

HUMAN RIGHTS COMMITTEE

Koutny v. Czech Republic

Communication No 807/1998

20 March 2000

CCPR/C/68/D/807/1998

ADMISSIBILITY

Submitted by: Mr. Ota Koutny

Alleged victim: The author and his brother Antonin

State party: Czech Republic

Date of communication: 24 January 1997 (initial submission)

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

Meeting on 20 March 2000

Adopts the following:

Decision on admissibility

1. The author of the communication is Ota Koutny, a Czech citizen currently residing in Vienna, Austria. He submits the communication on his own behalf and on that of his brother, Antonin Koutny. They claim to be victims of a violation of article 26 of the Covenant by the Czech Republic.

The facts as submitted by the author

2.1 The author's aunt and uncle, both Czech citizens, were co-owners of a house in Prague, which they purchased in 1935. After the Second World War, the property of the aunt was confiscated under Benes decree No. 108/1945 and she was deprived of her Czech citizenship for alleged hostile activities against Czechoslovakia. However, on 5 March 1947, she was acquitted of the accusations by the Extraordinary People's Court and was given back her Czech citizenship. However, by decision of 11 January 1951, the District National Council approved the confiscation of her property

on the basis of Benes decree No. 108/1945. The aunt died in 1975, and the author's mother was the only heiress. The mother commenced an action for return of the property on 2 September 1991 at the District Court in Prague. When she died on 15 April 1992, the author and his brother continued the law suit as her heirs. On 12 September 1995, however, the Court rejected their claim, on the basis that the confiscation had taken place before 25 February 1948, the beginning of the qualifying period for the Restitution Law No. 87/1991. It appears that the Court considered that the decree of 11 January 1951 was not a new decision, but a confirmation of the decision taken in 1945 under the Benes Decree. The author's appeal against this decision was rejected on 16 February 1996, and on 24 September 1996, the Constitutional Court rejected the author's further application for review.

2.2 It appears from the communication that the author's claim for restitution also relates to the part of the property formerly owned by his uncle. It is said that this property was confiscated after the Second World War, but no precise date is given. The author's uncle died in 1961 and his aunt was the only heiress.

The complaint

3. The author complains that the Court did not take into consideration the decree of 11 January 1951, which brings the confiscation within the ambit of the Restitution Law. According to the author, the Council's decision of 1951 was a clear act of political persecution, since his aunt had been acquitted of any charges of hostile activities. The author considers himself a victim of discrimination, because he did not obtain restitution, although all the requirements of the Restitution Law had been fulfilled. In this connection, he suggests that the discrimination may be connected to his political views, since he left Czechoslovakia in 1970 for political reasons.

The State party's observations on admissibility

4.1 The State party argues that the communication should be declared inadmissible for failure to exhaust domestic remedies. The State party submits that the Constitutional Court rejected the author's application because of his failure to provide supplemental information as requested by the Court. According to the State party, the Constitutional Court, in accordance with section 72 of the Act on the Constitutional Court, had requested the author to specify which of the rights enumerated in the international human rights instruments covered by article 10 of the Constitution he wanted to invoke. Since neither the author nor his lawyer provided this information, the Court decided not to proceed with the case and rejected the complaint. The State party notes that the Court never dismissed the case on its merits, and suggests that the author can petition the Constitutional Court again.

4.2 The State party further argues that the right to property is not protected by the Covenant and that the communication is therefore inadmissible ratione materiae. In this context, the State party notes that the author has not mentioned any breaches of the right to fair trial or any instances of discrimination.

4.3 The State party further argues that the communication is inadmissible ratione temporis since the alleged discriminatory confiscation took place before the entry into force of the Covenant.

The author's comments on the State party's observations

5.1 In his reply, the author maintains that he has exhausted all available domestic remedies. He states that he has never been informed of any possible defect in his application to the Constitutional Court.

5.2 The author maintains that his communication is admissible ratione materiae since he is a victim of discrimination, in violation of article 26 of the Covenant.

5.3 As to the State party's argument that the communication is inadmissible ratione temporis, the author submits that he was injured in his rights by Court decisions of 12 September 1995, 16 February 1996 and 24 September 1996, all taken after the entry into force of the Covenant for the Czech Republic.

Issues and proceedings before the Committee

6.1 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 it is admissible under the Optional Protocol to the Covenant.

6.2 The Committee has noted the State party's objections to the admissibility and the author's comments thereon. It considers that insofar as the author claims that the decree of 11 January 1951 was discriminatory, this claim is outside the Committee's competence ratione temporis and thus inadmissible under article 1 of the Optional Protocol.

6.3 The State party has argued that the communication is inadmissible for non-exhaustion of domestic remedies, since the author's appeal to the Constitutional Court was defective. The author has challenged this, but the Committee notes from the text of the Constitutional Court's decision of 24 September 1996, that the author was informed about the defects of his appeal and given an opportunity to remedy it, which he failed to do. On this basis, the Committee concludes that the communication is inadmissible under article 5, paragraph 2 (b) of the Optional Protocol for failure to exhaust domestic remedies.

7. The Human Rights Committee therefore decides:

(a) that the communication is inadmissible under articles 1 and 5 (2)(b) of the Optional Protocol;

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

The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine Chanet, Lord Colville, Ms. Elizabeth Evatt, Ms. Pilar Gaitán de Pombo, Mr. Louis Henkin, Mr. Eckart Klein, Mr. David Kretzmer, Mr. Martin Scheinin, Mr. Hipólito Solari Yrigoyen, Mr. Roman Wieruszewski, Mr. Maxwell Yalden and Mr. Abdallah Zakhia.

[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.]