



**International covenant  
on civil and  
political rights**

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HUMAN RIGHTS COMMITTEE  
Eighty-eighth session  
16 October – 3 November 2006

**DECISION**

**Communication No. 1201/2003**

|                                      |  |
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| <u>Submitted by:</u>                 | Mr. Hiran Ekanayake (not represented by counsel)   |
| <u>Alleged victim:</u>               | The author   |
| <u>State party:</u>                  | Sri Lanka  |
| <u>Date of communication:</u>        | 10 April 2003 (initial submission)   |
| <u>Document references:</u>          | Special Rapporteur's rule 97 decision, transmitted to the State party on 17 September 2003 (not issued in document form) |
| <u>Date of adoption of decision:</u> | 31 October 2006  |

*Subject matter:* unfair dismissal from judicial service

*Procedural issue:* none

*Substantive issues:* inequality

*Articles of the Covenant:* 26

*Articles of the Optional Protocol:* 2, 5, paragraph 2 (b)

[ANNEX]

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

**ANNEX**

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

Eighty-eighth session

concerning

**Communication No. 1201/2003\***

Submitted by: Mr. Hiran Ekanayake (not represented by  
counsel)

Alleged victim: The author

State party: Sri Lanka

Date of communication: 10 April 2003 (initial submission)

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

Meeting on 31 October 2006

Adopts the following:

**DECISION ON ADMISSIBILITY**

1. The author of the communication is Mr. Hiran Ekanayake, a Sri Lankan citizen, born on 24 July 1965. He claims to be a victim of violations by the State party of article 26 of the International Covenant on Civil and Political Rights. He is not represented by counsel.

**The facts as presented by the author**

2.1 On 1 July 1998, the author joined the judicial service. On 1 January 1999, he was appointed as a permanent magistrate and an additional district judge in Thambuttegama. One year after this appointment, he was transferred to Colombo as an additional Magistrate. He believes that he was transferred for not having complied with an order of the Judicial Services Commission (JSC) to have a loud speaker system removed by police from a meeting attended by

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\* 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. Edwin Johnson, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Ms. Elisabeth Palm, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Hipólito Solari-Yrigoyen and Mr. Roman Wieruszewski.

the then opposition leader. He alleges that the members of the JSC were members of the same political party as the President.

2.2 In April 2000, the author was requested by the Chief Justice to close a particular criminal case without further proceedings, when, in the author's view, there was sufficient evidence to let the case go to trial. The author alleges that the accused was a friend of the Chief Justice; the author refused to comply with the order.

2.3 Upon moving to Colombo, the author did not receive official accommodation nor did he receive any rent allowance. Other judicial officers had such privileges. He alleges that the failure of the JSC to provide him with these privileges was designed to harass him. The absence of official accommodation resulted in the author having to rent cheap accommodation in Ratmalana, a town 12 miles from Colombo. Due to the distance, security checks, and traffic congestion, the author had to leave his house at 5.30 am to go to work, as it could take three and half hours to reach the courthouse in Colombo.

2.4 On 11 May 2000, due to the length of time it took travelling to work, which was affecting his physical and mental well being, the author asked for a transfer from Colombo. On Friday 2 June 2000, he appeared before the JSC and was questioned by the Chief Justice about his request. He was referred to as a "mental wreck" and declared incapable of continuing in judicial service. He was requested to tender his resignation on the same day but he refused.

2.5 On Monday 5 June 2000, the author felt unwell, which he attributes to his meeting with the JSC, and did not go to work. He made arrangements with the supernumerary magistrate to substitute for him. On the same day, he saw a doctor who indicated that he was suffering from a "nervous illness" and gave him two weeks medical leave from 5 to 19 June 2000. The author returned to work on 17 June 2000.

