



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE
Ninety-fourth session
13-31 October 2008

DECISION

Communication No. 1766/2008

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| <u>Submitted by:</u> | Ziad Anani and Andrea Anani (not represented by counsel) |
| <u>Alleged victim:</u> | The authors |
| <u>State party:</u> | Canada |
| <u>Date of communication:</u> | 2 October 2007 (initial submission) |
| <u>Date of adoption of decision:</u> | 30 October 2008 |

* Made public by decision of the Human Rights Committee.

Subject matter: Alleged judicial bias and denial of a fair hearing by a competent, independent and impartial tribunal

Procedural issues: Level of substantiation of claims – Admissibility *ratione materiae* – Exhaustion of domestic remedies

Substantive issues: Right to a fair trial – Equality before the law and equal protection of the law – Right to an effective remedy

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

Articles of the Covenant: 2, paragraphs 1 and 3; 14, paragraph 1; 26

[ANNEX]

ANNEX

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

Ninety-fourth session

concerning

Communication No. 1766/2008*

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| <u>Submitted by:</u> | Ziad Anani and Andrea Anani (not represented by counsel) |
| <u>Alleged victim:</u> | The authors |
| <u>State party:</u> | Canada |
| <u>Date of communication:</u> | 2 October 2007 (initial submission) |

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

Meeting on 30 October 2008

Adopts the following:

DECISION ON ADMISSIBILITY

1. The authors of the communication are Mr. Ziad Anani (first author) and his wife, Ms. Andrea Anani (second author), both Canadian nationals, born on 9 December 1935 and 11 February 1959, respectively. The first author was born on 9 December 1935 in Jerusalem, then Palestine. The second author was born on 11 February 1959 in Jacksonville, USA. The authors claim to be victims of violations by Canada¹ of article 2, paragraphs 1 and 3, and of articles 7, 14, paragraph 1, 20, 25 (c) and 26 of the Covenant. They are not represented by counsel.

* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine Chanet, Mr. Maurice Glèlè Ahanhanzo, Mr. Yuji Iwasawa, Mr. Edwin Johnson, Ms. Helen Keller, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Ms. Iulia Antoanella Motoc, Mr. Michael O'Flaherty, Ms. Elisabeth Palm, Mr. José Luis Pérez Sanchez-Cerro, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Ivan Shearer and Ms. Ruth Wedgwood.

¹ The International Covenant on Civil and Political Rights and the Optional Protocol both entered into force for the State party on 19 August 1976.

The facts as submitted by the author:

2.1 The first set of proceedings relates to an application that the first author filed with the Canadian Intellectual Property Office on 4 March 1998 to patent an invention entitled 'Controlled and Self Regulating Sound Intensity to Control the Sound Level of Sound Producing Apparatus or Machinery'. He also requested financial assistance from the Ministry of Industry to market the invention, through its specialized operating agency Technology Partnerships Canada (TPC) and the Industrial Research Assistance Program (IRAP) of the National Research Council. On 24 September 2001, the Canadian Intellectual Property Office granted and issued the patent. However, the IRAP required the first author to incorporate his business in order to qualify for financial assistance. After the first author had incorporated a company, his request for financial assistance was rejected on the ground that his invention was already being commercially exploited.

2.2 On 3 November 2003, the first author filed a claim with the Supreme Court of British Columbia challenging the rejection of his request for financial assistance by the Ministry of Industry. On 26 February 2004, Justice H., who had replaced Justice T. despite the first author's objection, dismissed the claim and further directed that the action be tried in the Federal Court of Canada.

2.3 On 4 April 2006, the first author dissolved his company for lack of activity and lack of funds.

2.4 The second set of proceedings relates to a dispute between the authors and 'Uniglobe Travel International' concerning a franchise agreement that the authors and Uniglobe signed on 22 February 1999. After Uniglobe had terminated the agreement on 31 October 2001, the authors filed an action in the Supreme Court of British Columbia on 21 December 2001 seeking damages for breach of contract by Uniglobe, wrongful termination of the franchise agreement, fraud and loss of opportunity to earn profits. The authors also alleged that Uniglobe had made attempts on their life in 2002. On 18 June 2004, the Court dismissed the claim and awarded Uniglobe \$ 2,700 for its counterclaim for monies owing and damages for lost royalties. The authors' appeals were dismissed by the Court of Appeal for British Columbia and, on 9 June 2005, by the Supreme Court of Canada.

2.5 On 14 January 2005, a Master of the Supreme Court of British Columbia assessed the legal costs to be paid by the authors to Uniglobe at \$ 80,000. The authors did not appear at the assessment hearing. By letter dated 19 January 2005, counsel for Uniglobe advised them that there was no transcript of the assessment hearing, as submissions and rulings made in such hearings are not recorded. The authors' applications for leave to appeal to the Court of Appeal for British Columbia and, subsequently, to the Supreme Court of Canada were dismissed on 7 February and 9 June 2005, respectively.

