

Communication No. 380/1989, R. L. M. v. Trinidad and Tobago
(decision of 16 July 1993, adopted at the forty-eighth
session)

Submitted by: R. L. M. (name deleted)

Alleged victim: The author

State party: Trinidad and Tobago

Date of communication: 17 June 1989 (initial submission)

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

Meeting on 16 July 1993,

Adopts the following:

Decision on admissibility

1. The author of the communication is R. L. M., an attorney in Trinidad and Tobago, residing in San Fernando, Trinidad. He claims to be a victim of violations by Trinidad and Tobago of articles 2, paragraph 3, and 17 of the International Covenant on Civil and Political Rights.

Facts as submitted

2.1 The author contends that he has been the target of "unfair and unacceptable" behaviour and animosity on the part of a judge, L. D., sitting on the Port-of-Spain Assizes Court. In several criminal cases, including capital cases, which were presided over by the said judge and in which the author represented the accused, this judge allegedly made unjustified remarks which called into question the author's professional ethics. Thus, in a murder trial before the Port-of-Spain Assizes Court in July 1987, Judge L. D. criticized the author for having intimated to a senior police officer, during cross-examination, that he was lying and for having accused the prosecution of concocting and fabricating evidence. On the other hand, the judge saw no reason for similarly criticizing the prosecutor, who had accused the author of dishonesty on the same occasion.

2.2 The author lists four other criminal cases handled by Judge L. D., in which he is said also to have made "baseless critical or derogatory remarks" about the author's professional conduct. Thus, in one criminal case, the judge made the following remarks:

"I want to say a few words on the duty of attorneys for the defendants. They do not defend a case simply for the sake of a defence or simply on the instructions of their clients ... Without being critical of the conduct

of the attorney in this case, attorneys should be firm in advising their clients when there is no chance of success."

The author contends that the judge is nurturing a "personal venom or vendetta" against him and considers his behaviour to be unfair and unacceptable.

2.3 As to the requirement of exhaustion of domestic remedies, the author indicates that sections 137 and 138 of the Trinidadian Constitution regulate whatever disciplinary action may be taken against a judge or judicial officer. He has addressed a request for disciplinary action against the judge to the Chief Justice of Trinidad, to the Prime Minister and the President of Trinidad, without success.

2.4 The author contends that any action in respect of the judge's conduct is further precluded by section 129, paragraph 3, of the Trinidadian Constitution, which stipulates that the question of whether a Service Commission has properly performed any function vested in it by the Constitution may not be inquired into by a court. This provision has been interpreted by the High Court and the Court of Appeal of Trinidad and Tobago as precluding them from inquiring into the action or non-action of, for example, the Judicial and Legal Services Commission. The complaint mechanism set up by the latter has, in the author's opinion, become "nugatory in that it has not even acknowledged [my] complaint". Mandamus and other avenues of judicial review are said to be similarly unavailable.

Complaint

3. The author contends that the comments of Judge L. D. about him constitute an unlawful attack on his honour and reputation, for which no remedy is available, in violation of articles 2, paragraph 3, and 17 of the Covenant.

State party's information and observations

4.1 The State party contends that the communication is inadmissible both as incompatible with the provisions of the Covenant, in particular article 17, and as an abuse of the right of submission, pursuant to article 3 of the Optional Protocol.

4.2 In this context, the State party observes that the comments alleged to have been made by Judge L. D. do not reveal particular animosity towards the author but merely remind him of his professional duties vis-a-vis the Court and his clients. It further notes that comments made by a judge in his judicial capacity "are absolutely privileged", and that no action may be filed in the courts against such comments. Accordingly, they cannot, in the State party's opinion, be deemed "unlawful" within the meaning of article 17 of the Covenant.

4.3 The State party explains the rationale for the privileged nature of remarks made by judges in their judicial capacity:

"In the public interest it is desirable that persons in certain positions, such as judges ..., should be able to express themselves with complete freedom and, to secure their independence, absolute privilege is given to their acts and words" (quote from Halsbury's Laws of England, 4th ed., vol. 28, para. 96).

This rule applies even if the acts or remarks attributed to a judge are malicious, a qualification which according to the State party does not apply to the present case.

Issues and proceedings before the Committee

5.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

5.2 The Committee has examined the information submitted by the parties, including the author's petition to the Chief Justice of Trinidad and Tobago. It observes that the author has not shown, for purposes of admissibility, that the remarks attributed to Judge L. D. constituted an unlawful attack on his honour and reputation. Accordingly, the author has no claim under the Covenant, within the meaning of article 2 of the Optional Protocol.

6. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under article 2 of the Optional Protocol;

(b) That this communication shall be communicated to the State party and to the author of the communication.

[Done in English, French and Spanish, the English text being the original version.]