



**International Covenant on
Civil and Political Rights**

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**Human Rights Committee
Ninety-eighth session
8 to 26 March 2010**

Decision

Communication No. 1523/2006

<u>Submitted by:</u>	Chelliah Tiyagarajah (not represented by counsel)
<u>Alleged victim:</u>	The author
<u>State Party:</u>	Sri Lanka
<u>Date of Communication:</u>	15 June 2006 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 97 decision, transmitted to the State party on 27 November 2006 (not issued in document form)
<u>Date of adoption of decision:</u>	19 March 2010

*Made public by decision of the Human Rights Committee.

<i>Subject matter:</i>	Unfair court proceedings initiated by the author after an unfair dismissal
<i>Procedural issue:</i>	Non-substantiation of allegation; non-exhaustion of domestic remedies
<i>Substantive issues:</i>	Unfair trial; discrimination.
<i>Articles of the Covenant:</i>	14, paragraph 1; 26.
<i>Article of the Optional Protocol:</i>	2; 5 paragraph 2 (b)

[Annex]

ANNEX

Decision of the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights (ninety-eighth session)

concerning

Communication No. 1523/2006**

Submitted by: Chelliah Tiyagarajah (not represented by counsel)

Alleged victim: The author

State Party: Sri Lanka

Date of Communication: 15 June 2006 (initial submission)

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

Meeting on 19 March 2010,

Adopts the following:

Decision on admissibility

1. The author of the communication is Mr. Chelliah Tiyagarajah, a Sri Lankan citizen, residing in Sri Lanka, belonging to the ethnic Tamil minority. He claims to be a victim of violations by the State party of articles 14, paragraph 1, and 26, of the International Covenant on Civil and Political Rights. He is not represented. The Covenant and the Optional Protocol entered into force for the State party on 11 September 1980 and 3 January 1998, respectively.

Factual background

2.1 The author was employed by the State-owned “Sri Lanka Broadcasting Corporation” (hereinafter “SLBC”)¹, based in Colombo, from 1967 to 1998. In 1971, he was appointed to the post of sorter of letters and other correspondence, as a “grade five” labourer. Although he subsequently applied for several promotions, he never obtained any.

2.2 The author indicates that in both State and private companies, optional retirement can be chosen from the age of 55, while compulsory retirement is fixed at the age of 60 years. On 31 July 1997, the SLBC Board of Directors adopted a policy decision, to the

** The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Mahjoub El Haiba, Mr. Ahmad Amin Fathalla, Mr. Yuji Iwasawa, Ms. Helen Keller, Mr. Rajsoomer Lallah, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Mr. Michael O’Flaherty, Mr. José Luis Pérez Sanchez-Cerro, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabian Omar Salvioli and Mr. Krister Thelin.

¹ The SLBC was established pursuant to the Ceylon Broadcasting Corporation Act, N°37 of 1966.

effect that no person would be employed beyond the age of 55 years as of that date. This decision was shared with employees via Staff Notice N° SLBC-2489 of 8 August 1997, which decided to “confine the extension of service of employees of the corporation beyond the age of 55 years up to 31.12.1997”.

2.3 On 17 February 1998, the author reached the age of 55 years, and asked for an extension of his service, which was rejected by the SLBC². The author claims that termination of his service was without just cause, unfair and unreasonable. He further states that the SLBC employed several persons, even after they reached the age of 60.

2.4 The author filed a legal action under the Industrial Disputes Act³ before the Labour Tribunal. On 10 November 2003, the Tribunal decided that termination of the author’s service was unfair, and ordered his employer to pay him the equivalent of one year-salary⁴, as compensation. The SLBC appealed the Labour Tribunal decision before the High Court of the Western Province of Sri Lanka. On 7 January 2005, the High Court set aside the Labour Tribunal’s Order, on the ground that a similar case filed before the Supreme Court of Sri Lanka by other employees of the SLBC had been dismissed by the Supreme Court⁵. In that case, 14 applicants, employees of the SLBC, had filed a fundamental rights application against the SLBC Staff Notice N°SLBC-2489. They argued that this Notice denied them their right to equal protection of the law, guaranteed by the Sri Lankan Constitution. The Supreme Court found that the 14 petitioners had failed to establish a *prima facie* case, and therefore refused to grant leave to appeal. Since the High Court found the author’s complaint to be similar, in substance, to the Supreme Court case mentioned above, it felt bound to rule against the author.

2.5 The author lodged an appeal against the High Court’s decision with the Supreme Court of Sri Lanka, which was dismissed on 28 April 2005, as the court deemed that there was no basis to grant leave to appeal.

