



# International Covenant on Civil and Political Rights

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## Human Rights Committee

### Views adopted by the Committee under article 5 (4) of the Optional Protocol concerning communication No. 2537/2015\*, \*\*, \*\*\*

<i>Communication submitted by:</i>	Andrés Felipe Arias Leiva (represented by counsel, Mr. Víctor Javier Mosquera Marín)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Colombia
<i>Date of communication:</i>	11 August 2014
<i>Document references:</i>	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 21 January 2015 (not issued in document form)
<i>Date of adoption of Views:</i>	27 July 2018
<i>Subject matter:</i>	Conviction of former Minister at sole instance by the highest judicial body
<i>Procedural issues:</i>	Exhaustion of domestic remedies; abuse of the right of submission; insufficient substantiation of the complaint
<i>Substantive issues:</i>	Right to due process; right to a hearing by a competent, independent and impartial tribunal; right to be presumed innocent; right to have a conviction and sentence reviewed by a higher tribunal; equality before the law; right to take part in the conduct of public affairs and right to be elected
<i>Articles of the Covenant:</i>	7; 9 (1)–(4); 10 (1); 11; 14 (1), (2), (3) (a), (b) and (c), (5), (6) and (7); 15; 16; 17; 18; 19; 25; and 26
<i>Articles of the Optional Protocol:</i>	2, 3 and 5 (2) (b)

\* Adopted by the Committee at its 123rd session (2–27 July 2018).

\*\* The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Sarah Cleveland, Ahmed Amin Fathalla, Olivier de Frouville, Christof Heyns, Bamariam Koita, Marcia V.J. Kran, Mauro Politi, José Manuel Santos Pais, Yuval Shany and Margo Waterval.

\*\*\* The text of an individual opinion by a Committee member is appended to the present Views.



1.1 The author of the communication is Mr. Andrés Felipe Arias Leiva, a Colombian citizen born in 1973. He claims that the State party has violated his rights under articles 7; 9 (1)–(4); 10 (1); 11; 14 (1), (2), (3) (a), (b) and (c), (5), (6) and (7); 15; 16; 17; 18; 19; 25; and 26 of the Covenant. The author is represented by counsel. The Optional Protocol entered into force for the State party on 23 March 1976.

1.2 On 21 January 2015, the Committee, acting through its Special Rapporteur on new communications and interim measures, decided not to issue a request for interim measures to protect the author under rule 92 of the Committee’s rules of procedure.

1.3 On 23 March 2015, the State party submitted its observations on admissibility and asked the Committee to consider the admissibility of the communication separately from its merits. On 24 June 2015, the Committee, acting through its Special Rapporteur on new communications and interim measures, decided to refuse the State party’s request that the admissibility of the communication be considered separately from its merits.

1.4 On 20 April 2016, the Committee, acting through its Special Rapporteur on new communications and interim measures, pursuant to rule 92 of its rules of procedure, decided to ask the State party to consider taking protective measures to prevent any act of harassment or threats against the life or physical integrity of the author’s lawyer, by reason of his involvement with the communication, while the communication is being considered by the Committee.

#### **The facts as submitted by the author**

2.1 From 2005 to 2009, the author served as Minister of Agriculture and was responsible for an agricultural subsidies programme called Agro Ingreso Seguro (AIS). For the administration and oversight of the programme, the author entered directly into several technical and scientific cooperation agreements with the Inter-American Institute for Cooperation on Agriculture. At some unspecified point in time, certain irregularities in the administration of the AIS programme came to light.

2.2 The author claims that, on 9 March 2010, the Technical Investigation Corps of the Attorney General’s Office concluded that the author had committed no criminal acts. On 19 August 2010, the General Comptroller’s Office reached the same conclusion in relation to the same facts.

2.3 On 12 April 2010, the General Comptroller’s Office opened a preliminary investigation into irregularities in the administration of the AIS programme involving alleged misappropriation of State funds and subsidies. The irregularities apparently had tax implications. However, on 10 August 2010, the General Comptroller’s Office decided to discontinue this preliminary investigation.

2.4 According to the author, on 13 October 2010, Ms. V.M., who at the time was working as a journalist at a radio station, made negative comments about the author’s case and his possible criminal liability in respect of the alleged mismanagement of the AIS programme. Ms. V.M. was subsequently appointed Attorney General of the Nation. Before being officially informed of the duties she was to assume, the Attorney General had taken an active role in the criminal proceedings against the author. However, she did not recuse herself for having already expressed an opinion about his case.

2.5 In July 2011, the Counsel General’s Office imposed administrative disciplinary sanctions upon the author in relation to the irregularities that had occurred while he was in charge of the AIS programme.

2.6 On 21 July 2011, as part of an investigation prompted by a complaint lodged in 2009, the Attorney General’s Office instituted proceedings against the author, as a former Minister, before Bogotá High Court. On 16 September 2011, the Attorney General filed a written indictment against the author before the Supreme Court on charges of entering into an agreement without complying with the legal requirements and embezzlement by appropriation, in accordance with articles 410 and 297 of the Criminal Code (Act No. 599 of 2000). On 12 October 2011, the Attorney General formally indicted the author on these offences and requested that he be placed in pretrial detention. The author claims that the public hearing was conducted in a theatre; that the audience applauded the announcement

of the pretrial detention order; and that the Attorney General disclosed information including his telephone numbers and his family address. As a result, his wife and children began receiving threatening telephone calls and, two days after the hearing, items were stolen from his home by criminals claiming to work for the Attorney General's Office.

2.7 The author was held in pretrial detention by order of Bogotá High Court. He applied to the Court for release on three occasions, each time without success, as the Court ruled that the author might attempt to influence the testimony of witnesses in the case. The author claims that the Attorney General's Office used delaying tactics to ensure his continued detention and forged and falsified the items of evidence that were used against him.

2.8 The author claims that the Supreme Court judge who presided over his trial attempted to arbitrarily accelerate the start of the trial, without allowing the parties sufficient time to evaluate the evidence and prepare the defence. The author asserts that he asked the Supreme Court to respect the timeline allowed him by law for the preparation of his defence.

2.9 On 14 June 2013, Bogotá High Court ordered that the author's pretrial detention be terminated and that he be released.

2.10 In October 2013, the Ministry of the Interior assessed the risks to the author and his family, declaring them to be at "extraordinary risk". The author claims that, against this backdrop, fearing for his life and that of his family, he decided to leave the country. He travelled to the United States of America on 14 June 2014.

