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

DECISION

Communication No. 1182/2003

Submitted by:	Mr. Savvas Karatsis (represented by counsel, Mr. Achilleas Demetriades)
Alleged victim:	The author
State party:	Cyprus
Date of communication:	29 November 2001 (initial submission)
Document references:	Special Rapporteur's rule 97 decision, transmitted to the State party on 2 June 2003 (not issued in document form)
Date of decision:	25 July 2005

* Made public by decision of the Human Rights Committee.

Subject matter: Revocation of temporary appointment of judge to another post within the judiciary - Alleged bias of Supreme Court judges

Procedural issues: Substantiation of claims by author - Admissibility *ratione materiae*

Substantive issues: Right to a fair hearing by an impartial tribunal - Right to access to public service on general terms of equality - Right to an effective remedy.

Articles of the Covenant: 2 (3), 14 (1) and 25(c)

Articles of the Optional Protocol: 2 and 3

[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. 1182/2003*

Submitted by:	Mr. Savvas Karatsis (represented by counsel, Mr. Achilleas Demetriades)
Alleged victim:	The author
State party:	Cyprus
Date of communication:	29 November 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 Mr. Savvas Karatsis, a Cypriot national, born on 23 December 1952. He claims to be a victim of a violation by Cyprus[1] of article 14, paragraph 1, read alone and in conjunction with article 2, paragraph 3, of the Covenant. In a subsequent submission (see para. 5.1), he also claims a violation of his rights under article 25 (c) of the Covenant. The author is represented by counsel, Mr. Achilleas Demetriades.

Factual background

2.1 On 11 January 1994, the author was appointed to the post of Family Court judge, a position that he continues to hold until today. In June 2000, he applied for a vacant post of

* 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] The Covenant and the Optional Protocol thereto entered into force for Cyprus respectively on 23 March 1976 and 15 July 1992.

District Court judge offering better promotion opportunities, a higher salary scale and higher pension benefits. On 12 July 2000, the Supreme Council of Judicature ("the Supreme Council"), a panel responsible for the appointment and promotion of judges under the Administration of Justice Law (1964), whose 13 members also sit as Supreme Court of Cyprus, selected the author for a temporary post as District Court judge for a period of one year from 1 October 2000, subject to the condition that he would resign from his post of Family Court judge before taking up his function at the District Court. At the end of that period, the Supreme Council would decide about his appointment as permanent judge and civil servant.

2.2 On 14 July 2000, acting on instructions from the Supreme Court, the Chief Registrar communicated with the author. After the author had accepted the conditions of appointment, including his prior resignation from the post of Family Court judge, the Chief registrar sent him an offer of appointment to the post of District Court judge (with the starting salary of the scale for District Court judges) and advertised the author's post of Family Court judge. By letter of 19 July 2000, the author accepted the written offer of appointment, which did not contain a proviso on his resignation from the post as Family Court judge.

2.3 On 26 September 2000, the Chief Registrar sent the author the following letter together with the document of his appointment to the temporary post of District Court judge:

> "Further to the letter offering appointment dated 13 July 2000 and its acceptance by you by your letter dated 19 July 2000, I forward to you the relevant document of your appointment to the post of temporary district judge.
>
> 1. It is noted that, as you have been informed, a prerequisite to your appointment is your resignation from the post of judge of the Family Court before the assumption of your duties.
>
> 2. Provided the above [is] observed, you will take the judicial oath and will give the affirmation to the Republic for the post of temporary district judge next Monday, 2 October 2000, at 8.00 a.m. at the Supreme Court."

2.4 On 2 October 2000, the author objected to the condition of prior resignation from his post as Family Court judge, which he believed to have been dropped, as it had not been included in the written offer of appointment. He argued that such resignation would result in a reduction of his annual salary by CYP£ 10,000.00, loss of benefit of his more than six years of service in the Family Court, including loss of his pension benefits, and uncertainty of tenure as it was not sure whether he would be permanently appointed at the end of the one-year period. He would only accept the "new condition" of prior resignation in the event of permanent appointment to the post of District Court judge on a scale which corresponds to the salary of a Family Court judge with more than six years' service and if any acquired rights were preserved.