2.6 The third set of proceedings relates to a claim filed against the authors in the Provincial Court of British Columbia by Mr. A. I., the President and only director of Malaspina Coach Lines Ltd, who had used the authors' travel agency for his tour operations. On 2 October 2002, Judge M. ordered the authors to pay Malaspina \$ 2945.31 plus court-ordered interest. At the same time, he dismissed their \$ 7,013.98 counterclaim for breach of contract. On 2 May 2003,

the British Columbia Supreme Court dismissed the authors' appeal against the judgment of the Provincial Court.

2.7 The authors subsequently filed a claim against Mr. A. I., his wife and Malaspina Coach Lines Ltd. for perjury, forgery, fraud, conspiracy and defamation and for deceptive and unconscionable acts under the Trade Practice Act seeking \$ 79,000 damages. On 14 October 2003, the Supreme Court of British Columbia dismissed the claim and, on 29 June 2004, the Court of Appeal of British Columbia dismissed the authors' appeal and prohibited them from commencing or continuing any legal proceedings against the defendants without first obtaining leave from the Court. The Supreme Court of Canada upheld the order.

2.8 On 27 April 2006, the authors filed a statement of claim against the State of Canada in the Federal Court of Canada asking the Court to vacate the "apartheid" orders of the Supreme Court of British Columbia and the Court of Appeal for British Columbia dated 18 and 29 June 2004, respectively. On 28 April 2006, the Registry advised the authors of the decision of Justice B. that the Federal Court had *prima facie* no jurisdiction on the matter and that the Registrar should not file the claim.

2.9 On 2 May 2006, the authors filed a new statement of claim with the Ontario Superior Court of Justice, which dismissed the claim for re-litigation and abuse of process on 29 June 2006. On 18 October 2006, the Court of Appeal for Ontario dismissed the authors' appeal against the decision of the Ontario Superior Court of Justice.

2.10 On 15 December 2006, the authors filed a notice of application for leave to appeal to the Supreme Court of Canada, again asking for vacation of the lower courts' decisions and seeking damages. On 29 March 2007, the Court dismissed the application with costs.

The complaint:

3.1 In relation to all three proceedings, the authors claim that they were denied a fair and public hearing by a competent, independent and impartial tribunal, in violation of article 14, paragraph 1, of the Covenant. They further allege violations of articles 2, paragraph 1, and 26 of the Covenant because the judges discriminated against them on the basis of their Muslim faith and the Palestinian ethnic origin of the first author. By denying them an effective remedy to seek compensation for their lost profits (i.e. \$ 12,500,000 for the commercial exploitation of the patent between 2001 and 2021, \$ 1,109,500 for the remaining profitable seven years and six months of the terminated franchise agreement, and approximately \$ 7,000 for their counterclaim against Malaspina) and legal costs, the State party also violated article 2, paragraph 3, of the Covenant.

3.2 As regards the first set of proceedings, the authors claim that the IRAP made false allegations that the first author's patent was already being commercially exploited. They allege that by denying the first author the right and the opportunity to have access to a public service offered by Industry Canada and by discriminating against him in the access to financial assistance, the State party also violated his rights under articles 25 (c) and 26 of the Covenant. They further submit that they were unable to appeal the Master's order in the assessment hearing to a judge of the Supreme Court of British Columbia, in the absence of any transcripts of the submissions or the ruling made in the hearing.

3.3 With regard to the second set of proceedings, the authors allege that the trial judge denied them the right to a fair trial by allowing Uniglobe to call surprise witnesses and to cross-examine adverse witnesses without allowing the authors to cross-examine the defendants' witnesses and "by believing impeached witnesses for not telling the truth under oath."

3.4 In relation to the third set of proceedings, the authors submit that Mr. A. I. and his wife fabricated defamatory evidence. Judge M. accepted hearsay evidence to justify his ruling in favour of Mr. A. I. and his wife. The dismissal of the authors' action against Mr. A. I. and his wife showed that the judges were biased against them because of their Muslim faith and that they favoured Mr. A. I. and his wife who belonged to the Pentecostal Church. For the authors, the State party's conduct amounts to advocacy of racial and religious hatred that constitutes incitement to discrimination, hostility or violence against the authors, in breach of article 20, paragraph 2, of the Covenant.

3.5 The authors claim that by refusing to receive their statement of claim, the Federal Court of Canada denied them equal access to the courts and tribunals. Their treatment during the hearing by Justice H. in the Ontario Superior Court, who allegedly made fun of the authors, and in the Court of Appeal for Ontario was degrading and contrary to article 7 of the Covenant.

3.6 The authors submit that they have exhausted all available domestic remedies and that the same matter is not being examined under another procedure of international investigation or settlement.

Issues and proceedings before the Committee:

4.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with article 93 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

4.2 The Committee considers that, even assuming that the authors' claims would not be inadmissible due to non-exhaustion of domestic remedies (article 5, paragraph 2 (b), of the Optional Protocol), they are inadmissible either because they fall outside the scope of any of the provisions of the Covenant invoked by the authors, or because they have not been sufficiently substantiated for purposes of admissibility.

5. 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 authors and, for information, to the State Party.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]