2.11 On 13 June 2014, 48 hours before the presidential elections, the Supreme Court announced that the author would be convicted for irregularities in the administration of the AIS programme. The author claims that details of his conviction were leaked to the media.

2.12 On 17 July 2014, the Supreme Court sentenced the author to a prison term of 209 months (17 years and 5 months) and a fine of Col\$ 30,800,000,000 for embezzlement by appropriation and contracting without meeting legal requirements. In addition, the Court ordered that the author's civil rights should be restricted for the same duration as the main sentence and that he should be barred from holding public office, as set out in article 122 of the Constitution, as amended by Legislative Act No. 01 of 2004.<sup>1</sup> The sentence stated that no appeal against the judgment was possible. The author claims that only five of the eight Supreme Court judges were present throughout the criminal proceedings.

2.13 In August 2014, the author applied for political asylum in the United States for himself and his family.

### **The complaint**

3.1 The author submits that the State party violated his rights under articles 7; 9 (1)–(4); 10 (1); 11; 14 (1), (2), (3) (a), (b) and (c), (5), (6) and (7); 15; 16; 17; 18; 19; 25; and 26 of the Covenant.<sup>2</sup>

3.2 The author submits that his prolonged and unjustified pretrial detention and the conditions of his indictment hearing (para. 2.6) constituted cruel, inhuman and degrading treatment, contrary to articles 7 and 17 (1) of the Covenant.

3.3 In relation to article 9 (1)–(4) of the Covenant, the author claims that his right to freedom and security was violated by the acts described in the preceding paragraph, especially when the pretrial detention order was issued against him without there being any grounds to justify such a measure. The author's pretrial detention was unjustified, and was

<sup>1</sup> Article 1 of Legislative Act No. 01 of 2004 stipulates that the fifth paragraph of article 122 of the Constitution shall read as follows: "Without prejudice to any other penalties that the law may establish, any persons who have, at any time, been convicted of offences involving State assets shall not be permitted to: put themselves forward as candidates for elected office; be elected or appointed as public servants; or enter into, either personally or through an intermediary, contracts with the State."

<sup>2</sup> The communication does not substantiate the claims under articles 11, 16, 18 and 25; it simply invokes these articles.

not necessary in his case. The author further submits that he was charged with offences against the State administration and that such offences are not considered serious under any legal system. His requests for repeal of the pretrial detention order were arbitrarily refused by the judicial authorities.

3.4 The author claims a violation of his right to equality before the courts and his right to a fair hearing under article 14 (1) of the Covenant. He did not receive the same treatment as other defendants in the proceedings, as he was the only one held in pretrial detention for “many months”. His sentence was not commensurate with the gravity of the offence and other defendants accused of the same offences received less severe sentences. There was no equality of arms during the criminal proceedings as the prosecution was generally given more opportunity to prepare and present evidence than the accused’s defence team. The defendant did not have adequate time and facilities for the preparation of his defence. The author also claims that the Attorney General was not impartial; there were conflicts of interest originating from earlier personal issues with the author’s lawyer and she had expressed a view on the author’s case when working as a journalist at a radio station. Furthermore, the head Supreme Court judge, who oversaw the trial and drafted the verdict, had attempted to recuse herself at the start of the trial, citing a conflict of interest in that she was one of the victims in a separate criminal trial under way against other members of the government of ex-President Uribe concerning alleged surveillance of Supreme Court judges. However, the Supreme Court refused her request and she continued to lead the trial, even drawing up the sentence.

3.5 The author maintains that his right to be presumed innocent under article 14 (2) was also violated, since the Attorney General had expressed an opinion on the author’s case before taking up her position, while working as a journalist. He considers that the inclusion of his case in the 2011 management report of the Attorney General’s Office under the heading “high-impact cases” also violated his right to be presumed innocent. In addition, the Supreme Court did not duly assess and evaluate the evidence presented during the trial; it convicted the author despite the fact that his conduct did not conform to the definition of embezzlement and he did not enter into contracts without meeting the legal requirements.

3.6 The author also claims that he did not have adequate time and facilities for the preparation of his defence, in violation of article 14 (3) (b) of the Covenant. A report issued by the Criminal Investigation Police on 9 March 2010, which states that the Technical Investigation Corps of the Attorney General’s Office had concluded that the author did not engage in irregular activity, was not admitted in evidence by the Supreme Court. The Supreme Court also refused the author’s request that a handwriting test be carried out with a view to contesting a document admitted as evidence. The President also refused to provide the author with copies of the records of meetings of the Council of Ministers at which the AIS programme was discussed.

3.7 The author claims that he was not tried without undue delay, in violation of article 14 (3) (c) of the Covenant.

3.8 The author claims that the criminal proceedings against high-ranking officials heard by the Supreme Court, at sole instance, as provided for in article 235 of the Constitution, violated article 14 (5) of the Covenant. In his case, the author had no opportunity to appeal against the conviction and sentence handed down by the Supreme Court in its judgment of 17 July 2014.

3.9 The author also alleges that the State party violated his rights under article 14 (6) in that, in the absence of any judge or court to which an appeal could be submitted, there was no other authority able to set aside his conviction at a later stage.

3.10 The author alleges that he was tried twice for the same acts in violation of article 14 (7) of the Covenant. In July 2011, the Counsel General’s Office imposed administrative sanctions on the author for irregularities in the AIS programme that occurred while he was Minister. However, although responsibility was attributed to him, no criminal intent was established. The same events were subsequently the subject of criminal proceedings before the Supreme Court which ended with his conviction. The author adds that other public bodies had concluded that there was no evidence to substantiate his alleged criminal liability. For example, the Attorney General’s Office initially dismissed suggestions that the

author could be held criminally liable for irregularities identified in the disbursement of subsidies under the AIS programme, the General Comptroller's Office shelved the preliminary investigation and, in proceedings brought against the legal adviser to the Ministry, in which the author was not a party, Cundinamarca Administrative Court concluded that the scientific and technological cooperation agreements were not unlawful.

