



**International covenant  
on civil and  
political rights**

Distr.  
RESTRICTED\*

CCPR/C/84/D/1336/2004  
16 August 2005

Original: ENGLISH

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HUMAN RIGHTS COMMITTEE  
Eighty-fourth session  
11 – 29 July 2005

**DECISION**

**Communication No. 1336/2004**

Submitted by: Mr. Yo Han Chung (not represented by counsel)

Alleged victim: The author

State party: Australia

Date of communication: 8 June 2003 (initial submission)

Date of decision: 25 July 2005

*Subject matter:* exclusion from University

*Procedural issues:* inadmissibility *ratione materiae*

*Substantive issues:* right to study

*Articles of the Covenant:* 1, 2, 5, 6, 7, 9, 10, 14, 17, 18, 19, 20, 22, 25 and 26

*Articles of the Optional Protocol:* 2 and 3

[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-fourth session

concerning

#### **Communication No. 1336/2004\***

Submitted by: Mr. Yo Han Chung (not represented by counsel)

Alleged victim: The author

State party: Australia

Date of communication: 8 June 2003 (initial submission)

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

Meeting on 25 July 2005

Adopts the following:

#### **DECISION ON ADMISSIBILITY**

1. The author of the communication, initially dated 8 June 2003, is Yo Han Chung, a Korean citizen born in 1971, who immigrated to Australia<sup>1</sup> with his family in 1990. He claims to be a victim of violations by Australia of articles 1, 2, 5, 6, 7, 9, 10, 14, 17, 18, 19, 20, 22, 25 and 26 of the International Covenant on Civil and Political Rights (the Covenant). He is not represented by counsel.

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\* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, 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, Sir Nigel Rodley, Mr. Hipólito Solari-Yrigoyen, Ms. Ruth Wedgwood and Mr. Roman Wieruszewski.

Pursuant to rule 90 of the Committee's rules of procedure, Committee member Mr. Ivan Shearer did not participate in the adoption of the present Views.

<sup>1</sup> The International Covenant on Civil and Political Rights entered into force for the State party on 13 November 1980 and its Optional Protocol on 25 December 1991.

**Factual background**

2.1 The author enrolled in a Bachelor of Applied Science (Physiotherapy) course at the University of Sydney in 1993. Subsequently, he was diagnosed with anxiety and major depression.

2.2 In 1999, as the author was encountering difficulties in the course, several meetings took place between him and University authorities to design a programme and workload adapted to his mental health and anxiety. However, he failed a few subjects, and complained about the grades to various authorities, and requested to have access to his exam papers. By letter of 6 March 2000, the author was informed that he had been excluded from the course of Physiotherapy for a period of two years, for failure to show good cause why he should be allowed to re-enrol in the course.

2.3 On 4 September 2000, the author filed a complaint with the Human Rights and Equal Opportunity Commission claiming that the University, in excluding him, had discriminated against him on the grounds of race and disability. The author's complaint was terminated on 20 March 2001 for lack of substance.

2.4 On 10 April 2001, the author brought proceedings under the Human Rights and Equal Opportunity Commission Act 1986 with respect to complaints of race and disability discrimination, before the Federal Court of Australia. The matter was transferred to the Federal Magistrates Court, which summarily dismissed the claim on 20 September 2001, on the basis that it disclosed no reasonable cause of action.

2.5 On 3 October 2001, the author requested leave to appeal to the Full Court of the Federal Court but it was denied on 21 February 2002. A request for special leave to appeal to the High Court was denied on 5 November 2002.

**The complaint**

3.1 The author claims to be a victim of a violation of articles 1, 2, 5, 7, 9, 17, 19 and 25 of the Covenant, because the University of Sydney entered a fail grade in his Cardiopulmonary 2 exam causing him a "mental shock", and because the University authorities sent him a "threat letter" informing him that he could not enrol in Clinical Education 1A in 1999, which "repeated the mental shock".

3.2 The author claims to be a victim of a violation of articles 1, 2, 5, 7, 9, 10, paragraph 1, 17, 19, paragraph 1, 20, paragraph 2, 25 and 26 of the Covenant, in that the dean of the school did not change his exam result and excluded the author from school, despite a warning that the author might commit suicide.

3.3 He further alleges violations of articles 1, 2, 5, 7, 9, 10, 14, 17, 18, 19, 25 and 26 of the Covenant, because documents were allegedly forged during his Human Rights Commission investigation and because his language skills were monitored in school, restricting his self-determination to choose a study and occupation.

3.4 He claims to be a victim of a violation of articles 1, 2, 5, 7, 9, 14, 17, 20, 22, 25 and 26 of the Covenant, because the Human Rights Commission, the Police Commissioner and the

Education Minister did not ensure the enforcement of the law and the protection of his human rights.

3.5 Lastly, the author alleges a violation of articles 1, 2, 5, 7, 9, 10, paragraph 1, 14, paragraph 1 and 6, 17, 19, 20, 25 and 26 in that evidence was tampered within the federal proceedings, that the respondents did not produce requested evidence and that the judge did not “follow justice”.

## **Issues and proceedings before the Committee**

### **Consideration of admissibility**

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

4.2 The Committee considers that the author’s claims under articles 1, 2, 5, 6, 7, 9, 10, 14, 17, 18, 19, 20, 22, 25 and 26 of the Covenant either fall outside of the scope of those provisions or have not been substantiated, for purposes of admissibility. Consequently, the author’s claims are inadmissible under articles 2 and 3 of the Optional Protocol.

5. Accordingly, the Committee decides:

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

[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.]

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