



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE
Eighty-fourth session
11 – 29 July 2005

DECISION

Communication No. 1210/2003

<u>Submitted by:</u>	George Damianos (represented by counsel, Mr. Achilleas Demetriades)
<u>Alleged victim:</u>	The author
<u>State Party:</u>	Cyprus
<u>Date of communication:</u>	12 June 2001 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 97 decision, transmitted to the State party on 28 October 2003 (not issued in document form)
<u>Date of adoption of decision:</u>	25 July 2005

* Made public by decision of the Human Rights Committee.

Subject matter: Unequal treatment of employee following re-structuring of a public service entity

Procedural issues: None

Substantive issues: Right to equality and freedom from discrimination; access to public service; enforcement of a remedy

Articles of the Covenant: 19, 25 (c), 26 and 2

Articles of the Optional Protocol: 2

[ANNEX]

ANNEX

DECISION OF THE HUMAN RIGHTS COMMITTEE UNDER
THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT
ON CIVIL AND POLITICAL RIGHTS

Eighty-fourth session

concerning

Communication No. 1210/2003*

<u>Submitted by:</u>	George Damianos (represented by counsel, Mr. Achilleas Demetriades)
<u>Alleged victim:</u>	The author
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<u>Date of communication:</u>	12 June 2001 (initial submission)

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

Meeting on 25 July 2005,

Adopts the following:

DECISION ON ADMISSIBILITY

1. The author of the communication is George Damianos, a Cypriot national. He claims to be a victim of violations by Cyprus of his rights under articles 19, 25, (c) and 26 read alone and in conjunction with article 2, of the International Covenant on Civil and Political Rights. He is represented by counsel, Achilleas Demetriades.

Factual background

2.1 On 16 April 1980, the author was appointed as “Programme Officer” in the Radio Programme division of the Cyprus Broadcasting Corporation (CBC), which is part of the public service¹, at the salary scale 6/7 (Maximum salary of £ 3,765 Cyprus pounds per annum) . In September 1982, a collective agreement was signed between the CBC and the Trade Unions, according to which posts in the CBC were re-structured. In April 1983,

* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Alfredo Castillero Hoyos, Ms. Christine Chanet, Mr. Maurice Glèlè Ahanhanzo, Mr. Edwin Johnson, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Mr. Michael O’Flaherty, Ms. Elisabeth Palm, Sir Nigel Rodley, Mr. Ivan Shearer, Mr. Hipólito Solari-Yrigoyen, Ms. Ruth Wedgwood and Mr. Roman Wieruszewski.

¹ According to the author, it is under the auspices of the Ministry of Internal Affairs.

pursuant to the re-structuring, the post of “Programme Officer” was abolished and seven new posts were created bearing the following titles: Programme Officer A Scale A 10 (£ 4,396 Cyprus pounds per annum); Programme Officer B Scale A 8/9 (£ 3,909 Cyprus pounds per annum); and Programme Officer C Scale A 4/7 (£ 3,150 Cyprus pounds per annum). The author and the other Programme Officers were appointed, retrospectively from 1 January 1981, to the post of Programme Officer A with the addition in brackets of (Personal title) in the salary Scale 8/9. These new posts did not exist in the restructured establishment. The CBC stated that it intended to advertise the new posts of Programme Officer A Scale A 10, to which the author and the other Programme Officers were invited to apply.

2.2 The author and his colleagues challenged the re-structuring in an application to the Supreme Court. On 3 May 1985, the Supreme Court, having considered that the collective agreement was not in itself a sufficient legal basis on which the re-structuring could be based, found that, although there was no financial detriment to the applicants after the re-structuring, there had been a diminution of their status within the organization. Thus, the Court decided, they were entitled to be appointed to an existing post under the new structure, with duties and responsibilities corresponding to their previous position and seniority. The decision by the CBC was annulled.² The CBC appealed the decision, but later abandoned the appeal.

2.3 On 28 November 1985, the CBC decided that the author (as well as other employees in the music division) would be reinstated in his old post, that of Programme Officer, with his original responsibilities and on salary scale 8/9, instead of the old scale 6/7. The author notes that he was again placed against a post that did not exist under the new structure. On 30 November 1985, some of the author’s colleagues, but not the author himself, submitted an application to the Supreme Court for the committal of the Director General and the Board of Directors of CBC for disobeying the decision of the Court of 3 May 1985. The Court rejected the application. The applicants subsequently reached a settlement with the CBC, to which the author was not a party.