3.11 In relation to article 15 of the Covenant, the author claims that he was sentenced for acts or omissions that were not offences and that no criminal liability could be established under article 32 (10) (1) of the Criminal Code. The scientific and technological cooperation agreements were concluded on the basis of established practice in the Ministry of Agriculture and among the relevant legal and technical experts. Accordingly, any error on the author's part would be of the kind that precluded any criminal liability. Even if this were not the case, his actions would constitute negligence and, in the absence of any criminal intent, he would not be subject to criminal penalties. Therefore, he was convicted of acts or omissions that were not criminal offences.

3.12 The author also maintains that he is a victim of a violation by the State party of his rights under articles 19 (1) and 26 of the Covenant, in that the criminal proceedings brought against him were part of a campaign of persecution led by the current Government of Colombia and motivated by his political opinions and his opposition to the peace process between the Government and the Fuerzas Armadas Revolucionarias de Colombia (Revolutionary Armed Forces of Colombia, known as FARC). He claims that the authorities were persecuting individuals who might potentially be candidates for the presidential elections held on 15 June 2014. He was singled out for these same reasons, and was prevented from exercising his civil and political rights, including the right to appeal against the conviction and sentence pronounced against him by the Supreme Court.

3.13 Lastly, the author claims that all these facts constitute a violation of his right to human dignity under article 10 (1) of the Covenant.

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

4.1 In a note verbale dated 23 March 2015, the State party set forth its observations on the admissibility of the communication and requested the Committee to declare it inadmissible.

4.2 The State party maintains that the communication sets forth a distorted, biased and inaccurate account of the facts, as well as value judgments and subjective interpretations of legal fundamentals. With regard to the facts of the case, the State party indicates that, in response to a complaint filed in 2009, and in accordance with article 251 of the Constitution, on 21 July 2011, the Attorney General's Office instituted charges against the author, in his capacity as former Minister of Agriculture and Rural Development, before Bogotá High Court. On 12 October, the Attorney General's Office formally indicted the author before the Criminal Cassation Chamber of the Supreme Court, which was hearing the author's case.

4.3 The Attorney General's Office requested that the author be placed in pretrial detention since the evidence suggested that he was likely to obstruct justice. On 21 July 2011, after a public hearing at which the author and the Counsel General were present, Bogotá High Court, as the court responsible for ensuring due process, ordered that the author be placed in pretrial detention. On 14 June 2013, the judicial authorities reversed this order on the grounds that the prosecution had prepared its evidence and the risk of obstruction of justice therefore no longer existed. The author continued to appear in court but, although he had been summoned, he failed to attend the hearing at which the Supreme Court's judgment was read out. He also failed to appear at subsequent hearings before the Supreme Court and, as of the date on which the State party's observations were submitted to the Committee, he had not come forward to serve his sentence.

4.4 The State party provides a detailed description of the relevant sections of the Constitution, legal provisions and case law relating to the jurisdiction applicable to government ministers and criminal investigations and trials carried out by the Criminal Chamber of the Supreme Court. The case law of national courts indicates that trials of public officials before the Supreme Court do not disregard due process and that the right to

review by a second instance is not absolute, since this right is not one of the core elements of the right to due process. Exceptions may be made to this principle provided that they are reasonable and proportional and respect the right to equality and substantive due process.<sup>3</sup>

4.5 Neither the Covenant nor any other human rights treaties establish a requirement for a second hearing in criminal proceedings for high-ranking officials with parliamentary immunity. States parties enjoy a wide margin of discretion in shaping procedures and designing effective mechanisms for the protection of rights and there is no absolute requirement for a second criminal hearing in trials involving high-ranking officials. The trial of such officials by the highest body in criminal matters is in itself a full guarantee of due process. The State party maintains that an unequivocal requirement for a “second instance” cannot be deduced from the wording of article 14 (5) of the Covenant since the wording actually used in the text is a “higher tribunal”. The reference to a “higher tribunal” can be interpreted as meaning that the case must be heard by a court endowed with higher academic and professional qualities in order to ensure a correct evaluation of the issues before it.

4.6 In the author’s case, on 17 July 2014, the Criminal Chamber, as sole instance, convicted him of offences of embezzlement for third parties’ benefit and entering into contracts without meeting the legal requirements. The criminal proceedings were not politically motivated. In its indictment, the Attorney General’s Office affirmed that the author, as Minister of Agriculture, had failed to conform to the principles and standards that govern contractual agreements entered into by the State when preparing and formalizing three agreements with the Inter-American Institute for Cooperation on Agriculture within the framework of which funds were illegally disbursed to private individuals, causing a depletion of State assets. The Supreme Court’s judgment was limited to establishing whether or not the author was criminally liable; it did not consider the purpose or significance of the AIS programme.

4.7 During the trial before the Supreme Court, all fundamental safeguards enjoyed by the author, as a defendant, were respected. For example, in order to guarantee his right to a defence, on 16 May 2012, the Criminal Chamber annulled the order implemented immediately after the pretrial hearing and set the date of the oral proceedings for 14 June 2012. At the indictment hearing, on 12 October 2011, two Supreme Court judges, including the lead judge, sought to recuse themselves from the decision as to the point of the trial from which the number of representative of the victims should be restricted in order to bring the size of the prosecution team into line with the size of the defence team. The recusal request was based on the fact that the two judges had petitioned for *amparo* against a decision adopted by the Criminal Chamber in a trial against two public officials working for the office of the President who were accused of illegal surveillance and wiretapping of various persons, including Supreme Court judges, in which they had been recognized as victims. However, the Criminal Chamber refused the recusal request, finding that there was no direct or indirect correlation between this earlier decision and the case against the author to be decided by the two judges, among others. Furthermore, during the proceedings the author made no reference to the possibility that there may be grounds for the judges’ recusal.

4.8 The conviction and sentence handed down against the author did not constitute a violation of the *non bis in idem* principle. Although the author was subject to tax-related, disciplinary and criminal investigations for conduct related to the administration of the AIS programme, the purpose, aim and scope of these investigations differed from those of the criminal proceedings. In addition, the facts were not exactly the same.

4.9 The sentence handed down against the author by the Supreme Court is not disproportionate, and reflects the application not of discretionary criteria but of the legally established guidelines for determining individual criminal liability, as detailed by the Supreme Court in its judgment. The other persons facing criminal charges, who received more lenient sentences, were rewarded for having cooperated with the judicial authorities

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<sup>3</sup> The State party refers to Constitutional Court rulings C-142 of 1993, C-591 of 1996, C-545 of 2008, C-650 of 2001 and C-254A of 2012.

and agreeing to prompt conclusion of their trials, both of which can result in significant sentence reductions.

