



## International Covenant on Civil and Political Rights

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### Human Rights Committee

102nd session

11–29 July 2011

### Views

#### Communication No. 1531/2006

<i>Submitted by:</i>	Jesús Cunillera Arias (not represented by counsel)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Spain
<i>Date of communication:</i>	27 July 2006 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 27 November 2006 (not issued in document form) CCPR/C/95/D/1531/2006 – decision on admissibility of 10 March 2009
<i>Date of adoption of Views:</i>	26 July 2011
<i>Subject matter:</i>	Waiver of representation by a lawyer and <i>procurador</i> (court attorney) in criminal proceedings
<i>Procedural issues:</i>	Failure to substantiate claims; incompatibility <i>ratione materiae</i>
<i>Substantive issues:</i>	Equality before the courts
<i>Article of the Covenant:</i>	14, paragraph 1
<i>Articles of the Optional Protocol:</i>	2, 3

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

On 26 July 2011, the Human Rights Committee adopted the annexed draft as the Committee's Views under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 1531/2006. The text of the Views is appended to the present document.

[Annex]

## Annex

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

concerning

#### **Communication No. 1531/2006\***

<i>Submitted by:</i>	Jesús Cunillera Arias (not represented by counsel)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Spain
<i>Date of communication:</i>	27 July 2006 (initial submission)
<i>Decision on admissibility:</i>	10 March 2009

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

*Meeting* on 26 July 2011,

*Having concluded* its consideration of communication No. 1531/2006, submitted to the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights,

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

*Adopts* the following:

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

1.1 The author of the communication, dated 27 July 2006, is Jesús Cunillera Arias, a Spanish national who claims to be the victim of a violation by Spain of articles 2, paragraphs 1 and 2; 14, paragraphs 1 and 3 (b) and (d); 16; and 26 of the Covenant. The Optional Protocol entered into force for the State party on 25 April 1985. The author is not represented by counsel.

1.2 On 31 March 2007, the Special Rapporteur on new communications and interim measures, acting on behalf of the Committee, granted the State party's request to consider the admissibility of the communication separately from the merits.

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\* The following members of the Committee participated in the consideration of the present communication: Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Ahmad Amin Fathalla, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Ms. Helen Keller, Mr. Rajsoomer Lallah, Ms. Iulia Antoanella Motoc, Mr. Gerald L. Neuman, Mr. Michael O'Flaherty, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabian Omar Salvioli, Mr. Krister Thelin and Ms. Margo Waterval.

**The facts as submitted by the author**

2.1 On 21 November 2002, the author filed a complaint with Madrid Investigating Court No. 13 alleging negligence — defined as a criminal offence under article 467.2 of the Criminal Code<sup>1</sup> — on the part of the court-appointed lawyer and *procurador* (court attorney) in a civil suit in which he was the plaintiff. Their appointment was a legal requirement and the author did not have confidence in them. They never informed him of the status of the proceedings; they never consulted with him; they failed to contest an appeal; and, in the pretrial hearing, they prevented the author from intervening and presenting evidence.

2.2 After summoning the parties to give their statements, Investigating Court No. 13 issued a stay of proceedings, without notifying the author, whose new lawyer did not challenge the decision or give him any information. The author requested a copy of the proceedings, but his request was denied.

2.3 On 1 May 2003, the author filed an application for review (*reposición*) of the decision to stay proceedings, in which he invoked, inter alia, article 6.3 (c) of the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms (the right of all persons charged with a criminal offence to defend themselves in person). He argued, inter alia, that there was a requirement to act through a lawyer and a *procurador* only in civil and criminal proceedings but not in labour or administrative proceedings, despite the fact that the latter were often more complex. The author asked that his application be accepted — even though it was not lodged by a *procurador* — and requested the right to choose a lawyer from the roster to assist him but not to act for him, as he would act on his own behalf in all trial proceedings without the need for the lawyer's signature; he also asked for an up-to-date copy of the judicial proceedings. His application was rejected on 17 June 2003 on the grounds, inter alia, of an irregularity relating to court appearances (*defecto de personificación*) owing to his failure to comply with the provisions of article 118 of the Criminal Procedure Act.