2.6 On 28 June 2000, the author's service was terminated by the JSC for the following reasons: he had not reported for work from 5 June 2000 without obtaining prior leave; he was suffering from a "supervening nervous illness"; he had been the target of previous complaints; and was unfit to hold judicial office. After the termination of his service, which received media coverage, the author received death threats, and a group of unidentified people twice "searched for him" at night in his residence. He went into hiding for nearly one and a half years out of fear. He did not file complaints with the police, as he believed "it could make the situation worse": the then administration "would not have hesitated to design a method of suppression".

2.7 On 10 July 2000, the author appealed to the JSC, to which no response was received. He also complained to the Human Rights Commission of Sri Lanka<sup>1</sup> and the President of Sri Lanka. There was no response from the President's office.

### **The complaint**

3.1 The author claims that he did not receive equal protection of the law and that he was discriminated against, contrary to article 26.

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<sup>1</sup> He does not provide the outcome of this complaint.

3.2. He claims that all available effective domestic remedies have been exhausted. He alleges that the Sri Lankan judiciary is not independent, and that its ineffectiveness as well as that of the other law enforcement authorities, due to political influence and fear, prevents him from filing a claim in a first instance Sri Lankan court.

3.3 The author claims that the JSC is highly politicized. The Chief Justice is its Chair and it is also presided over by two Supreme Court judges. He claims that the Chairman of the Human Rights Commission is a strong supporter of the Chief Justice and the President of Sri Lanka. The Chief Justice has absolute control over the Court of Appeal, because the President of Sri Lanka appoints and promotes judges to the Court of Appeal on the recommendation of the Chief Justice. According to the author, no Court of Appeal judge would risk his or her future by acting against the expectation of the Chief Justice. In the event of the author filing a case in the Court of Appeal, he would have to include the Chief Justice and the JSC as defendants, and any order issued in his favour would have an adverse impact on their careers. Even if the Court of Appeal rendered an order in the author's favour, the Chief Justice could influence the Attorney General's department to appeal against the order before the Supreme Court. As the Supreme Court judges are also appointed by the Chief Justice, such remedy cannot be considered effective.

3.4 The author claims that the JSC's view of his medical condition is unacceptable because his case was not considered by a medical board consisting of three specialists, as required by domestic law. He claims that the reasons given by the JSC for his dismissal are unsustainable and were maliciously fabricated for the purpose of depriving him of judicial office. The real reason why he was dismissed is on account of his failure to cooperate with the directions of the JSC, referred to in paragraphs 2.1 and 2.2 above.

#### **The State party's submission on admissibility and merits**

4.1 In its submission of 15 March 2004, the State party contests the admissibility of the communication on grounds of non-exhaustion of domestic remedies. It highlights the author's failure to submit any claim before the Sri Lankan courts. It cites Articles 107 to 117 of the Sri Lankan Constitution, which ensure the independence of the judiciary, and denies that the executive has any role to play in the discipline of judicial officers or within the JSC. Such a role could be construed as interference within the terms of Article 115 of the Constitution and could result in a jail term and a fine if established.

4.2 On the merits, the State party contests the author's allegations that the Chairman of the Human Rights Commission was a political supporter of the President, and that the Chief Justice has control over all judges on the Court of Appeal. The author has made such allegations merely as a pretext for not exhausting domestic remedies. Moreover, it may be noted that all decisions complained of in the communication were decisions of the JSC and not the sole decision of the Chief Justice.

4.3 The State party explains that the author joined the judiciary on 1 July 1998 and was on probation when dismissed. Up to the time of his dismissal, many complaints were filed against him of which the State party refers to the following: abuse of power to build on land belonging to him, contrary to regulations; institution of criminal proceedings before his own court against an individual with whom the author had personal differences and which the author subsequently admitted; and delay of one year in the hearing of a case involving maintenance of a child. The

State party submits that two of these incidents occurred prior to the appointment of the current Chief Justice.