4.10 Article 339 of the Code of Criminal Procedure provides that, during the indictment hearing, the parties may raise any issues that might constitute an obstacle to the involvement of certain officials. However, in the criminal proceedings against the author, none of the parties indicated that the Attorney General might be in a situation of conflict of interest. Furthermore, the Attorney General delegated her duties to Supreme Court Public Prosecutor No. 10, who represented the Attorney General's Office during both the pretrial hearing and the trial.

4.11 The author had every opportunity to submit evidence in the criminal proceedings. However, pursuant to article 359 of the Code of Criminal Procedure, the parties and participants may ask the judge to exclude items of evidence deemed unlawful, or to reject them or declare them inadmissible, should, for example, such evidence be purposeless, repetitive, intended to corroborate known facts or for other reasons unnecessary. The author also had the time necessary to prepare his defence. The pretrial hearing consisted of 12 sessions, held between 14 December 2011 and 14 May 2012. During this period, the author requested, and obtained, a stay of proceedings until he received replies to numerous requests for information and documents. The author's defence team was actively involved in the hearing and thus able to ensure that the rights of all parties and participants were respected. The documents presented in evidence during the trial, most of which were in the public domain, were obtained and submitted in accordance with due process and were subject to challenge. All evidence collected was duly evaluated by the Supreme Court, as is reflected in the extensive and meticulous consideration accorded them in the ruling.

4.12 The author's requests for copies of the records of meetings of the Council of Ministers and for one of the witnesses to undergo a handwriting test were made during the due process hearing, and the judicial authorities duly considered the reasons for the requests, their pertinence and their expediency.

4.13 The Supreme Court did not at any time order the author's pretrial detention; as the court before which the due process hearing was held, Bogotá High Court bore exclusive responsibility for such decisions, and for their suspension or revocation.

4.14 The State party contends that the author is seeking to have the Committee act as an appeal court for matters – notably his criminal liability – that have already been duly settled before the Supreme Court, because he disagrees with the outcome of the trial and the sentence handed down against him. The communication should therefore be declared inadmissible under article 2 of the Optional Protocol.

4.15 The State party considers that the communication constitutes an abuse of the right of submission and is therefore inadmissible under rule 96 of the Committee's rules of procedure. It refers in detail to specific passages and submits that the communication contains false, distorted, incomplete and unclear information, as outlined above (paras. 4.2–4.13).

4.16 The communication does not meet the admissibility requirement established in article 5 (2) (b) of the Optional Protocol. The author had several means of challenging the sentence handed down by the Supreme Court, such as applying for judicial review of executory Supreme Court judgments under article 192 of the Code of Criminal Procedure, applying for *amparo* as provided for in the Constitution or applying for legal proceedings to be declared null and void on the grounds that evidence was unlawful, the judge was not competent and fundamental guarantees were violated under articles 455 to 458 of the Code of Criminal Procedure.

4.17 The State party refers to the observations made in the preceding paragraphs and maintains that the author's allegations of a violation of his rights under the Covenant are manifestly unfounded.

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

5.1 On 19 April and 16 and 17 July 2015, the author submitted his comments on the State party's observations. He notes that his communication meets the admissibility criteria

established in the Optional Protocol and reiterates the claims made in his initial communication.

5.2 He repeats his allegation that the criminal proceedings against him constituted a violation of article 14 (5) of the Covenant. The remedies mentioned by the State party (para. 4.16) do not provide for a substantive review of a conviction and sentence. A request for review cannot be submitted against this type of Supreme Court judgment.<sup>4</sup> An *amparo* petition is not an effective avenue of redress because the provisions stipulating that persons with parliamentary immunity must be tried before the Supreme Court, as sole instance, have constitutional rank, and it is not possible to petition a judge for protection of a right that is not recognized in the Constitution itself. Moreover, article 181 of the Code of Criminal Procedure states only that cassation appeals may be used to challenge “rulings handed down in second-instance proceedings”. Judicial reviews are an extraordinary remedy and, as such, do not provide for decisions to be challenged during the trial but rather only once the trial is over and new evidence is identified, there is a change in case law, or some other new point comes to light that justifies a review of the deliberations but does not constitute a challenge to definitive judgments already handed down.

5.3 The rules governing criminal proceedings brought against high-ranking government officials with parliamentary immunity before the Supreme Court, in sole instance, without any possibility of the conviction and sentence being submitted for review to a higher court, violate article 26 of the Covenant by denying this right to certain government officials.

5.4 The proceedings brought against the author, and in particular the actions of the Attorney General’s Office, were politically motivated.

5.5 The author did not request the recusal of the lead Supreme Court judge on grounds of conflict of interest. However, this does not mean that no such conflict existed. Furthermore, the Supreme Court itself refused the judge’s recusal request. A number of the other Supreme Court judges involved in different stages of the proceedings should also have disclosed a conflict of interest as they were in the same situation as the lead judge.

5.6 The fact that the hearing at which the indictment was read out and the pretrial detention order requested was held in a theatre constituted inhuman and degrading treatment for the author.

5.7 The author claims that his pretrial detention, which lasted for two years, “considerably exceeded the maximum time limits for such detention”.

5.8 The author claims that the evidence that he asked to have considered during the trial but which was not admitted by the Supreme Court was germane, relevant and useful.

5.9 With regard to the admissibility of the communication, the author points out that the Supreme Court’s ruling itself states that “no appeal is possible” against the verdict. Therefore, there is no adequate and effective remedy that might allow for his conviction and sentence by the Supreme Court, acting as sole instance, to be reviewed. The other remedies to which the State party refers are not adequate and effective either (para. 5.2).

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

6.1 On 21 October 2015, the State party submitted its observations on the merits of the communication and reiterated that the communication does not meet the admissibility criteria established in the Optional Protocol. In particular, the State party reiterated its arguments regarding the author’s failure to substantiate his allegations.

6.2 The State party reiterates that, in its view, the criminal proceedings instituted against the author before the Supreme Court do not constitute a violation of article 14 (5) of the Covenant.

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<sup>4</sup> The author refers to the Supreme Court judgment handed down in case No. 33054, of 19 January 2011, in which the Court indicated that such judgments are not subject to appeal and that “no challenge is admissible. Even requests for review are inadmissible.”