2.5 On the same day, the Chief Registrar informed the author that his appointment had been revoked, as he did not accept the conditions of such appointment. On 4 December 2000, the author filed a complaint with the Supreme Court, challenging the Supreme Council's notification of 26 September 2000 on the basis that it purported unilaterally to change the terms of his employment contract. The author also challenged the Council's decision of 2 October 2000 revoking his appointment. The case was first referred to a single judge of the

Court but later assigned to the full Supreme Court by the Chief Registrar. On 23 January 2001, the author, by reference to Article 153(9)[2] of the Constitution of Cyprus, applied for his case to be heard by a different bench, arguing that the 13 judges of the Supreme Court were the very authors of the impugned decisions, which they had taken in their capacity as members of the Supreme Council.

2.6 By judgment of 15 March 2001, the Supreme Court dismissed the case for want of jurisdiction without addressing the issue of impartiality.[3] It held that the appointment of judges is an exercise of the judicial rather than the executive or administrative power, thus falling within the exclusive competence of the Supreme Council and outside the Supreme Court's jurisdiction under Article 146 of the Constitution of Cyprus.[4]

2.7 On 25 May 2001, the author filed an application with the European Court of Human Rights, alleging that the Supreme Court's lack of impartiality, the denial of an effective remedy to challenge the Supreme Council's decision and the reduction of his salary and pension benefits in the event of his resignation from the post of Family Court judge violated articles 6 and 13 of the European Convention on Human Rights and article 1 of Protocol No. 1 to the Convention.

2.8 On 31 May 2001, the European Court's Registrar informed the author of the possible obstacles to the admissibility of his application, namely the inapplicability of articles 6 and 13 of the Convention to public law disputes irrespective of pecuniary character, as well as the inapplicability of article 1 of Protocol No. 1 in the light of the fact that the author had not been deprived of his pension rights as a Family Court judge and that he had not acquired any such rights as a District Court judge.

2.9 On 14 June 2001, the author insisted on registration of his application, arguing that the State party cannot deny him judicial review on the basis that the appointment of judges, unlike that of civil servants, comes within the competence of the judicial rather than the administrative power, and at the same time benefit from the exemption of disputes concerning civil servants from the scope of article 6. Otherwise, he would be left without any remedy.

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[2] Article 153(9) of the Constitution of Cyprus reads: "In the case of temporary absence or incapacity of the President of the High Court or of one of the Greek judges or of the Turkish judge thereof, the President of the Supreme Constitutional Court or the Greek judge of the Turkish judge thereof, respectively, shall act in his place during such temporary absence of incapacity. Provided that it is impracticable or inconvenient for the Greek or the Turkish judge of the Supreme Constitutional Court to act, the senior in office Greek or Turkish judge in the judicial service of the Republic shall so act respectively."

[3] The Court recalled that "[i]t is up to the court, which is legally competent under the law, to decide whether the subject matter of an application comes under its jurisdiction. This matter takes precedence over any other. Once it is considered that the court has jurisdiction to deal with the subject matter of an application, then the question of excluding judges who will exercise the court's jurisdiction is examined." Supreme Court of Cyprus, case No. 1547/2000, Savvas Karatsis v. The Republic, Judgment of 15 March 2001.

[4] The Supreme Court referred to its previous judgment in *Antonios Kourris v. The Supreme Council of Judicature* (1972) 3 CLR, 390.

2.10 On 27 September 2001, the European Court declared the application inadmissible under Article 35, paragraph 4, of the Convention, as it did not disclose any appearance of a violation of the rights and freedoms set out in the Convention.

The complaint

3.1 The author claims that the fact that the Supreme Court's decision not to hear his case was taken by the same judges who, in their capacity as members of the Supreme Council, had revoked his temporary appointment as District Court judge deprived him of his rights to a fair and public hearing before an impartial tribunal and to an effective remedy, in violation of article 14, paragraph 1, read alone and in conjunction with article 2, paragraph 3, of the Covenant.

3.2 On impartiality, the author recalls the Committee's jurisprudence[5] that judges must not harbour any preconceptions about the matter placed before them. The fact that neither the Attorney General, who usually represents the State in court proceedings, nor the Supreme Council as respondent filed an appearance before the Supreme Court illustrated that the 13 judges on the Supreme Court were judges in their own cause.

