



**International covenant
on civil and
political rights**

Distr.
RESTRICTED*

CCPR/C/85/D/1417/2005
23 November 2005

Original: ENGLISH

HUMAN RIGHTS COMMITTEE
Eighty-fifth session
17 October – 3 November 2005

DECISION

Communication No. 1417/2005

<u>Submitted by:</u>	Mr. J.O., Mrs Z.S., and their daughter S. O., (not represented by counsel)
<u>Alleged victim:</u>	The authors
<u>State party:</u>	Belgium
<u>Date of communication:</u>	24 September 2004 (initial submission)
<u>Date of decision:</u>	28 October 2005

Subject matter: Effective representation in civil proceedings

Procedural issues: Exhaustion of domestic remedies; failure to sufficiently substantiate allegations for purposes of admissibility; inadmissibility *ratione materiae*.

Substantive issues: Inability to obtain redress in a civil suit due to alleged mishandling of legal representation; undue delay.

Articles of the Covenant: none

Articles of the Optional Protocol: 2; 3; 5, paragraph 2 (a)

[ANNEX]

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- Made public by decision of the Human Rights Committee.

ANNEX

**DECISION OF THE HUMAN RIGHTS COMMITTEE UNDER
THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT
ON CIVIL AND POLITICAL RIGHTS**

Eighty-fifth session

Concerning

Communication No. 1417/2005**

Submitted by: Mr. J.O., Mrs Z.S, and their daughter S. O.,
(not represented by counsel)

Alleged victim: The authors

State party: Belgium

Date of communication: 24 September 2004 (initial submission)

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

Meeting on 28 October 2005

Adopts the following:

DECISION ON ADMISSIBILITY

1. The authors of the communication are Mr. J.O., a Belgian national born in 1951 and his companion, Mrs. S.Z., a Belgian resident born in 1970. They submit the communication on their behalf and on behalf of their child S., a Belgian national born in 1999, and claim to be victims of violations of their human rights by Belgium, in particular of all of their “judicial rights”, rights under the UN Charter, the Universal Declaration of Human Rights, and the International Covenant on Civil and Political Rights. Although the authors do not invoke any specific provision of the Covenant, the communication appears to raise issues under articles 2, paragraph 3 (b); 14; and 26. The authors are not represented by counsel. The Covenant and the Optional Protocol entered into force for the State party on 21 July 1983 and 17 August 1994, respectively.

** The following members of the Committee participated in the examination of the present communication: 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, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Ivan Shearer, Mr. Hipólito Solari-Yrigoyen, Ms. Ruth Wedgwood and Mr. Roman Wieruszewski.

Factual background

2.1 From the documents submitted to the Committee, it transpires that in 1992, Mr. O., then a taxi driver, was the victim of an assault by another taxi driver and as consequence was declared temporarily unable to work.

2.2 On 15 November 1999, while the author and his pregnant companion were travelling in a public bus in Brussels, a car crashed into the bus. Allegedly, the author and his companion were thrust into the seats in front of them and suffered injuries. The author's companion was hospitalized and gave birth to their daughter on 21 November 1999. According to the authors, their daughter has been affected by the accident, in that she is suffering from growth problems.

2.3 From the multiple documents submitted by the authors, it transpires that they are parties to different proceedings related to the above events. For instance, in 1994, the author contested the decision of a Mutual Insurance company to suspend his work incapacity entitlements starting from 12 November 1993. Allegedly, on 11 September 2001, the Brussels Labour Court (Cour du Travail de Bruxelles) decided in the author's favour. The author claims however, that the delay of the procedure – 7 years – constitutes undue delay that he imputes to omissions of his lawyer.

2.4 In another procedure, the author was opposed to an insurance company, in relation to the reimbursement of a disability insurance premium. He allegedly had contracted a disability insurance with the company in 1992, and following his recognition as disabled person in 1993, he requested the payment of disability pension. The company disagreed, claiming that the author's disability existed, in fact, prior to the conclusion of the contract and that it was covered by an exemption clause to this effect. Allegedly, on 17 January 1996, the Brussels First Instance Tribunal ordered an expert medical opinion, as the company and the author disagreed on the expert to examine the author. In his report, the designated expert, Dr. I., confirmed the company's version. The author contests the expert's conclusion and claims that he was partial.

2.5 A third set of proceedings relate to the author's litigation with the insurance company of his employer in 1992, where the author had requested the payment of indemnities for his incapacity to work. In fact, after the author's accident of 1992, he was declared by a medical expert to be 100% fit to work with effect of 1 January 1993. In 1996, however, another medical expert concluded that, following the 1992 accident, the author displayed a 66 % inability to work. On 10 March 1998, the author complained against the insurer to the Brussels Labour Court (Cour du Travail de Bruxelles). On 11 December 1998, the Court rejected the author's claim as having been submitted out of time. The author requested a revision of this decision and invoked *force majeure*. By judgment of 20 November 2000, the Court rejected his request. In this regard, the author claims a violation of his right to defence, as his lawyer allegedly did not respect the statutory appeal deadline and was responsible for the prescription of his action.