6.3 Likewise, neither the criminal trial nor the conviction and sentence handed down constitute a violation of the right to equality before the courts and before the law, as established in articles 14 (1) and 26 of the Covenant.

6.4 The author's detention was ordered in the context of criminal proceedings instituted against him by the judicial authorities, in accordance with the law. Therefore, this measure did not violate article 9 of the Covenant. The criminal proceedings also did not constitute a violation of article 7 of the Covenant. The sentence imposed on the author by the Supreme Court does not constitute a violation of his rights under article 15 of the Covenant.

#### **Author's comments on the merits**

7.1 On 3 December 2015, the author submitted comments on the merits of the communication and reiterated the allegations of Covenant violations that he had submitted previously.

7.2 With regard to article 14 (2) of the Covenant, the author adds that a prolonged period of pretrial detention can also have an indirect impact on the presumption of innocence.

7.3 There were inconsistencies between the factual events that formed the basis of the charges against him and those for which he was ultimately convicted, in violation of article 14 (3) (a) of the Covenant.

7.4 The criminal proceedings against him constituted a violation of article 11 of the Covenant.

7.5 The author alleges that he suffered a violation of his rights under article 16 of the Covenant since, together with his family, he was forced to leave the State party for security reasons and set up home in the United States of America. In 2014, the author applied to the State party's consulate in Miami, where consular staff treated the author in a demeaning manner and arbitrarily retained his passport in order to prevent him from completing the necessary formalities, thereby denying his right to be recognized as a person before the law.

7.6 The conviction and the sentence imposed on the author constitute a violation of his rights under article 25 of the Covenant, in that they bar him, for life, from being elected to public office or serving as a public official. Thus, he will not be permitted to stand as a candidate for election or directly to take part in the conduct of public affairs.

#### **Additional information**

8.1 By letters dated 15 July and 26 August 2016, 10 February and 12 June 2017, and 21 March 2018, the author informed the Committee that, on 24 April 2015, the Constitutional Court declared certain articles of the Code of Criminal Procedure which excluded the possibility of contesting all convictions before a functionally or hierarchically superior authority to be unconstitutional and urged Congress to introduce, within a year, comprehensive legislation establishing the right to challenge all convictions. Until such legislation was adopted, all convictions should have been understood to be challengeable.

8.2 As Congress failed to adopt any such legislation, on 22 April 2016 the author informed the Supreme Court that he was challenging the verdict reached against him on 17 July 2014.

8.3 On 28 April 2016, the Supreme Court issued a ruling stating that the Constitutional Court's order was applicable only to executory judgments issued after 24 April 2016. On 25 May 2016, the Supreme Court dismissed the author's petition.

8.4 On 18 January 2018, through Legislative Act No. 01 of 2018, the legislature of Colombia amended the Constitution to guarantee the right to a second hearing in criminal cases for government ministers.

8.5 In the light of this amendment to the Constitution, on 22 February 2018, the author filed an appeal to the Supreme Court. On 7 March 2018, a Supreme Court judge declared the appeal inadmissible.

9.1 On 12 June 2018, the State party submitted additional observations and reiterated its position that there was no violation of article 14 (5) of the Covenant.

9.2 With regard to the author's claims under article 25 of the Covenant, the State party maintains that the Supreme Court found that the author was criminally responsible for the offences of entering into contracts without meeting the legal requirements and embezzlement by appropriation, and ruled that he should be "barred from holding public office" in accordance with article 122 of the Constitution. The rights to take part in the conduct of public affairs and to be elected may be subject to limitations, provided that such limitation is established by law, objective, reasonable and proportional, as in the present case.

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

#### *Consideration of admissibility*

10.1 Before examining any claim contained in a communication, the Committee must decide, in accordance with rule 93 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

10.2 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.

10.3 The Committee takes note of the State party's arguments that the author has not exhausted all available domestic remedies because he had several means of challenging the conviction handed down by the Supreme Court on 17 July 2014 (para. 4.16). The Committee also takes note of the author's allegations that such remedies were not appropriate and effective (para. 5.2). The Committee notes that the Supreme Court decision stated that "no appeal" is possible against the judgment (para 2.12); that the State party has not explained how the remedies referred to in its observations could be effective in the author's case; and that these remedies do not provide for a substantive review of the conviction and sentence. Since the State party has not raised any objections regarding the exhaustion of domestic remedies in connection with the other specific claims made by the author, the Committee considers that the requirements of article 5 (2) (b) of the Optional Protocol are met.

10.4 The Committee notes the State party's argument that the communication should be declared inadmissible as an abuse of the right of submission (para. 4.15). The Committee points out, however, that the fact that the State party and the author of the communication disagree on the facts, the application of the law and the relevance of the jurisprudence of the domestic courts and the Committee does not, in itself, constitute an abuse of the right of submission.<sup>5</sup> Accordingly, the Committee considers that the communication does not constitute an abuse of the right to submission under article 3 of the Optional Protocol.

10.5 The Committee takes note of the author's allegations, under article 9 of the Covenant, that the State party violated his right to liberty and security. He maintains that the pretrial detention order against him was not justified; that his requests for the order's revocation were dismissed by Bogotá High Court; and that the duration of his detention exceeded the legally established maximum (paras. 3.3 and 5.7). The Committee also takes note of the State party's argument that the author's pretrial detention was ordered by the competent court and lasted for approximately one year and seven months, as permitted by law. The Committee notes that, on 21 July 2001, Bogotá High Court ordered the author's pretrial detention. According to the State party, this measure was taken at the request of the prosecution because there was a risk of obstruction of justice. However, the order was revoked on 14 June 2013 by the same court, on the grounds that the Attorney General's Office had completed its evidentiary work and that this risk no longer existed (paras. 4.3, 4.13 and 6.4). As the author has not disproved these arguments, the Committee considers that the claims under article 14 (1) of the Covenant have not been sufficiently substantiated

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<sup>5</sup> *F.A.H. et al. v. Colombia* (CCPR/C/119/D/2121/2011), para. 8.3.

for the purposes of admissibility and concludes that they are inadmissible under article 2 of the Optional Protocol.