2.4 On 23 June 2003, the author submitted another application to Investigating Court No. 13, this time a request for review (*reforma*) and, in the alternative, an appeal (*apelación*), but the application was rejected on 26 June 2003. The author filed complaint proceedings (*queja*) with the Madrid Provincial High Court, but these were dismissed on 10 November 2003. The Court pointed out that, for an individual to bring a criminal or civil action, article 761 of the Criminal Procedure Act requires the intervention of a *procurador* and lawyer and that this is a binding procedural requirement that entails no infringement of international treaties or laws. The Court dismissed the complaint proceedings because the author failed to comply with this requirement. An application for reconsideration (*súplica*) of this decision was declared inadmissible on 15 January 2004.

2.5 The author instituted *amparo* proceedings before the Constitutional Court, invoking article 6, paragraph 3 (c), of the Convention for the Protection of Human Rights and Fundamental Freedoms, under which persons charged with a criminal offence have the right to defend themselves in person. He requested annulment of the previous judicial decisions preventing him from exercising his right to legal counsel of his own choosing and to appear on his own behalf to plead his own defence, assisted, but not replaced, by that counsel. On 20 June 2005, the Court declared his appeal inadmissible on the ground that the

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<sup>1</sup> Article 467.2: “Any lawyer or *procurador* who by act or omission manifestly prejudices the interests entrusted to him/her shall be liable to a 12 to 24-month fine and one to four years' specific disqualification from employment, public office or professional practice or function. If such act or omission was the result of serious negligence, the penalties shall be a 6 to 12-month fine and specific disqualification from professional practice for six months to two years.”

author had failed to meet the requirement under article 81, paragraph 1, of the Constitutional Court Organization Act for actions before the Court to be conducted through the intermediary of a *procurador* and for the defence to be provided or overseen by a lawyer.

### **The complaint**

3.1 The author alleges that the facts described constitute a violation of articles 2, paragraphs 1 and 2; 14, paragraphs 1 and 3 (b) and (d); 16; and 26 of the Covenant. He maintains that Spanish law denies citizens the right to appear on their own behalf before civil and criminal courts and requires them to appoint a legal representative who is “imposed on them” without their consent. Furthermore, it offers no legal redress against a representative who does not act in good faith, since that requires direct knowledge of the judicial proceedings, which the client is denied.

3.2 The author points out that the right to appear on one’s own behalf should apply equally to all parties in the proceedings, not only the accused. The author does not reject the assistance of a lawyer, provided that he can choose one himself, that the lawyer does not claim to act for him, and that the author can conduct his case in court himself, be notified of all procedures and take issue with his lawyer, that is, be free to act as he chooses in the defence of his rights.

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

4.1 In its note verbale dated 31 January 2007, the State party contests the admissibility of the communication for lack of substantiation. It points out that, since the author has not been charged with a criminal offence, article 14, paragraph 3, of the Covenant is not applicable. Moreover, the Covenant does not recognize a right to institute proceedings, whether civil or criminal, without legal counsel. This matter falls outside the scope of the Covenant, which refers exclusively to assistance to persons charged with a criminal offence, a situation the author has never been in.

4.2 The State party draws attention to various communications addressed to the Committee alleging a violation of article 14, paragraph 1, and article 26 of the Covenant on the ground of having been denied the right to appear before the Constitutional Court without being represented by a *procurador* – a requirement not imposed on applicants who are qualified lawyers. The State party recalls that the Committee declared these communications<sup>2</sup> inadmissible because, accepting the Constitutional Court’s argument, it found that the requirement for a *procurador* reflects the need for a person with knowledge of the law to be responsible for handling an application to that Court.

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

5.1 On 3 July 2007, the author transmitted his comments on the State party’s observations. He repeats that the right to defend oneself in person, as with any other right, must apply to all parties in the proceedings, not only the accused. In this connection, he invokes the principle of equality before the courts under article 14, paragraph 1, and the prohibition of discrimination contained in article 26 of the Covenant.

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<sup>2</sup> Communication No. 865/1999, *Alejandro Marín Gómez v. Spain*, Views adopted on 22 October 2001, para. 8.4; communication No. 866/1999, *Marina Torregrosa Lafuente et al. v. Spain*, Views adopted on 16 July 2001, para. 6.3; and communication No. 1006/2001, *José Antonio Martínez Muñoz v. Spain*, Views adopted on 30 October 2003, para. 6.4.

5.2 The author points out that the decisions of the Committee cited by the State party are not applicable in the present case, as this case concerns the right to defend oneself in person before a criminal court. Spanish civil and criminal procedural law expressly and without exception denies all citizens, including practising lawyers, the right to defend themselves in person. The decisions cited by the State party refer only to *amparo* proceedings in the Constitutional Court, which has its own rules.