2.6 A final set of procedures was conducted by the authors against the insurance company of the car driver responsible for the 1999 accident. The authors claimed that they suffered serious injuries and requested reparation. The insurance company contested this claim and requested a medical opinion to verify the consequences of the accident for the authors' health. The medical expert issued his report on 4 July 2005; he allegedly concluded that the authors

did not present any evidence of injuries attributable to the accident. The authors contest the expert's conclusion and claim a violation of their right to defence, as the designated medical expert allegedly defended the company's interests. They also complain about their lawyer who proposed this expert.

2.7 The authors explain that they have appealed to several institutions and submit copies of their complaints (Ministry of Justice, First Minister, etc), claiming various unspecified violations of their rights. On 24 February 2004, and in three additional letters of 28 July 2005, they enumerate several alleged procedural violations in the proceedings involving them, and have filed a complaint in the Brussels First Instance Tribunal. They claim violations of their rights and complain about the misconduct of several of the lawyers who represented them, and also about different representatives of the Brussels Bar who allegedly "covered" these lawyers, and about the alleged partiality of the medical expert who investigated the effects on them of the 1999 accident. On 10 May 2005, an examining magistrate of the First Instance Tribunal informed them that their case was with the Federal Police, which would convoke them shortly.

The complaint

3.1 The authors do not invoke particular provisions of the Covenant. In essence, they claim that due to their counsels' and a medical expert's misconduct, the State party has allegedly mishandled their cases as presented in paragraphs 2.1 to 2.7 above. They explain that they are unable to obtain redress of the situation in the State party as lawyers do not perform their work properly, whereas they have no more (financial) means to pay for their defence. They also claim that their cases have not been resolved since 1992 (in relation to the case of Mr. O.) and 1999 (for the bus accident), which is said to constitute an undue delay. These claims may raise issues under articles 2, paragraph 3 (b), and 14, of the Covenant.

3.2 Allegedly, due to the authorities' acts or omissions, their daughter does not receive any social benefits (allocation).

3.3 Finally, the authors also claim that they are victims of racial discrimination by the State party, without further substantiating this claim, which could raise issues under article 26 of the Covenant.

Issues and proceedings before the Committee

4.1 Before considering any claims 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.

4.2 As required by article 5, paragraph 2 (a), of the Optional Protocol, the Committee has ascertained that a similar complaint submitted by the author was declared inadmissible by the European Court for Human Rights on 7 November 2003 (application No. 16793/03), as "manifestly ill-founded". Article 5, paragraph 2 (a), however, does not preclude the Committee from examining the present communication as the issue is no longer being examined by the European Court and the State party has formulated no reservation under article 5, paragraph 2 (a) of the Optional Protocol.

4.3 The Committee has noted the authors' claims that, firstly, the State party has violated their human rights, due to the alleged mishandling of their cases in relation to the situation in which they have found themselves following the accidents of 1992 and 1999. It observes that the author's claims primarily relate to the assessment of elements of facts and evidence in the case. It recalls that it is generally for the courts of States parties to the Covenant to evaluate facts and evidence in a particular case, unless it can be ascertained that it was clearly arbitrary or amounted to a denial of justice¹. The material before the Committee does not show that the various proceedings in the State party suffered from such defects. Accordingly, the Committee considers that the author has failed to sufficiently substantiate his claim, for purposes of admissibility, and that this part of the communication is inadmissible under article 2 of the Optional Protocol.

4.4 Secondly, the Committee notes that the conduct of a privately hired defence lawyer in civil proceedings is not protected as such by any provision of the Covenant. Article 14, paragraph 3 (d) obliges States parties to provide legal aid only within the frame work of criminal proceedings. The Committee therefore concludes that this claim is incompatible *ratione materiae* with the provisions of the Covenant, under article 3 of the Optional Protocol.

4.5 As far as the author's claim that their proceedings suffered from undue delay, the Committee notes that from the material before it, it cannot be established that this delay can in any way be imputed to the State party. Rather, the delays appear to be the consequence of the authors' successive actions against the insurance companies, as well as their repeated challenges to the conclusions of experts and complaints about their lawyers. In the circumstances, the Committee considers that the author has failed to sufficiently substantiate, for purposes of admissibility, this particular claim. Accordingly, this part of the communication is inadmissible under article 2 of the Optional Protocol.

4.6 The Committee has further taken note of the authors otherwise unsubstantiated claims that their daughter is not entitled to social benefits, and that they are victims of racial discrimination. The Committee considers that the authors have failed to sufficiently substantiate, for purposes of admissibility, these claims, which accordingly are inadmissible under article 2 of the Optional Protocol.

5. The Human Rights Committee therefore decides:

- (a) That the communication is inadmissible under article 2 and 3 of the Optional Protocol;
- (b) That this decision shall be transmitted to the State party and to the author, for information.

[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.]

¹ See for example Communication No. 541/1993, Errol Simms v. Jamaica, Inadmissibility decision adopted on 3 April 1995, paragraph 6.2.