2.6 The author contends that his action was based on the wrongful termination of his employment under the Industrial Disputes Act, whereas the Supreme Court decision, on the basis of which the High Court rejected his claim, dealt with an action on fundamental rights for alleged unequal treatment. He adds that the dismissal of his appeal by the Supreme Court left him without access to a judicial or administrative remedy.

2.7 The author further claims that with the Supreme Court’s decision not to grant leave to appeal, he realized that he had been discriminated against, since he belongs to the Tamil minority. He affirms that his surname is unmistakably identified as Tamil, and that both the High Court and the Supreme Court are located in the South of Sri Lanka where the Tamils represent a minority. Hence, the author contends that he has been a victim of discrimination on the basis of race.

The complaint

3. The author claims that by ruling on the basis of a Supreme Court decision, the cause of action of which differed from his own action, the High Court violated his right to a fair trial, in breach of article 14, paragraph 1, of the Covenant. He further claims that he was denied relief by the High Court and the Supreme Court because he was discriminated

² Presumably on the basis of the SLBC Staff Notice N°SLBC-2489, which entered into force on 1 January 1998.

³ N°43 (1950)

⁴ Rs. 74’532, i.e. 7400 USD

⁵ Case N°75/98.

against on the basis of being a member of the Tamil ethnic minority, in violation of article 26 of the Covenant.

State party's failure to cooperate

4. By *notes verbales* of 27 November 2006, 29 July 2008, 26 February 2009 and 12 October 2009, the State party was requested to submit to the Committee information on the admissibility and merits of the communication. The Committee notes that this information has not been received, and regrets the State party's failure to provide any information with regard to the admissibility or the substance of the author's claims. The Committee recalls that under the Optional Protocol, the State party concerned is required to submit to the Committee written explanations or statements, clarifying the matter and the remedy, if any, it may have taken. In the absence of a reply from the State party, due weight must be given to the author's allegations, to the extent that they have been properly substantiated.

Issues and proceedings before the Committee

Consideration of admissibility

5.1 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 it is admissible under the Optional Protocol to the Covenant. The Committee has ascertained, as required under article 5, paragraph 2 (a), of the Optional Protocol, that the matter is not being examined under another procedure of international investigation or settlement.

5.2 The Committee notes the author's claim that by ruling on the basis of a Supreme Court decision which differed from his own action, the High Court violated his right to a fair trial, in breach of article 14, paragraph 1, of the Covenant. The Committee observes that the State party's Supreme Court considered a case similar, in substance, to the author's. In that case, 14 employees of the SLBC had filed a fundamental rights application against a number of respondents, complaining about the implementation of the SLBC's Staff Notice N° 2489. The Supreme Court ruled that the SLBC's refusal to grant employees an extension of service beyond 55 years was not in breach of their rights to equal protection of the law, and therefore rejected their leave to appeal. In the present situation, the High Court applied the Supreme Court ruling to the author's case, as a binding precedent. The Committee notes that other than stating that the subject matter of the author's claims differed from those of the other employees, he has not substantiated any further on how they differed. The Committee recalls its jurisprudence that it is generally for the courts of State parties to the Covenant to review the facts and evidence, or the application of domestic legislation, unless it can be shown that such review or application was clearly arbitrary, amounted to a denial of justice, or that the court otherwise violated its obligation of independence and impartiality⁶. In the present case, the author failed to demonstrate that the application, by the High Court of the Western Province of Sri Lanka, of a Supreme Court precedent, as *res judicata*, amounted to arbitrariness or to a denial of justice on his behalf. This claim is therefore inadmissible under article 2 of the Optional Protocol.

5.3 Regarding the author's claim under article 26, arguing discrimination on the basis of race, as he is a member of the Tamil minority, the Committee notes that the author failed to provide it with sufficient information on comparable cases, so as to demonstrate that either

⁶ See, for example, Communications No. 1537/2006, *Gerashchenko v. Belarus*, Inadmissibility decision adopted on 23 October 2009, para. 6.5; N°1403/2005, *Gilberg v. Germany*, Inadmissibility decision adopted on 25 July 2006, para. 6.6.

the termination of his employment, or the fact that the Supreme Court denied him leave to appeal, amounted to discrimination or unequal treatment, based on race, under this provision. The Committee thus finds that the author has failed to substantiate sufficiently, for purposes of admissibility, any claim of a potential violation of article 26, on the ground of race. As such, this part of the claim is also inadmissible under article 2 of the Optional Protocol.

5.4 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.]