2.4 Subsequently, the author applied to the Supreme Court contesting the legality of the CBC’s decision of 28 November 1985, claiming that it was contrary to the Supreme Court’s decision of 3 May 1985, and that his reinstatement in his old position of Programme Officer, which had been abolished by the re-structuring, was wrong, as his position no longer existed. In his view, the new post under the new structure, which corresponded to the duties and responsibilities of his old post was Programme Officer A Scale A 10. On 13 June 1987, the Supreme Court dismissed his claim, holding that he had been correctly reinstated in his old post, and noted that he was paid at a higher salary scale. The Court disagreed with the conclusions of the Supreme Court decision of 3 May 1985, arguing that, given that the Court had found that the collective agreement is not a sufficient legal basis on which the re-structuring could be validly founded, the author’s original post of Programme Officer could

² The Supreme Court decision notes that “As a result of the re-structuring of the establishment the applicants were entitled by virtue of their vested rights in the previous posts, to be emplaced to an existent organic post under the new structure, with corresponding duties and responsibilities. In the circumstances of the present case for the reasons I have explained, there has been a diminution of the status of the applicants as they have not been emplaced to an existent organic post corresponding to the one previously possessed by them. For these reasons this recourse succeeds and the sub judice decision is annulled.”

not have been abolished by the re-structuring. The CBC was thus correct in placing the author on his old post.³

2.5 On 13 June 1987, the author appealed the Supreme Court's decision⁴. During the hearing on 23 November 1990, the CBC agreed to reconsider the matter and the appeal was abandoned. On 12 July 1991, the CBC reviewed the author's case and rejected his request for appointment to the post of Programme Officer A Scale A 10 but decided that he should remain on his old position of Programme Officer on the higher scale 8/9, as decided on 28 November 1985. Following this decision, the author appealed his case to the Supreme Court, claiming that the CBC had discriminated against him in applying the collective agreement partially and selectively in relation to some employees but not to him. On 26 March 1999⁵, the Supreme Court dismissed his claim of unlawful discrimination, holding that the author had failed to prove that his situation was similar to the cases in which the collective agreement had been applied. A general claim that the agreement was only applied in relation to some employees was not sufficient. Thus, the author had not failed to discharge the required burden of proof.

2.6 On 19 December 1991, the CBC's decision was upheld by a decision of the Ministry of Internal Affairs, who stated that if his claim were to be accepted he would be put in a better position than his colleagues who had reached a settlement with the CBC. On 30 March 1992, the author was offered a permanent appointment as Programme Officer A Scale A 10. On 13 April 1992, he accepted this offer.

The complaint

3.1 The author claims that having been placed on non-existing posts three times since 1983, (in April 1983, 28 November 1985 (old post) and 12 July 1991 (decision to remain on old post) he was treated unequally and in a discriminatory manner by the CBC in relation to the application of the collective agreement, which was applied to other employees but not to himself. The CBC's decisions to place him on these posts were contrary to the Supreme Court decision of 3 May 1985, and the author believes that he was discriminated against on the basis of his opinions.

3.2 As a consequence of this treatment, he claims that his employment status was affected negatively. He argues that if he had been appointed to the new post of Programme Officer A Scale A 10, when the restructuring took place (1983) rather than nearly 10 years later, he would be in a more senior position than the one he holds at the time of submission of the communication. Indeed, he currently remains in the position he should have been in if the Supreme Court judgment of 3 May 1985 had been applied i.e. Programme Officer A Scale A

³ The Court acknowledged that seven Programme Officers were, in accordance with the restructuring, placed in the post of Programme Officer A, Scale A 10, but that the applicants were not challenging this, only their "nonemplacement" in post of Programme Officer A Scale A 10, and their alleged wrongful emplacement in their old post of Programme Officer, which they say was abolished as a result of the restructuring.

⁴ He does not say to where he appealed it.

⁵ An earlier application to the Supreme Court on the same grounds was dismissed on 10 September 1993 "for lack of competence to render judgement due to the existence of contradictory jurisprudence."

10. In addition, he states that he suffered a reduction in his salary as well as pension entitlement reductions, and the proceedings themselves caused him a financial loss.