10.6 The Committee takes note of the author's allegations that the State party violated his right to equality before the courts and before the law and his right to a fair trial, as established in articles 14 (1) and 26 of the Covenant, since he was not treated in the same manner as his co-defendants in the trial; that the sentence imposed by the Supreme Court was disproportionate; that there was no equality of arms between the defence and the prosecution during the trial; that the Attorney General had already expressed a view on his case; and that the lead Supreme Court judge was in a situation of conflict of interest (para. 3.4). The Committee also takes note of the State party's arguments that the criminal proceedings brought against the author followed the procedure used for trials involving citizens who, because of the duties they perform, as senior government officials, enjoy parliamentary immunity; that the lead judge sought to recuse herself only from the decision as to the point of the trial from which the number of representatives of the victims should be limited; that the Criminal Chamber of the Supreme Court refused to accept her recusal because it considered there to be no direct or indirect correlation between the case in which the judge was a victim and the author's case; and that the Attorney General delegated her duties to another prosecutor who took part in the preparatory hearing and the oral proceedings (paras. 4.4, 4.5, 4.7, 4.10 and 6.3). The State party also maintains that the sentence imposed is not disproportionate and is consistent with legally established sentencing guidelines, taking account of the author's status as a former senior official and as the highest authority of a State entity, and that the other co-defendants, who received more lenient sentences, were rewarded for cooperating with the judiciary and agreeing to early termination of their trials (para. 4.9). In view of the foregoing, the Committee concludes that the author has failed to sufficiently substantiate these claims for purposes of admissibility and therefore declares them inadmissible under article 2 of the Optional Protocol.

10.7 The Committee takes note of the author's claims under article 14 (2) and (3) (a), (b) and (c) of the Covenant that his right to be presumed innocent has been violated by the State party (para. 3.5); that he did not have adequate time and facilities for the preparation of his defence, since the authorities denied him access to evidence and the Supreme Court did not admit evidence essential for his defence; and that he was not tried without undue delay (paras. 3.6, 3.7, 5.8, 7.2 and 7.3). The Committee also notes the State party's observations that the author had access to all facilities needed to prepare his defence and submit evidence in the criminal proceedings, and that all evidence was duly evaluated by the judicial authorities (paras. 4.6, 4.11 and 4.12). The Committee notes that the author's allegations concerning the essential nature of the evidence that was not admitted and the alleged failure to try him without undue delay are insufficiently substantiated. Further, his allegations relate primarily to the evaluation of the facts and evidence conducted by the State party's courts. The Committee recalls its case law according to which it is incumbent on 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.<sup>6</sup> The Committee has examined the materials submitted by the parties, including the Supreme Court ruling, and considers that these materials do not show that the criminal proceedings against the author suffered from such defects. Accordingly, the Committee considers that the author has failed to provide sufficient substantiation of his claim of a violation of his right to a defence as enshrined in article 14 (2) and (3) (a), (b) and (c) of the Covenant and that the communication is therefore inadmissible under article 2 of the Optional Protocol.

10.8 The Committee takes note of the author's claims under article 14 (7) of the Covenant that he was tried twice for the same acts (para. 3.10). The Committee notes, however, that, from the information provided by the parties (para. 4.8), it is not possible to conclude that the penalties imposed upon the author by the Attorney General's Office, within the framework of disciplinary administrative proceedings, constitute punishment of a

<sup>6</sup> *Manzano et al. v. Colombia* (CCPR/C/98/D/1616/2007), para. 6.4, and *L.D.L.P. v. Spain* (CCPR/C/102/D/1622/2007), para. 6.3.

criminal nature. It recalls that the guarantee afforded under this provision of the Covenant applies to criminal offences only, and not to disciplinary measures that do not constitute punishment for a criminal offence within the meaning of article 14 of the Covenant.<sup>7</sup> Accordingly, the Committee considers that these claims have not been sufficiently substantiated for the purposes of admissibility and declares them inadmissible under article 2 of the Optional Protocol.

10.9 The Committee takes note of the author's allegations, under article 15 (1) of the Covenant, that he was convicted of acts or omissions that did not constitute criminal offences. The author contends that it was not proven in the course of the criminal proceedings that his conduct conformed to the constituent elements of the offences of which he was charged; that he committed an error of the kind that precluded criminal liability; and that his conduct was not wilfully culpable (para. 3.11). The Committee observes, however, that the author does not argue that the offences of which he was convicted by the Supreme Court (embezzlement by appropriation and contracting without meeting the legal requirements) did not exist at the time of the events. The Committee thus considers that the claims under article 15 (1) of the Covenant have not been sufficiently substantiated for the purposes of admissibility and concludes that they are inadmissible under article 2 of the Optional Protocol.

10.10 The Committee takes note of the author's allegations that the State party violated his rights under articles 7, 10 (1), 17 (1), 18, 19 and 26 of the Covenant in the manner in which some of the hearings were organized, in the alleged politically motivated nature of the criminal proceedings and the pretrial detention order issued against him, and in the consequences of the proceedings (paras. 3.2, 3.12, 3.13, 5.3, 5.4 and 5.6). The Committee considers that these claims are insufficiently substantiated for the purposes of admissibility and declares them inadmissible under article 2 of the Optional Protocol.

10.11 The Committee takes note of the author's general allegations that his rights under articles 11, 14 (6) and 16 of the Covenant were violated by the State party (paras. 3.1, 3.9, 7.4 and 7.5). However, in the light of the information before it, in particular the information provided by the author, the Committee notes that a violation of these rights cannot be inferred from the circumstances of the case and that these complaints are manifestly unfounded. Accordingly, the Committee concludes that these claims are inadmissible under article 2 of the Optional Protocol.

10.12 The Committee takes note of the author's allegations under articles 14 (5) and 25 of the Covenant (paras. 3.8, 5.2 and 7.6). The Committee also takes note of the State party's argument that the complaint should be declared inadmissible for lack of substantiation (paras. 4.17, 6.1 and 9.2). The Committee nevertheless considers that the author's allegations have been sufficiently substantiated for purposes of admissibility. The Committee therefore finds that the author's claims under articles 14 (5) and 25 are admissible and proceeds to examine them on the merits.

#### *Consideration of the merits*

11.1 The Committee has considered the present communication in the light of all the information made available to it by the parties, as provided under article 5 (1) of the Optional Protocol.

