

Sri Lanka contravenes the International Covenant on Civil and Political Rights for death in custody

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The Human Rights Committee finds Sri Lanka's investigation into the death of a victim of police assault in custody in contravention of the International Covenant on Civil and Political Rights.



GUNETHTHIGE V. SRI LANKA (2087/2011)

Summary

In March 2015, the Human Rights Committee was asked to consider whether Sri Lanka had violated its obligations under the International Covenant on Civil and Political Rights in connection with the death of an individual in police custody.

The communication was submitted by two Sri Lankan nationals on their own behalf and on behalf of their deceased son and nephew respectively, Thissera Sunil Hemachandra, under the Optional Protocol to the Covenant.

Background

On 22 July 2003, Mr Hemachandra was arrested and detained without reason by officers of Moragahahena Police Station, shortly after it had become known that Mr Hemachandra had won approximately US\$25,000 in a lottery. Mr Hemachandra was severely beaten upon arrest and while in police custody.

On 23 July 2003, Mr Hemachandra was in a visibly critical medical condition, with especially severe injuries to his head and abdomen. The police failed to seek medical assistance for several hours.

On the same day, the authors submitted a complaint to the National Human Rights Commission of Sri Lanka.

On 26 July 2003, Mr Hemachandra died in the national hospital of Colombo as a result of his head injury. On 29 July 2003, a post-mortem report identified four possible origins of the injury: (a) a heavy blow to Mr Hemachandra's back, (b) a fall due to being pushed, (c) an accidental fall, or (d) a fit due to alcohol withdrawal or epilepsy. The report stated that a fall following alcohol withdrawal was "possible", a conclusion drawn from the condition of Mr Hemachandra's liver.

On 27 July 2003, an investigation was ordered by the Colombo Chief Magistrate's Court. On 8 August 2003, the matter was transferred to the Magistrate of Horana. On 29 April 2004, the investigation was closed further to the Attorney General's decision not to pursue charges in connection with Mr Hemachandra's death because of an alleged lack of evidence for his having been assaulted.

On 8 September 2013, the authors filed a fundamental rights petition with the Supreme Court of Sri Lanka. The complaint to the National Human Rights Commission was suspended as a result.

On 6 August 2010, the Supreme Court, relying on the report from 29 July 2003, dismissed the petition on the ground that a fit due to alcohol withdrawal was "highly probable". The Court discarded the possibility of Mr Hemachandra's death being the result of police assault and chose not to launch an independent investigation.

On 20 July 2011, the authors filed a communication with the Committee under the Optional Protocol to the Covenant. The authors claimed that Sri Lanka had violated the authors' and Mr Hemachandra's rights to: (i) life; (ii) freedom from cruel and inhuman treatment; (iii) liberty and security of the person; and (iv) dignified treatment in detention (in violation of articles 6, 7, 9, 10 of the Covenant respectively).

As of March 2015, the authors still did not know the exact circumstances surrounding Mr Hemachandra's death and no investigation or prosecution of any public authorities had taken place.

The Committee's decision

Regarding the admissibility of the authors' complaint, the Committee noted that the authors had exhausted domestic remedies for the purposes of article 5(2)(b) of the Optional Protocol, noting the undue prolongation of the remedies available to the authors, and declared the claim admissible to the extent that it raised issues under articles 6, 7, 9 and 10 of the Covenant.

On the merits, the Committee recalled its jurisprudence that, by arresting and detaining an individual, State parties take responsibility for that individual's life and that there was a rebuttable presumption that a death occurring during police custody constituted an arbitrary execution requiring adequate investigation. With respect to the latter, the Committee noted that all investigative steps taken by the police had been taken by the same police forces that had arrested and detained Mr Hemachandra, that the investigations by the Magistrate of Horana had been closed, and that the authors' petition had been dismissed by the Supreme Court after seven years, without any form of independent investigation having been ordered. The Committee considered these measures inadequate and concluded that by act or omission, Sri Lanka had not taken adequate steps to protect Mr Hemachandra's life or to properly investigate his death. The Committee further noted Mr Hemachandra's lack of adequate legal representation.

In view of the above, the Committee concluded that Sri Lanka was in violation of the Covenant. Regarding Mr Hemachandra, Sri Lanka was in breach of articles 6, 7 and 9. Having reached this conclusion, the Committee decided not to examine separately the remaining grounds invoked by the authors under article 10.

As for the authors' personal claims, the Committee found a violation of article 7 on account of the continued anguish caused by the unresolved circumstances surrounding Mr Hemachandra's death.

In accordance with article 2(3) of the Covenant, the Committee observed that Sri Lanka was under an obligation to provide the authors with an effective remedy. This included a prompt and independent investigation of the facts, prosecution of the perpetrators and providing the authors with adequate financial compensation. Sri Lanka was also required to ensure that such violations did not reoccur in the future and to issue a public apology to Mr Hemachandra's family.

Sri Lanka must now submit its written response within six months of the Committee's decision, including information on the action taken in the light of the Committee's recommendations, and ensure that the decision is published widely.

Sam Hunter Jones is an international lawyer, based in London.