3.3 According to the author, the issue of impartiality is of such importance as a prerequisite for a fair trial that it should be considered before any other issue including that of jurisdiction. Instead of dismissing his case on grounds of jurisdiction, the Supreme Court judges should first have been replaced by another bench under the procedure provided for in Article 153(9) of the Constitution.

3.4 The author argues that the guarantees of article 14, paragraph 1, apply to all court proceedings, whether civil, criminal or administrative, as long as they involve a determination of one's rights and obligations in a suit at law.

3.5 With regard to article 2 of the Covenant, the author submits that the Supreme Court's failure to give effect to his rights under article 14, paragraph 1, deprived him of the only effective remedy available under Cypriot law.

State party's observations on admissibility and merits

4.1 On 2 December 2003, the State party challenged the admissibility and, subsidiarily, the merits of the communication, arguing that the author's claim under article 14, paragraph 1, is inadmissible *ratione materiae* under article 3 of the Optional Protocol and that, as a consequence, article 2 of the Covenant does not apply.

4.2 The State party recalls the Committee's jurisprudence[6] that the procedure of appointing judges does not come within the purview of a determination of rights and obligations in a suit of law within the meaning of article 14, paragraph 1, of the Covenant. In relation to the largely congruent provision of article 6, paragraph 1, of the European Convention, the

[5] Communication No. 387/1989, *Karttunen v. Finland*, Views adopted on 5 November 1992, at para. 7.2.
[6] See Communication No. 972/2001, *George Kazantzis v. Cyprus*, decisions on admissibility adopted on 7 August 2003, at para. 6.5.

European Commission[7] has decided that disputes concerning the judiciary, despite their independence from the executive branch, fall outside the scope of article 6. The European Court, since *Pellegrin v. France*,[8] has applied a "functional criterion" to exclude from the scope of article 6, paragraph 1, any disputes concerning the appointment, promotion or dismissal to or from posts involving participation in the exercise of powers conferred by public law.

4.3 The State party submits that the author's claim related to article 2 of the Covenant should also be dismissed, because that provision can only be invoked in conjunction with a substantive Covenant right.

4.4 On the merits, the State party argues that the author's allegations about the lack of impartiality of the Supreme Court judges and the denial of a fair hearing are merely conjectural, given that the Supreme Court (in whatever composition) was bound by its previous judgment in *Kourris v. The Supreme Council of Judicature*[9] to dismiss his complaint for want of jurisdiction under Article 146 of the Constitution. The author's rights under articles 2 and 14, paragraph 1, of the Covenant had therefore not been violated in any event.

Author's comments

5.1 On 2 February 2004, the author commented on the State party's observations and amended the communication by claiming also a violation of article 25 (c) of the Covenant. He submits that his case relates to the procedural fairness of the Supreme Court proceedings rather than to the fairness of their outcome. These proceedings had to be distinguished from *Kazantzis v. Cyprus*, which related to the decision of the Supreme Council of Judicature itself, a non-judicial body, to reject the appointment of an applicant from outside the judiciary to the post of District Court judge.

5.2 The author considers that his case is similar to *Casanovas v. France*[10] and *Chira Vangas v. Peru*,[11] as it concerns the terms of his employment within the judiciary, conveying more favourable career prospects, salary and pension benefits in the event of his appointment to the post of District Court judge. He recalls that the concept of "suit at law" under article 14, paragraph 1, is based on the nature of the right in question rather than the status of one of the parties, and concludes that his claim under that article is admissible *ratione materiae*.

5.3 The author reiterates that the Supreme Court's lack of impartiality touched upon principles of natural justice and should therefore have been considered before any jurisdictional questions arising under domestic law. The Committee should take the view that article 14, paragraph 1, has been violated.

5.4 By reference to *Kazantzis v. Cyprus*, the author submits that the procedure for appointing judges falls within the scope of article 25 (c) of the Covenant. He contends that the revocation of his appointment to the post of District Court judge breached his right under that article to access, on general terms of equality, to public service.

[7] X v. Portugal (1983) 32 DR, at p. 258.
[8] Application No. 28541/95, Judgment of 8 December 1999.
[9] See above, at footnote 4.
[10] Communication No. 441/1990, Views adopted on 19 July 1994.
[11] Communication No. 906/2000, Views adopted on 22 July 2002.