11.2 The Committee takes note of the author's allegation that the criminal proceedings against him constituted a violation of article 14 (5) of the Covenant since there is no mechanism that would have enabled him to appeal his sentence and apply to have the conviction and sentence handed down by the Supreme Court on 17 July 2014 reviewed by a higher tribunal (paras. 3.8 and 6.4). Given that the Constitutional Court had declared several articles of the Code of Criminal Procedure that excluded the possibility of contesting all convictions before a functionally or hierarchically superior authority, and also an amendment to the Constitution, to be unconstitutional, the author lodged two appeals

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<sup>7</sup> General comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 57.

challenging his conviction before the Supreme Court. These were declared inadmissible on 25 May 2016 and 7 March 2018 respectively (paras. 8.1, 8.3 and 8.5).

11.3 The Committee also notes the State party's argument that an absolute requirement for a "second instance" cannot be inferred from the wording of article 14 (5) of the Covenant, as the wording actually used in the text is a "higher tribunal"; that this wording can be interpreted in the sense that the reference to a "higher tribunal" means that the case must be heard before a court of the highest academic and professional calibre, which is thus able to guarantee a correct evaluation of the matters submitted for its consideration; that States parties enjoy broad discretion to determine procedures and design effective mechanisms for the protection of rights without being required to establish a second hearing in criminal cases involving senior officials enjoying parliamentary privilege; and that the fact that such persons, as high-ranking officials benefiting from parliamentary immunity, are tried before the court of highest instance for criminal matters is in itself a comprehensive guarantee of due process (paras. 4.4, 4.5 and 6.2).

11.4 The Committee recalls that article 14 (5) of the Covenant provides that everyone convicted of a crime has the right to have his or her conviction and sentence reviewed by a higher tribunal according to the law. The Committee recalls that the phrase "according to the law" is not intended to mean that the very existence of a right to review should be left to the discretion of the States parties. Although a State party's legislation may provide in certain circumstances for the trial of an individual, because of his or her position, by a higher court than would normally be the case, this circumstance alone cannot impair the defendant's right to have his or her conviction and sentence reviewed by a court.<sup>8</sup> In the present case, the State party has given no indication of the existence of any remedy that the author may use to apply to have his conviction and sentence reviewed by another court.<sup>9</sup> Accordingly, the Committee finds that the State party violated the author's rights under article 14 (5) of the Covenant.

11.5 The Committee takes note of the author's allegations that the Supreme Court's judgment of 17 July 2014 constitutes a violation of his rights under article 25 of the Covenant, since he is banned for life from being elected to public office or serving as a public official (para. 7.6).

11.6 The Committee recalls that article 25 of the Covenant recognizes and protects the right of every citizen to take part in the conduct of public affairs, the right to vote and to be elected, and the right to have access to public service. Whatever form of constitution or government is in force, the exercise of these rights by citizens may not be suspended or excluded except on grounds which are established by law and which are objective and reasonable.<sup>10</sup> The Committee also recalls that if conviction for an offence is a basis for suspending the right to vote or to stand for office, such restriction must be proportionate to the offence and the sentence.<sup>11</sup> The Committee further recalls that when this conviction is clearly arbitrary or amounts to a manifest error or denial of justice, or the judicial proceedings resulting in the conviction otherwise violate the right to a fair trial, it may render the restriction of the rights under article 25 arbitrary.<sup>12</sup>

11.7 The Committee observes that, on 17 July 2014, the Supreme Court found the author guilty of the crimes of embezzlement by appropriation and contracting without meeting

<sup>8</sup> *Terrón v. Spain* (CCPR/C/82/D/1073/2002), para. 7.4. See also general comment No. 32, paras. 45–47.

<sup>9</sup> The Committee also notes that the effects of the Constitutional Court ruling of 24 April 2015 that declared several articles of the Code of Criminal Procedure pertinent to the matter to be unconstitutional do not apply to the author's case, since, in a judgment of 28 April 2016, the Supreme Court found that the Constitutional Court provision was applicable only to executory judgments issued after 24 April 2016. Following the amendment of the Constitution through Legislative Act No. 001 of 2018, the author filed an appeal before the Supreme Court, which declared it inadmissible on 7 March 2018 (paras. 8.4 and 8.5).

<sup>10</sup> See general comment No. 25 (1996) on the right to participate in public affairs, voting rights and the right of equal access to public service, paras. 3 and 4.

<sup>11</sup> *Ibid.*, para. 14, and *Dissanayake v. Sri Lanka* (CCPR/C/93/D/1373/2005), para. 8.5.

<sup>12</sup> *Nasheed v. Maldives* (CCPR/C/122/D/2270/2013 and 2851/2016), para. 8.6.

legal requirements. Since the author was convicted of offences involving State assets, the Supreme Court also ordered that he should be barred from holding public office. The State party's observations do not refute the lifelong character of the ban. Rather, they maintain that such a restriction was imposed by the Supreme Court in fair judicial proceedings and that this measure is legal, objective, reasonable and proportional (para. 9.2). The Committee also observes that the Supreme Court ordered that the author's civil rights be restricted for the same duration as the main sentence (17 years and 5 months), and that the author has not contested this measure. Against this backdrop, the Committee must determine whether the lifelong suspension of the author's rights under article 25, which continues to apply after the main sentence has been served, is compatible with the Covenant. The Committee considers that States parties pursue a legitimate aim in combating acts of corruption and protecting the treasury, and therefore the public interest, for the purpose of preserving the democratic order. Thus, a State party may have a legitimate interest in restricting the access of persons convicted of crimes of corruption to public office. To this end, the State party may impose a lifelong suspension of the rights protected under article 25 of the Covenant only in the most exceptional cases, for serious crimes and when justified by the individual circumstances of the convicted person. Any such ban must be based on objective grounds and be foreseeable.<sup>13</sup> In this case, the Committee observes that the author was found guilty of the serious crimes committed by him in the exercise of his functions as Minister of Agriculture, the highest public official of the ministry in question, and that such crimes significantly affected the State's assets. Having established the criminal liability of the author, the Supreme Court automatically imposed a lifelong suspension of his rights under article 25 of the Covenant, in accordance with article 122 of the Constitution, as amended by Legislative Act No. 01 of 2004, which was in force at the time of the events in question (see footnote 1 above). The duration of this ban considerably exceeds that of the main sentence imposed on the author. The Committee observes that the ban provided for in article 122 of the Constitution is described in vague terms and is not subject to any time limit, and that the conditions for imposing such a ban are likewise referred to in such terms, thereby limiting their foreseeability. Moreover, in the light of the information made available to the Committee by the parties, the Committee observes that the Supreme Court did not conduct a meaningful individualized assessment of the proportionality of the restriction of the author's rights under article 25 of the Covenant. In the operative part of its judgment, which imposed the ban in question, the Court did not explicitly consider the specific circumstances of the serious crimes of which the author had been convicted. The Court likewise failed to sufficiently explain how the specific circumstances of the case justified the imposition of a lifelong suspension. In view of the foregoing, the Committee finds that the available information does not enable it to conclude that, in this case, the lifelong restrictions imposed on the author's rights under article 25 of the Covenant by the Supreme Court were proportional. Accordingly, the Committee concludes that the State party violated the author's rights under article 25 of the Covenant.

