

HUMAN RIGHTS COMMITTEE

Drobek v. Slovakia

Communication No 643/1995**

14 July 1997

CCPR/C/60/D/643/1995

ADMISSIBILITY

Submitted by: Peter Drobek [represented by the Kingsford Legal Centre, Australia]

Victim: The author

State party: Slovakia

Date of communication: 31 May 1994 (initial submission)

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

Meeting on 14 July 1997,

Adopts the following:

Decision on admissibility

1. The author of the communication, dated 31 May 1994, is Peter Drobek, an Australian citizen, born in Bratislava. He claims to be the victim of violations by Slovakia of articles 2, 17 and 26 of the International Covenant on Civil and Political Rights. The Optional Protocol entered into force for Czechoslovakia on 12 June 1991. After the dissolution of the Czech and Slovak Federal Republic, Slovakia notified its succession to the Covenant and to the Optional Protocol effective the first day of the new Republic, 1 January 1993. The author is represented by counsel.

The facts as submitted by the author

2.1 The author would have inherited from his father and his uncle certain properties in Bratislava which were expropriated pursuant to the Benes Decrees Nos. 12 and 108 of 1945

under which all properties owned by ethnic Germans were confiscated. In 1948, the Communist regime expropriated all private property used to generate income. After the fall of the communist regime, the Czech and Slovak Federal Republic enacted Law 87/1991,¹ and after the creation of the State of Slovakia, the Slovakian Government instituted a policy whereby property taken under the Communist regime could be reclaimed. However, the restitution legislation did not cover confiscation effected under the Benes decrees.

2.2 The author tried to avail himself of the restitution legislation and sought the return of his properties. On 25 May 1993, the local Court of Bratislava dismissed his claims. Counsel claims that the Court does not address the issue of discrimination and the racial injustice the author has suffered. In this respect, he claims that, as there are no effective domestic remedies available to him to obtain redress for the racial discrimination suffered, domestic remedies have been exhausted.

The complaint

3.1 The author claims to be the victim of a violation of articles 2 and 26 of the Covenant by the Slovak Government, because it has endorsed the ethnic discrimination committed before the Covenant existed by enacting a law which grants relief to those who had their lands expropriated for reasons of economic ideology and does not provide it to those expropriated on ethnic grounds. Counsel claims that article 2 of the Covenant in conjunction with the preamble are to be interpreted to mean that the rights contained in the Covenant derive from the inherent dignity of the human person and that the breach committed prior to the entry into force of the Covenant has been repeated by the enactment of discriminatory legislation in 1991 and by the decisions of the Slovak Courts of 1993 and 1995.

3.2 The author claims that there is a violation of article 17 as his family were treated as criminals, their honour and reputation being badly damaged. In this respect, the author claims that until the Slovak Government rehabilitates them and returns their property, the Government will continue to be in breach of the Covenant.

State party's observations and author comments thereon

4. On 11 August 1995, the communication was transmitted to the State party under rule 91 of the Committee's rules of procedure. No submission under rule 91 was received from the State party, despite a reminder addressed to it on 20 August 1996.

5.1 By a letter of 10 August 1995, counsel informed the Committee that domestic remedies had been exhausted in respect of the author's property claim and that the City Court Session, on 9 February 1995, had rejected the author's appeal to the judgement of the Local Court, in Bratislava.²

5.2 By a further letter of 23 July 1996, counsel claims that Slovak authorities discriminate against individuals of German origin.

Admissibility considerations

6.1 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. The Committee notes with regret the State party's failure to provide information and observations on the question of the admissibility of the communication.

6.2 The Committee notes that the challenged law entered into force for the territory of Slovakia in 1991, when that country was still part of the Czech and Slovak Federal Republic, that is, before Slovakia's succession to the Covenant and the Optional Protocol in January 1993. Considering, however, that Slovakia continued to apply the provisions of the 1991 law after January 1993, the communication is not inadmissible ratione temporis.

