

HUMAN RIGHTS COMMITTEE

Somers v. Hungary

Communication No. 566/1993**

23 July 1996

CCPR/C/53/D/566/1993*

VIEWS

Submitted by: Ivan Somers

Victims: The author and his mother

State party: Hungary

Date of communication: 20 August 1993 (initial submission)

Date of decision on admissibility: 15 March 1995

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

Meeting on 23 July 1996,

Having concluded its consideration of communication No. 566/1993 submitted to the Human Rights Committee by Mr. Ivan Somers, on his and his mother's behalf, under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1. The author of the communication is Ivan Somers, an Australian citizen of Hungarian origin currently residing in Edgecliff, New South Wales, Australia. He submits the complaint on his and his mother's behalf, and alleges violations by Hungary of articles 14,

18, 19, 21, 22, 24, and 26 of the International Covenant on Civil and Political Rights. The Optional Protocol entered into force for Hungary on 7 December 1988.

The facts as submitted by the author

2.1 In March 1951, the author's parents and his maternal grandmother were arrested by the Hungarian communist state security police (AVH). They were taken to the AVH headquarters in Budapest, interrogated over a period of four weeks and forced to sign false confessions which, according to the author, had been prepared well in advance. The author's parents were then interned, without trial, at the prison of Kistarcsa, on the pretext that they had failed to inform on the author's grandmother, who had allegedly given a parcel of clothing to a Russian officer, to take to her son then living in Vienna.

2.2 According to the author, the true reason for the arrest only became known in 1992, when he was able to obtain a copy of a report drawn up in 1952 by the local branch of the AVH in the town where his parents had lived (Reference No. 23-5354/52). This report had been addressed to the AVH headquarters in Budapest.

2.3 The report charged the author's parents with being opponents to the Communist party. It identified the author's father as an influential member of the Social Democratic Party, which was then being "liquidated". The report further singled out his parents as members of the local Jewish community with alleged "Zionist connections". The author submits that in the early 1950s, any such accusation was sufficient to cause someone's imprisonment without trial.

2.4 The author refers in particular to paragraph 3 of the report, which confirms that following his parents' arrest, all the family's property and assets were confiscated by the local governmental authorities. These expropriations pre-date the nationalization of private property in Hungary. The difference is said to be demonstrated by the fact that in spite of the nationalization of land and property under the Communist regime, many Hungarians were allowed to keep their home. In the case of the author's parents, however, their home in a two-story apartment building in the town of Szekesfehervar, which belonged to the father of Mr. Somers, was confiscated and immediately occupied by the secretary of the local branch of the Communist party.

2.5 The author's mother and grandmother were released in August 1953, following an amnesty decreed after the death of Stalin. His father died in prison under circumstances that, to date, remain largely unexplained.

2.6 Since 1953, the author's mother has made numerous attempts to recuperate her former home. These attempts have continued after she emigrated to Australia. Local government authorities in Hungary have rejected her claim, despite a gradual move, in Hungary, to reconstitute property seized under the Communist regime to their former owners.

The complaint:

3.1 In 1991, the Hungarian Parliament was called upon to consider the status of properties expropriated during the Communist period. In adopting new legislation, the State party has failed, in the author's opinion, to distinguish between such cases where the expropriation was the consequence of breaches of the Covenant and the majority of cases where the expropriation had been the result of the nationalization of private property.

3.2 It is submitted that by rejecting restitution of property in favour of what amounts to no more than nominal monetary compensation - worth approximately 2 per cent of the current market value of the property seized by the State - the new legislation gives continuing effect to these expropriations, regardless of whether they were linked, in the past, to violations of the Covenant.

3.3 The author submits that his family's assets were seized by the State party in violation of articles 14, 18, 19, 21, 22, 24, and 26 of the Covenant (i.e. before the widespread nationalization programme in Hungary). He contends that the only proper course for Hungary would be to restitute those assets which were obtained by the State through extra-legal or illegal means. The current Government's failure to restitute property obtained by such means is said to amount to its endorsing Covenant breaches committed during the communist period.

The State party's observations and the author's comments:

4.1 In its submission under rule 91 of the rules of procedure, dated 31 March 1994, the State party contends that as the events complained of occurred prior to the date of entry into force of the Optional Protocol for Hungary, the communication should be deemed inadmissible ratione temporis. In this context, the State party refers to the 1969 Vienna Convention on the Law of Treaties, and in particular to its article 28 laying down the principle of non-retroactivity of treaties.

4.2 The State party emphasizes that it has always expressed "its deepest sympathy with victims of violations of human rights committed under the previous regime.... It has been and remains committed to provide these victims with moral support and, in accordance with the relevant legislative acts, financial compensation to the victims".

5.1 In his comments, Mr. Somers reiterates that his parents were expropriated and persecuted on the basis of their social background and their political beliefs. He provides a certificate dated 6 July 1993 from the Hungarian Indemnification and Compensation Authority, in which the State party acknowledges that his mother was wrongfully imprisoned; a letter dated 7 July 1993 from the same Authority acknowledges that the death of his father had resulted from the unlawful action of government agents.

5.2 To the author, the political nature of the expropriation of his family's home and assets is demonstrated by the fact that it occurred prior to the adoption of Law-Decree No. 4 of 1952 on the nationalization of private property. He adds that by Act 1027 of 1963, the then Government of Hungary allowed a number of former owners of real estate to request the annulment of an expropriation order, with the possibility of restitution. To the application

of the author's mother, the authorities replied, however, that she did not come within the scope of application of Act 1027 and that, as a former internee, her former house in Szekesfehervar could not be restituted to her.

