

HUMAN RIGHTS COMMITTEE

Mankarious v. Australia

Communication No. 1065/2002

1 April 2002

CCPR/C/74/D/1065/2002

ADMISSIBILITY

Submitted by: Makram Asham Andrawos Mankarious

State party concerned: Australia

Date of registered communication: 27 November 2001 (initial submission)

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

Meeting on 1 April 2002,

Adopts the following:

Decision on admissibility

1. The author of the communication, dated 27 November 2001, is Mr. Makram Asham Andrawos Mankarious, an Australian citizen, born in Cairo, Egypt on 17 December 1950, who claims to be a victim of a violation by Australia¹ of article 26 of the International Covenant on Civil and Political Rights (the Covenant). He is not represented by counsel.

The facts as submitted by the author

2.1 The author emigrated from Egypt to Australia in 1972 and took residence in Melbourne. Between 10 July and 4 October 1974, he was a manual worker for Metro Plastics Pty. Ltd., a company that manufactured plastic materials using heavy molds called plastic dies.

2.2 On 4 October 1974, during working hours, the author was the victim of an accident in which a heavy plastic-die weighing several tons broke loose from the crane on which it was hanging and fell on his right leg.

2.3 As a result of the accident, the author was immediately dismissed by the company and was told by the manager not to make any complaints. The company closed down three months later.

2.4 The author was initially treated at Alfred Hospital in Melbourne and was told by the doctor there that the injury was inoperable and that the only remedy was to rest. The author remained bed-ridden for 16 months following the accident and was unable to work. During this period he received no compensation from his employer.

2.5 In 1981, while his leg was increasingly painful, the author consulted a specialist in Melbourne who recommended an operation. The author was operated in 1982 and medical costs were paid by the Australian Department of Social Security that allegedly kept all the medical records and doctors' certificates. The operation did not prove very useful as the author continued to suffer.

2.6 The author then resided in the United Kingdom but does not provide any information as to the actions he has undertaken there with regard to his injury.

2.7 Informed that there were very good specialists in Switzerland for that kind of injury, the author travelled to Geneva in April 1996, where he had a medical check-up at the Hospital Cantonal. Doctors recommended an active treatment of the varicose veins and of an inguinal hernia by way of sclerotherapy.

2.8 In 1995, in order to defray medical costs for these treatments, the author requested legal assistance from the Law Institute of Victoria, Australia, which sent him a list of lawyers who may assist him. The author submits that he has never received assistance from those lawyers.

2.9 In May 1996, a Swiss lawyer, acting on behalf of the author, referred the case to the Australian Consulate in Geneva, which responded that the matter should directly be addressed to the Department of Social Security in Australia.

2.10 In November 1996, the author consulted another lawyer in Switzerland in order to start a procedure in Australia. Counsel for the author requested assistance of Australian lawyers who emphasized the difficulty of such a procedure because of the significant time period that had elapsed since the accident. Despite additional information on the case submitted by the Swiss counsel, the said Australian lawyers did not follow up on the case. No further actions were taken by the author in this regard.

2.11 Today, the author's injury continues to bleed. The author explains that this has greatly handicapped him and inhibited his ability to find full time employment.

The complaint

3.1 The author claims that he is a victim of a violation of article 26 of the Covenant, as he has been denied equal access to social rights in Australia as well as to legal assistance.

3.2 The author also claims that he has been denied access to legal remedies in Australia and therefore

considers that domestic remedies have been exhausted.

3.3 The author asks for medical expenses related to his leg injury to be assumed by the State party as well as for compensation for loss of earnings and for future earning capacity.

Issues and proceedings before the Committee

4.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its Rules of Procedure, decide whether or not the complaint is admissible under the Optional Protocol to the Covenant.

4.2 The Committee observes that the author has not sufficiently substantiated, for purposes of admissibility, in what way he claims to be a victim of a violation of article 26 of the Covenant.

4.3 Moreover, the Committee considers that, while avenues were available to the author for submitting his case before Australian authorities, the author has not demonstrated that they would be unreasonably prolonged or unlikely to bring him effective relief. The Committee also notes that the author has failed to justify his apparent inaction during the time that has elapsed since he left Australia and until he took further steps in Switzerland in 1995.

5. The Committee therefore decides:

(a) that the communication is inadmissible under articles 2 and 5, paragraph 2 (b), of the Optional Protocol;

(b) that this decision shall be communicated to the author and, for information, to the State party.

Notes

¹ The Optional Protocol to the International Covenant on Civil and Political Rights entered into force for the State party on 25 December 1991.