth in this article that protect the accused, by analogy, offer rights and safeguards to crime victims, enabling them to act as a private plaintiff and to expedite proceedings.

7.2 Despite all the author's efforts to expedite the criminal investigation into his son's death, the case was closed by the judge of Court No. 5 on 29 December 2000, without any possibility of challenging or appealing this decision. In this respect, he contends that when the human rights violation is, at the same time, the result of an act considered to be a criminal offence, the victim is entitled to an effective judicial investigation in order to identify the perpetrators and impose the appropriate sanctions.

7.3 Purely disciplinary and administrative remedies cannot be deemed to constitute adequate and effective remedies within the meaning of article 2 (3) of the Covenant, in the event of particularly serious violations of human rights, especially when violation of the right to life is alleged.

7.4 The State party's comments refer to some of the items of evidence produced during the investigation, while omitting others that indicate that the death of the author's son was not a suicide. In this respect, the author reiterates that the investigation was flawed and that the actions of the authorities detracted from the effectiveness of the investigation, as reflected in the administrative proceedings against the police officers, which recommended that five police officers should be penalized for breaching the principles of police conduct.

7.5 With regard to the comments of the State party to the effect that the communication is intended to place the Committee in the position of a court of fourth instance, the author affirms that the Committee is competent to declare a communication admissible if the complaint is related to a judgment by a national court that was issued without due process of law or that appears to violate any other right guaranteed by the Covenant. In the present case, the Court judgment in question was issued disregarding due process, which constituted a violation of the right to an effective remedy and the right to participate in the proceedings as a plaintiff and showed the failure of the authorities to identify and punish those responsible for the death of his son, thereby leading to a violation of article 2 (3), read in conjunction with article 14 (1), of the Covenant.

7.6 The author maintains that he did not have access to an effective remedy or to fair treatment or an effective process, and that he is a victim on account of the manifest failure of the State party to investigate the events.⁵ Because it was concluded that his son had committed suicide, he was unable to collect life insurance, since the insurance policy included an exclusionary clause in the event of suicide.

⁵ The author refers to the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by the General Assembly on 16 December 2005.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 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 case is admissible under the Optional Protocol to the Covenant.

8.2 As required under article 5 (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.

8.3 The Committee notes the author's allegations that Court No. 5 opened a case with regard to the circumstances of his son's death; that he joined the proceedings as a private plaintiff; that, on 29 December 2000, Court No. 5 decided to close the judicial investigation for lack of evidence showing the commission of an offence; that, subsequently, on 11 April 2001, the same Court also rejected an appeal for annulment and a request to reopen the case submitted by the author; and that, under Act No. 1.908 governing the proceedings in question, the plaintiff could not challenge the decision to close the case file, which could only be appealed by the prosecutor. The Committee notes that the State party did not question the admissibility of the communication on the grounds of the failure to exhaust domestic remedies. Consequently, the Committee considers that there is no obstacle to the admissibility of the communication under article 5 (2) (b) of the Optional Protocol.

8.4 The Committee notes the State party's argument that the communication should be declared inadmissible because an unreasonable time elapsed between the date of exhaustion of domestic remedies and the submission of the communication to the Committee, which affects the State party's right of defence. The Committee also notes the author's claims that the Optional Protocol does not establish any deadline for the submission of communications and that he could not approach the Committee earlier owing to serious health problems and security reasons. The Committee recalls that, according to its jurisprudence, there may be an abuse of the right of submission where an exceptionally long period of time has elapsed between the exhaustion of domestic remedies and the submission of the communication, without sufficient justification, in which case the communication is inadmissible under article 3 of the Optional Protocol.⁶ In the present case, the Committee notes that the author submitted the communication to the Committee on 10 August 2010,⁷ more than nine and seven years since the closure of the case by Court No. 5 and the last action in the proceedings, respectively; that during the judicial investigation, the author enjoyed police protection; and that the protection was withdrawn by order of Court No. 5 on 29 December 2000. Furthermore, the State party has not contested the author's allegation that he continued to receive threats until 2009 owing to the complaint he had submitted against the superintendent who was leading the investigation into his son's death. Therefore, in the particular circumstances of this case, the Committee considers that the present communication does not constitute an abuse of the right of submission.

8.5 The Committee notes the State party's arguments that, through the present communication, the author expects the Committee to act as a court of fourth instance and to review the standard of proof used by the judicial authorities; that, in the proceedings

⁶ See communications No. 1849/2008, *M.B. v. Czech Republic*, decision on admissibility adopted on 29 October 2012, para. 7.4; No. 1615/2007, *Bohuslav Zavrel v. Czech Republic*, Views adopted on 27 July 2010, para. 8.6; No. 1434/2005, *Fillacier v. France*, decision on admissibility adopted on 27 March 2006, para. 4.3; and No. 787/1997, *Gobin v. Mauritius*, decision on admissibility adopted on 16 July 2001, para. 6.3.

⁷ At the time the communication was submitted, the Committee's rules of procedure in force were those set out in CCPR/C/3/Rev.8 of 22 September 2005.

conducted by Court No. 5, several evidence gathering and procedural measures were ordered and carried out, whose results served as a basis for the decision to close the case; that the author's efforts within the framework of the investigations were not impeded; and that the judicial authorities concluded that the death of the author's son was due to suicide through the use of a firearm, without the intervention of third parties. The Committee also notes the author's allegations that the actions or omissions of the authorities constituted a denial of justice and a violation of his rights under article 2 (3), read in conjunction with article 14, of the Covenant, on the grounds that any attempt to expedite the investigation into the circumstances of his son's death was hindered, and that he even received death threats; that Court No. 5 closed the case concerning the death of his son, despite the fact that certain facts and evidence indicated that the death of his son had not been a suicide; and that the lack of diligence of the police investigation affected the outcome of the judicial investigation.

8.6 The Committee notes that the death of the author's son was the subject of judicial proceedings before Court No. 5, which considered various pieces of evidence and conducted procedural formalities; that the author took an active part in the proceedings as a private plaintiff; that, in response to his allegations of threats, the authorities provided him with police protection until the date on which the closure of the case was ordered; that, although the law in force did not allow the author to challenge the decision to close the case, he did submit an appeal for annulment against that decision before Court No. 5, which was dismissed by Court No. 5, *inter alia*, in response to the dismissal request by the Public Legal Service; and that, since the decision to close the case was not final, procedural action continued after that date, without a decision being taken to reopen the case. In these circumstances, the Committee finds that the author has not sufficiently substantiated his allegation that he was deprived of access to an effective judicial remedy. Moreover, his allegations to the Committee of a violation of the Covenant relate primarily to the evaluation of facts and evidence by the courts of the State party. The Committee recalls its jurisprudence, according to which it is for the courts of States parties to evaluate the facts and the evidence in each 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.⁸ The Committee has examined the materials submitted by the author, and considers that these materials do not show that the decision of Court No. 5 suffered from such defects. The Committee therefore considers that the author has not sufficiently substantiated his claim of a violation of article 2 (3), read in conjunction with article 14, of the Covenant, and that the communication is therefore inadmissible under article 2 of the Optional Protocol.

9. The Committee therefore decides:

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

⁸ See communication No. 1616/2007, *Manzano et al. v. Colombia*, decision adopted on 19 March 2010, para. 6.4; and communication No. 1622/2007, *L.D.L.P. v. Spain*, decision adopted on 26 July 2011, para. 6.3.