12. The Committee, acting under article 5 (4) of the Optional Protocol to the Covenant, is of the view that the facts before it disclose a violation of articles 14 (5) and 25 of the Covenant.

13. In accordance with article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy. This requires that full reparation be made to individuals whose Covenant rights have been violated. The Committee considers that, in the present case, its Views on the merits of the complaint constitute sufficient reparation for the violation found. The State party is also under an obligation to take all necessary steps to prevent the occurrence of similar violations in the future, including a review of its legislation to ensure that any restriction of the right to take part in the conduct of public affairs and to be elected is reasonable and proportional and is based on an individualized assessment of each case.

14. 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

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<sup>13</sup> *Paksas v. Lithuania* (CCPR/C/110/D/2155/2012), para. 8.4.

party has undertaken to ensure for all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when a violation has been established, the Committee wishes to receive from the State party, within 180 days, information on the measures taken to give effect to the present Views. The State party is also requested to publish the present Views and to disseminate them widely.

## Annex

[Original: English]

### Individual opinion of Sarah Cleveland (concurring)

1. I concur in the Committee's finding of a violation of the author's right to appellate review of his conviction under article 14 (5) of the Covenant and its determination that its Views on the merits of the author's claims constitute sufficient remedy for the violation found. I write separately to express my understanding of the Committee's conclusion that the author's rights under article 25 of the Covenant were also violated.

2. As the Committee observes, consistent with article 25, States may have a legitimate interest in prohibiting an individual from holding public office as a result of serious criminal conduct. Like term limits on public office, such restrictions can in fact serve the public interest in promoting effective democratic governance and ensuring the effective participation of the general public in political life. Any such restrictions on public service, however, must be established by law and be objective and reasonable. They must be proportionate to the severity of the crime and they must be applied consistent with due process.<sup>1</sup>

3. A permanent prohibition on public service can satisfy these criteria under certain circumstances, as the Committee notes. That is particularly true where a high-level government official commits serious crimes, including large-scale corruption involving State assets.

4. The requirement that a lifelong ban on public service must be proportionate to the individual circumstances could be satisfied in at least two ways. First, an automatic lifelong ban could apply only to a narrow set of cases: a clearly-defined range of serious crimes, when committed by a narrow range of high-level public servants. As former Committee member Gerald Neuman has observed, a number of States expressly provide in their constitutions for ineligibility for public service as an authorized or mandatory consequence of impeachment.<sup>2</sup> Alternatively, a law could provide more broadly for the possibility of a prohibition on public service, but that law could be applied only based on an independent judicial assessment of the proportionality of the ban to the circumstances in each individual case.

5. In the present case, the Colombian constitutional provision at the time imposed an automatic ban on public service for life for any person convicted of offences affecting State assets.<sup>3</sup> The provision did not further specify which crimes fall into that category. It did not further address their severity or their impact on State assets, nor was application of the automatic ban limited to high-level public servants. Finally, the State party did not suggest that the provision had been narrowed or clarified through judicial interpretation. The provision therefore fell under the second category above, for which an individual proportionality assessment would be required.

6. My colleagues conclude that the constitutional provision was thus too vague to render the sanction foreseeable. That may be true with respect to the full range of crimes

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<sup>1</sup> See general comment No. 25 (1996) on participation in public affairs and the right to vote, paras. 4 and 14. See also European Commission for Democracy through Law (Venice Commission), Amicus curiae brief for the European Court of Human Rights in the case of *Berlusconi v. Italy*, CDL-AD(2017)025-e (collecting the legislation of 62 countries relating to procedural protections regarding disqualification from standing for public office).

<sup>2</sup> See *Paksas v. Lithuania* (CCPR/C/110/D/2155/2012), appendix.

<sup>3</sup> The relevant constitutional provision in force in 2004 stated: "Without prejudice to any other penalties that the law may establish, any persons who have, at any time, been convicted of offences involving State assets shall not be permitted to: put themselves forward as candidates for elected office; be elected or appointed as public servants; or enter into, either personally or through an intermediary, contracts with the State" (art. 122).



that might fall within its ambit. However, on the facts of the present case, application of the automatic ban on public service for life for persons convicted of offences “affecting State assets” was entirely foreseeable. The Committee emphasizes that the author was convicted of embezzling sufficient public assets to result in a prison sentence of 17.5 years and a fine of approximately € 12,187,765.

7. The Committee also concludes that the automatic application of the constitutional prohibition could yield disproportionate results and that the Supreme Court failed to assess the proportionality of the lifetime ban to the author’s individual circumstances. Nothing in the Committee’s opinion, however, suggests that had the Supreme Court engaged in such an assessment, a lifetime ban on public service would have been disproportionate in the present case. The author was the Minister of Agriculture, a high-ranking government official. He was convicted for large-scale corruption of public funds, totalling millions of dollars, and the crime was based on actions taken while he was in office. He was therefore convicted of an egregious abuse of public trust and theft of public funds, while wielding substantial public power.

8. The Supreme Court was obviously aware of those facts at the time that it applied the ban in this particular case. It also is entirely possible that the Court did assess the proportionality of the ban to the author’s circumstances and concluded that it was proportionate, but did not articulate that rationale given the categorical constitutional provision. However, the State party did not submit that such a proportionality analysis did, in fact, occur, or that the decision of the Supreme Court should be upheld on that basis.

9. In the end, therefore, the Committee essentially finds a violation because the Supreme Court did not formally articulate a finding that the lifetime ban on public service was proportionate in the present case. Such an interpretation is also consistent with the Committee’s conclusion that its Views constitute sufficient remedy for the violation found. Based on this understanding, I concur in the Committee’s decision in the present case.

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