#### **The Committee's decision on admissibility**

6.1 The Human Rights Committee considered the admissibility of the communication on 10 March 2009 at its ninety-fifth session.

6.2 The author maintains that, under Spanish procedural law, he was not permitted to act on his own behalf before the civil or criminal courts without the assistance of a lawyer and a *procurador* or to participate actively in the trial in which he was a party when the court-appointed lawyer and *procurador* failed to defend his interests. The author maintains that these facts constitute a violation of articles 2, paragraphs 1 and 2; 14, paragraphs 1 and 3 (b) and (d); 16; and 26 of the Covenant. The Committee was of the view that, for the purposes of admissibility, the author had not sufficiently substantiated his claim of a violation of articles 2, paragraphs 1 and 2; 16; and 26. It consequently found this part of the communication inadmissible under article 2 of the Optional Protocol.

6.3 As to the author's complaint under article 14, paragraph 3 (b) and (d), the Committee recalled that these provisions recognize rights that are applicable only to persons accused of a criminal offence. Given that the author does not fall into this category, he cannot invoke them. The Committee consequently found this part of the communication to be incompatible *ratione materiae* with the provisions of the Covenant and thus inadmissible under article 3 of the Optional Protocol.

6.4 The author also invokes article 14, paragraph 1, and maintains, inter alia, that the right to appear on one's own behalf must be applied equally to all parties in the proceedings, not only the accused. The Committee considered that the author had substantiated that complaint sufficiently for the purposes of admissibility and that the complaint raises issues related to the right of all persons to a fair hearing by a court of law. Moreover, the facts in the present communication differ from those presented in other communications, where what was at issue was the requirement to be represented by a *procurador* before the Constitutional Court. Since there were no other obstacles to admissibility, the Committee considered this part of the communication to be admissible.

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

7.1 On 2 October 2009, the State party submitted its observations on the merits of the communication. It asks the Committee to reject the communication as domestic remedies have not been exhausted and there has been no violation of the Covenant.

7.2 According to the State party, if it is accepted that an application is obligatory when filing for *amparo* — as implied in the decision on admissibility and accepted by the Committee in previous communications — since the author did not heed the request by the Constitutional Court that he be represented by a *procurador* and assisted by a lawyer and the application was declared inadmissible, it is clear that domestic remedies have not been exhausted in this case. They can only be said to have been exhausted when the complaint that is the subject of the application has been rejected by the Constitutional Court. If the Constitutional Court has legitimately and correctly demanded an application, with no violation whatsoever of the Covenant, the author has not exhausted domestic remedies for any complaint under article 14, paragraph 1.

7.3 Notwithstanding the above, it should be recalled that the author filed a complaint for alleged professional errors by the lawyer and *procurador* assigned to him by the court for a civil suit in which he was the plaintiff. It is debatable whether what the author claims to have been professional errors — without producing even minimal evidence — were in fact errors. The errors referred to in his complaint concern an irregularity in the application because of lack of proxy — the intention being to prevent the other party from being heard — the remedy for which is well known to legal professionals, and a procedural formality in the hearing where, as the author expressly admitted in his complaint, he was able to appear on his own behalf. He claims to have been prevented from doing so, but does not specify how. Nor does he provide any information on the outcome of the civil suit or the remedies available to him in that connection. The scant information he does provide on this is contained in the criminal complaint filed by him and is offered for the sole purpose of attacking what he calls the representative “imposed on him”. The author only tried to exercise his right to defend himself in criminal proceedings instituted on the basis of his complaint, which did not involve a lawyer at all and that bore only his own name and signature.

7.4 According to the State party, filing a complaint is not an appropriate action to establish the complainant as a party to criminal proceedings, which must be pursued by law in the case of alleged offences like the ones claimed by the author. It is simply an act that brings to the attention of the judicial authority a claim that an offence has been committed, but it does not confer on the complainant the status of prosecutor (*parte acusadora*). Citizens can become a party to criminal proceedings by means of a criminal accusation (*querrela*), but there is no record of the author having filed one. What the file before the Committee does contain is a complaint document signed exclusively by the author. In view of this, it can be stated that the author was not even a party to the proceedings in which he claimed to have been conducting his own defence and which were not intended to determine rights and obligations of a civil nature but to investigate *ex officio* and possibly sanction an alleged offence. The author’s status was simply that of a complainant, not a party to the proceedings, which were criminal proceedings in which he did not appear in person either with or without the assistance of a lawyer and in which no one had to assist him as he was not a party to the proceedings.