3.3 In addition, the author claims that the State party's failure to ensure his right to equal and non-discriminatory treatment and to provide him with an effective remedy violates article 2 of the Covenant. He refers to the failure of the domestic Courts to uphold and enforce the decision of the Supreme Court of 3 May 1985.

State party response on admissibility and merits and author's comments thereon

4. In its submission of 26 April 2004, the State party endorses the approach of the Supreme Court judgment of 26 March 1999, which stated inter alia, "the burden of proof of any discriminatory or unequal treatment is on the appellant. In order to establish his allegation, the appellant should have proved that his case was the same as that of the cases in respect of which the relevant agreement was applied. A general allegation for application of the agreement in respect of certain employees is not enough. Consequently, the appellant has failed to discharge the burden of proof and therefore the relevant ground of annulment is dismissed." In the State party's view, the author's claim is therefore manifestly ill-founded.

5.1 On 22 July 2004, the author reiterated his previous arguments and added new claims under articles 25, paragraph c, and 19 of the Covenant. On article 25 (c), he claims that this provision requires equal treatment, not only in relation to access to such employment but throughout the period in which an employee forms part of the public service of his country. He claims that his treatment by the CBC constitutes harassment that threatened the continuity of his public service position. As to the latter provision, the author claims that the expression of his opinions with regard to the inadequate administration of the CBC and the ensuing unequal treatment he was subjected to resulted in his exclusion from the normal scales of promotion that applied to the rest of his colleagues. He reiterates his claim under article 2, read alone and/or in conjunction with articles 26, 25 (c), and 19, that the State party failed to ensure the application of his rights in an equal manner and without distinction of any kind, and failed to provide him with an effective remedy in relation to the violation of articles 26, 25 (c), and 19. He also claims a stand-alone violation of article 2, paragraph 3 (c), as the State party failed to give effect to a judicial decision of the State party, namely the decision of the Supreme Court of 3 May 1985. This decision constitutes a final decision of the national courts of the State party, which has not been enforced.

5.2 As to the State party's argument that the burden of proof was on the author to prove that his position was the same as those of the other employees, the author claims that once a prima facie case of discrimination has been made out by him, it is for the State party to prove that there has been no discrimination.

5.3 On the facts, the author recalls that he was the only employee left in an ambiguous position until he was finally appointed to an existing post in 1992. He claims that on 18 August 1983, soon after the conclusion of the collective agreement, there were 13 employees with the same salary scale as himself, namely 8/9, and that the CBC applied the collective agreement selectively, resulting in the author being the last of these employees to be appointed to an existing post, almost 10 years later. The State party's authorities, by failing to examine the reasons why he was treated less favorably, acquiesced in this decision. The author claims that the denial of the authorities to appoint him to an existing post until 1992 was part of the victimization and harassment against him, due to his attempts to disclose the

inadequate administration of the CBC through complaints to internal and external bodies, and his initiation of legal proceedings.

Issues and proceedings before the Committee

6.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not the complaint is admissible under the Optional Protocol to the Covenant.

6.2 As to the claim that the State party violated the author's rights under article 19, the Committee considers that the author has failed to substantiate this claim, for purposes of admissibility. Thus, the Committee considers this claim inadmissible under article 2 of the Optional Protocol.

6.3 As to the author's claim of unequal treatment and discrimination, under articles 25 (c) and 26 (read together with article 2), of the Covenant, the Committee notes that these issues and claims were addressed by the Supreme Court of Cyprus in its judgment of 26 March 1999. It specifically examined the author's argument that by going ahead with the restructuring for several of his colleagues but not for him, CBC had discriminated against him. It concluded that the author did not discharge the required burden of proof for the discriminatory nature of his treatment by the CBC. The Committee recalls its jurisprudence that it is generally for the courts of States parties to the Covenant to evaluate facts and evidence in a particular case, unless it can be ascertained that the evaluation was clearly arbitrary or amounted to a denial of justice⁶. Nothing in the file suggests that the proceedings before the Supreme Court which resulted in the judgment of 26 March 1999 suffered from such defects. The Committee accordingly considers this part of the communication to be inadmissible under article 2 of the Optional Protocol.

7. The Human Rights Committee therefore decides:

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

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

⁶ See Errol Simms v. Jamaica, communication No.541/1993, declared inadmissible on 3 April 1995.