4.4 The State party submits that the author requested a transfer only four months after he took up his position in Colombo, on account of alleged difficulties in travelling into Colombo every day, which he alleged was aggravating his nervous condition. It denies that it would take three and half hours to travel from Ratmalana to Colombo. Even during peak hours, the journey would not take more than one hour. The author also stated that he had to rent another house in Kandy to keep his excess furniture whilst taking on his residence outside Colombo. In the State party's view, this request for a transfer so soon after he took up his new position was intended to negate the object of the transfer, namely, immediate supervision intended by the JSC over his conduct and work, and was inconsistent with the declaration made by him on appointment that he would accept a posting in any part of Sri Lanka.

4.5 The State party considers that the JSC's decision to terminate the author's employment was fair, reasonable and justified. Upon questioning by the JSC, it was noticed that the author was suffering from a state of instability, on the basis of which they believed that he was incapable of discharging his duties. On 5 June 2000, he failed to report to work and only faxed a medical report, which stated that he was suffering from a "nervous illness", to the JSC on 6 June 2000. As a result of these facts, as well as the author's past conduct, including the fact that he stayed away from work without prior leave and also the fact that he was on probation, the JSC terminated his judicial appointment. In this regard, it referred to Rule 13 of the Rules of the JSC, which states that, "The Commission may at any time terminate the appointment of an officer who is on probation without assigning any reason."

4.6 The State party confirms that the author was denied rent allowance pursuant to circulars issued by the JSC, in accordance with which a judicial officer must live either within the city limits of Colombo or within the jurisdiction of the Colombo Magistrates Court. As this condition was not satisfied in the case of the author, he was not entitled to any rental subsidy.

#### **The author's comments on the State party's submission**

5.1 On 21 May 2004, the author reiterated his previous claims. He submits that the existence of Constitutional provisions on the independence of the judiciary does not necessarily mean that there is such independence in fact. He submits that in practice the judiciary is not independent and the constitutional articles are not applied. As to the previous alleged complaint against the author in relation to the abuse of power with respect to land, the author dismisses this allegation.

5.2 The author denies that the transfer to Colombo was made for any supervisory purpose and also denies that it matters where a judge is working for such purposes. As to the rent allowance issue, he submits that the JSC may grant it to individuals, depending on the circumstances of their case. He claims to know of judicial officers living outside the abovementioned limits (para. 4.6) who receive such an allowance. The author provides information on the unlawfulness of his dismissal, and the procedure that should have been followed in this case, particularly in light of his mental health. He complains that he fears for his life, that he has been living for the last four years in a remote village, out of the public eye, and that he receives telephone threats that he will be murdered if he does not withdraw his case before the Committee. He wrote to the Minister of

Interior, the Prime Minister and the Inspector General of Police, asking for security, but never received a response.

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

### **Consideration of admissibility**

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 communication is admissible under the Optional Protocol to the Covenant.

6.2 As to the requirement to exhaust domestic remedies, the Committee notes that the author did not raise any claim before the State parties' courts with respect to his dismissal from judicial service, which he claims violates article 26 of the Covenant. He confirms that he could have appealed his dismissal to the Court of Appeal but chose not to do so, as according to him, the judiciary is not independent. The Committee considers that the generalised claim made by the author that none of the judges of the Court of Appeal or the Supreme Court could deal with his case impartially, since all are influenced by the Chief Justice, has not been substantiated by him. It concludes that the author has failed to exhaust domestic remedies or to show that they would be ineffective in the circumstances of this case. Accordingly, this part of the communication is inadmissible under article 5, paragraph 2 (b) of the Optional Protocol.

6.3 As to the claim under article 26, that the author was unequally treated with respect to the provision of rent allowance, the Committee finds this claim insufficiently substantiated, for purposes of admissibility, under article 2 of the Optional Protocol.

7. The Human Rights Committee therefore decides:

- a) That the communication is inadmissible under article 2; and article 5, paragraph 2(b), of the Optional Protocol.
- b) That this decision shall be communicated to the author and to the State party.

[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.]

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