7.5 The State party points out that no one has a right to have a person convicted of a criminal offence and that the Covenant does not require that individuals be able to act as prosecutors in criminal proceedings. Apart from the fact that the alleged errors attributed to his lawyer in the civil suit are debatable, the author’s complaint gave rise to criminal proceedings that were followed up on *ex officio* and in which the judge found no offence had been committed. There are no objective facts to support the claim that there has been a violation of article 14, paragraph 1, of the Covenant, either in the civil suit (on which no information is provided that would allow that conclusion to be drawn) or in the criminal proceedings.

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

8.1 On 14 February 2010, the author submitted comments on the State party’s observations. He says that the Constitutional Court never grants *amparo* to individuals claiming their right to defend themselves in person in criminal or other courts, despite the Committee’s decision concerning communication No. 526/1993, in which the Committee concluded that the author’s right to defend himself in person had not been respected, in violation of article 14, paragraph 3 (d), of the Covenant.<sup>3</sup> Citizens can only appear on their

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<sup>3</sup> Communication No. 526/1993, *Michael and Brian Hill v. Spain*, Views adopted on 2 April 1997,

own behalf or on behalf of someone else in labour courts, irrespective of the importance or nature of the matter in question. This applies even in conflicts concerning groups that affect many individuals, which are far more important to society than most of the trivial disputes between individuals in civil cases or the frequently irrelevant minor offences dealt with by the criminal courts.

8.2 In a State governed by the rule of law, a representative cannot be imposed on citizens against their will, since every power of attorney is voluntary, and without consent no legal act or right exists. A representative imposed on a person takes over the case without consulting or passing on information on the judicial proceedings or responding to any of the requests of the client, who loses all oversight or control of the proceedings to which he or she is a party. It is not possible to take legal action against a representative who does not act in good faith, since that requires direct knowledge of the judicial proceedings.

8.3 The author reiterates that he filed a complaint about a lawyer and *procurador* assigned to him in a civil suit; their appointment was a legal requirement and he had no confidence in them. Neither of the two ever informed him of the status of the proceedings or consulted with him about anything; they did not contest a groundless appeal by the defendant and prevented the author from speaking at the pretrial hearing. On the basis of his complaint about these matters, Madrid Investigating Court No. 13 instituted preliminary proceedings. The court dismissed the case after doing no more than summoning the defendants and the author to make a statement, without notifying the author, whose new court-appointed lawyer and *procurador* did not challenge the decision or give him any information. The author requested a copy of the proceedings to find out what their status was, but this information was denied him. In view of this, he asked to be allowed to appear on his own behalf with the assistance of a lawyer of his choice, but his request was rejected. The Madrid Provincial High Court allowed his complaint proceedings, without denying his rights to appear and defend himself. However, its decision complied with domestic law, denying the applicability of the Covenant. The Constitutional Court subsequently rejected the application for *amparo*, stating that the right to defend oneself is central to the right to a defence and must be considered crucial from a constitutional viewpoint and that it is an essential component of fundamental rights. The author also states that the European Court of Human Rights has unequivocally reaffirmed that the right to defend oneself includes the power to actually conduct one's own defence, give instructions to lawyers, question witnesses and exercise the other prerogatives inherent in that right.

8.4 The author states that the right to defend oneself in person, like any other right, must apply equally to all citizens who are a party to proceedings, not just to one party, in accordance with article 14, paragraph 1, of the Covenant.

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

#### *Consideration of the merits*

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

9.2 The Committee must decide if the requirement that the author be represented by a lawyer and a *procurador* in criminal proceedings in which he is the complainant contravenes article 14, paragraph 1, of the Covenant. The Committee takes note of the observations made by the State party concerning the existence of jurisprudence on this

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para. 14.2.

question. It notes, however, that the decisions of the Committee mentioned by the State party refer to complaints focusing solely on the fact that representation by a *procurador* is required in *amparo* proceedings before the Constitutional Court. The claim made in these cases therefore differs from the claim made in the present case.

9.3 The Committee considers that there may be objective and reasonable grounds for the requirement of representation set forth in the law of a given State owing, for example, to the complexity of criminal proceedings. Consequently, on the basis of the information contained in the case file, the Committee considers that there is no objective or reasonable ground for concluding that there has been a violation of article 14, paragraph 1, of the Covenant.

10. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the information before it does not disclose a violation of article 14, paragraph 1, of the Covenant.

[Adopted in English, French and Spanish, the Spanish text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

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