5.5 The author claims that the dismissal of his complaint by the Supreme Court also deprived him of his right to access to an effective remedy, in violation of article 14, paragraph 1, and 25 (c) in conjunction with article 2 of the Covenant.

5.6 As a remedy, the author claims that the proceedings be revived and a differently composed Supreme Court deal first with the issue of impartiality of the 13 Supreme Court judges who dismissed his complaint. He also claims adequate compensation for the loss suffered in terms of career opportunities, salary and pension befits, as well as for his legal expenses.

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 communication is admissible under the Optional Protocol to the Covenant.

6.2 With regard to the author's claim under article 25(c) of the Covenant, the Committee notes the absence of any information on comparable cases, in which candidates were appointed to the post of District Court judge, or on any prohibited grounds of discrimination, on the basis of which the author would have been denied access to that post. It therefore considers that the author has not substantiated his claim that he was denied access, on general terms of equality, to public service for purposes of admissibility. Consequently, this part of the communication is inadmissible under article 2 of the Optional Protocol.

6.3 As to the author's claim under article 14, paragraph 1, the Committee observes that, in contrast to *Casanovas v. France* and *Chira Vargas v. Peru*, the present case concerns the revocation of an appointment to another post within the judiciary rather than the dismissal from public service. The Committee recalls that the concept of "suit at law" under article 14, paragraph 1, is based on the nature of the rights in question rather than the status of one of the parties.[12] It also recalls that that the procedure of appointing judges, albeit subject to the right in article 25(c) to access to public service on general terms of equality, as well as the right in article 2, paragraph 3, to an effective remedy, does not as such come within the purview of a determination of rights and obligations in a suit at law within the meaning of article 14, paragraph 1.

6.4 The issue before the Committee is therefore whether the proceedings initiated by the author to challenge the revocation of his appointment to the post of District Court judge constituted a determination of his rights and obligations in a suit at law. The Committee recalls that the author chose not to resign from his post as Family Court judge to prevent a substantial reduction in his annual salary, exclusion of his years of service at the Family Court from the calculation of his pension benefits, as well as uncertainty of tenure. It notes that the author entirely preserved these acquired rights and considers that his claim concerning the loss of career prospects and possible increases in salary and pension benefits caused by the revocation of his appointment is merely hypothetical. Similarly, he has failed to substantiate any violation of his right under article 25(c) to equal access to public service.[13] The author has therefore not substantiated that the proceedings initiated by him constituted a

[12] Communication No. 112/1981, *Y.L. v. Canada*, decision on admissibility adopted on 8 April 1986, at para. 9.2; Communication No. 441/1990, Casanovas v. France, at para. 5.2.
[13] See above, at para. 6.2.

determination of his rights and obligations in a suit at law within the meaning of article 14, paragraph 1.

6.5 While the revocation of appointments within the judiciary must not necessarily be determined by a court or tribunal, the Committee recalls that whenever a judicial body is entrusted under national law with the task of deciding on such matters, it must respect the guarantee of equality of all persons before the courts and tribunals as enshrined in article 14, paragraph 1, and the principles of impartiality, fairness and equality of arms implicit in this guarantee.[14] However, the author has not rebutted the State party's argument that the Supreme Court's judgment in *Kourris v. The Supreme Council of Judicature* was a binding precedent to the effect that the Supreme Council's exercise of powers is not subject to judicial review and falls outside the Supreme Court's jurisdiction under Article 146 of the Constitution. Accordingly, the Committee considers that the Supreme Court did not violate the guarantees of article 14, paragraph 1, when it declared itself incompetent to deal with the author's case, given that Cypriot law explicitly excluded the Court's jurisdiction to adjudicate the matter. The initiation of proceedings before a judicial body that manifestly lacks jurisdiction to deal with a matter cannot trigger the guarantees of Article 14, paragraph 1. The Committee concludes that this part of the communication is therefore inadmissible *ratione materiae* under article 3 of the Optional Protocol.

7. The Human Rights Committee therefore decides:

a) That the communication is inadmissible under articles 2 and 3 of the Optional Protocol;

b) That this decision shall be communicated 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.]

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[14] *Cf.* Communication No. 1015/2001, *Perterer v. Austria*, Views adopted on 20 July 2004, at para. 9.2.