6.3 Although the author's claim relates to property rights, which are not as such protected by the Covenant, he contends that the 1991 law violates his rights under articles 2 and 26 of the Covenant in that it applies only to individuals whose property was confiscated after 1948 and thus excludes from compensation in respect of property taken from ethnic Germans by a 1945 decree of the pre-Communist regime. The Committee has already had occasion to hold that laws relating to property rights may violate articles 2 and 26 of the Covenant if they are discriminatory in character. The question the Committee must therefore resolve in the instant case is whether the 1991 law applied to the claimant falls into this category.

6.4 In its views on communication 516/1992 (Simunek v. Czech Republic), the Committee held that the 1991 law violated the Covenant because it excluded from its application individuals whose property was confiscated after 1948 simply because they were not nationals or residents of the country after the fall of the Communist regime in 1989. The instant case differs from the views in the above case, in that the author in the present case does not allege discriminatory treatment in respect of confiscation of property after 1948. Instead, he contends that the 1991 law is discriminatory because it does not also compensate victims of the 1945 seizures decreed by the pre-Communist regime.

6.5 The Committee has consistently held that not every distinction or differentiation in treatment amounts to discrimination within the meaning of articles 2 and 26. The Committee considers that, in the present case, legislation adopted after the fall of the Communist regime in Czechoslovakia to compensate the victims of that regime does not appear to be prima facie discriminatory within the meaning of article 26 merely because, as the author contends, it does not compensate the victims of injustices allegedly committed by earlier regimes. The author has failed to substantiate such a claim with regard to articles 2 and 26.

6.6 The author has claimed that Slovakia violated article 17 of the International Covenant on Civil and Political Rights by not rectifying the alleged criminalization of his family by the Slovak authorities. The Committee considers that the author has failed to substantiate this particular claim.

7. The Human Rights Committee therefore decides:

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

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

*/ The following members of the Committee participated in the examination of the present communication: Mr. Nisuke Ando, Mr. Prafullachandra N. Bhagwati, Mr. Thomas Buergenthal, Ms. Christine Chanet, Lord Colville, Ms. Elizabeth Evatt, Ms. Pilar Gaitan de Pombo, Mr. Eckart Klein, Mr. David Kretzmer, Ms. Cecilia Medina Quiroga, Mr. Fausto Pocar, Mr. Martin Scheinin, Mr. Danilo Türk and Mr. Maxwell Yalden.

**/ The text of an individual opinion by Committee members Cecilia Medina Quiroga and Eckart Klein is appended to the present document.

1/ See Committee's Views on communication No. 516/1992 (Simunek et al. v. Czech Republic), adopted 19 July 1995, and No. 586/1994 (Adam v. Czech Republic), adopted 23 July 1996.

2/ The author provides the text of the decision in Slovak and an English translation. There had never been any remedies available in respect of the author's discrimination claim.

[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.]

Appendix

Individual opinion by Committee members Cecilia Medina Quiroga and Eckart Klein

The author of the communication contends that the State party discriminated against him by enacting Law 87/1991, which grants relief to individuals whose lands were confiscated by the communist regime and which does not grant it to those of German origin whose lands were confiscated under the Benes Decrees.

The Committee has declared this communication inadmissible for lack of substantiation of the author's claim. We do not agree with this decision. The author has given clear reasons why he thinks he is being discriminated against by the State party: this is not only because of the fact that Law 87/1991 applies only to property seized under the communist regime and not to the 1945 seizures decreed between 1945 and 1948 by the pre-communist regime; the author argues that the enactment of Law 87/1991 reflects the support by Slovakia of discrimination which individuals of German origin suffered immediately after the Second World War. He further adds that such discrimination on the part of the Slovak authorities

continues until the present day (paragraphs 3.1 and 5.2). Since article 26 of the Covenant must be respected by all State party authorities, legislative acts also have to meet its requirements; accordingly, a law which is discriminatory for any of the reasons set out in article 26 would violate the Covenant.

The State party has not responded to the author's allegations. A claim of discrimination that raises an issue of substance - not disputed at the admissibility stage by the State party - requires consideration on the merits. We therefore conclude that this communication should have been declared admissible.

Cecilia Medina Quiroga [signed]

Eckart Klein [signed]

[Original: English]