5.3 In 1991, the Constitutional Court of Hungary (Alkotmánybíróság) quashed Law-Decree 4 of 1952 as unconstitutional. The author notes, however, that the decision apparently did not affect expropriations carried out pursuant to the Decree.

5.4 Regarding the State party's ratione temporis argument, the author reiterates that his case refers to action taken by the State party since the ratification of the Covenant and the Optional Protocol. He notes that in contrast to legislation adopted in the former Czechoslovakia and in Germany, where the rightful owners of property formerly seized by the State may claim restitution, Hungarian legislation passed in 1991 (Law No. XXV of 1991) and in 1992 (Law No. XXVI) merely recognizes the right of owners to nominal compensation and excludes restitution, except for the property of religious orders. Accordingly, the legislation is said to sanction the State party's continued ownership of property confiscated during the Communist period.

5.5 Mr. Somers contends that as victims of political persecution under the former regime, he and his mother face particular disadvantages under current Hungarian law and practice relating to the privatization of (State) property. He explains that the tenants currently occupying residential property in Hungary enjoy an option to buy their home from the local government authority on a priority basis.

5.6 The author submits that by restricting the rights of former owners, including those dispossessed on account of political persecution, to compensation, the 1991 legislation has enabled the Hungarian Government to reap substantial profits from the sale, at current market prices, of property seized under the Communist regime. Moreover, owners are barred from claiming even the proceeds of the sale of their property by the State. He encloses a letter dated 21 June 1994 from a Government agency acting on behalf of the City Council of Szekesfehervar, which states that notwithstanding the proceedings before the Human Rights Committee, the agency will proceed with the sale of the author's family home.

5.7 The author further points out that the 1991 legislation does not distinguish between nationalization of private property by legislation from confiscation of the property of former political prisoners, such as the author's parents. He notes that the 1991 legislation obliges the State to pay compensation in the form of vouchers, whose value is calculated by reference to an (arbitrarily chosen) amount per square meter of the building. Under the legislation, he received vouchers with a face value of Forint 333,000 in full settlement for his parents' former home, an amount equivalent to approximately 3,330 U.S. dollars. The author adds that these vouchers traded on the Hungarian stock exchange for only 42 per cent of their face value (the equivalent of 1,400 U.S. dollars) and have since become worthless, as they have ceased to be listed due to lack of demand.

5.8 The discriminatory nature of the regulation is said to be further demonstrated by the fact that the current occupants of residential properties who enjoy a "buy first option" may insist

that the total face value of the vouchers circulated in accordance with the 1991 and 1992 legislation on partial compensation is set off against the purchase price of their home. The author therefore concludes that under the current legislation, he is in a substantially worse position than someone who, though dispossessed of legal ownership by the 1952 Law Decree, was able to remain in his/her home as a tenant.

5.9 The author rejects as "totally inconsistent with the State party's current status as a party to the Covenant and the Protocol" the possibility that it may now derive potential financial benefits from the sale of his family's property. He requests the Committee to seek restitution of his property or, alternatively, the full proceeds of its sale.

The Committee's admissibility decision:

6.1 During its 53rd session, the Committee considered the admissibility of the communication. It noted the author's claim relating to the confiscation of his family's property in 1951 and observed that irrespective of the fact that these events occurred prior to the entry into force of the Optional Protocol for Hungary, the right to property was not protected under the Covenant. The allegation concerning a violation of the author's and his mother's right to property per se was thus inadmissible ratione materiae, under article 3 of the Optional Protocol.

6.2 Regarding the author's claims under articles 14, 18, 19, 21, 22 and 24, the Committee noted that the author had failed to substantiate, for purposes of admissibility, how State party action prior to the entry into force of the Optional Protocol for Hungary had continued to produce effects which in themselves would constitute a violation of any of these rights after the entry into force. These claims were deemed inadmissible ratione temporis.

6.3 As to the author's further complaint that legislation on compensation for expropriation during the Communist period adopted in 1991 and 1992 (i.e. after the entry into force of the Optional Protocol for Hungary) was discriminatory, in that it placed himself and his mother, as victims of political persecution during the Communist period, in a significantly more unfavourable position than those expropriated under Law Decree 4 of 1952, the Committee noted that the State party had not addressed this point and merely argued that all of the claims are inadmissible ratione temporis. It recalled that the State party's obligations under the Covenant applied as of the date of entry into force for the State party. There was, however, another issue as to when the Committee's competence to consider complaints about violations of the Covenant under the Optional Protocol was: it was the Committee's jurisprudence under the Optional Protocol that it cannot consider alleged violations of the Covenant which occurred before the entry into force of the Protocol for the State party, unless the violations complained of continue after the entry into force of the Protocol. A continuing violation must be interpreted as an affirmation, by act or clear implication, of the previous violations of the State party.

6.4 It was correct that Mr. Somers and his mother did not fall under the terms of the State party's 1991-1992 legislation concerning compensation for expropriation during the Communist period. The Committee noted that this was the crux of their claim under article

26: they considered that the omission of a clearly cognizable group of individuals - i.e. those who were expropriated on the basis of political opinion and/or social origin prior to the Law Decree of 1952 - from the scope of this legislation constituted discrimination contrary to article 26, and that their situation should have been addressed in relevant legislative provisions. It concluded that this issue was based on acts of the State party which occurred after the entry into force of the Optional Protocol for Hungary and believed that it required examination under article 26 of the Covenant.

6.5 On 15 March 1995, the Committee therefore declared the communication admissible in so far as it appeared to raise issues under article 26 of the Covenant.

State party's observations on the merits and author's comments thereon:

7.1 In its submission under article 4, paragraph 2, of the Optional Protocol, dated 31 January 1996, the State party recalls that for compensation for expropriation under the former communist regime, three Parliament Acts have thus far been enacted. Of these¹, Act XXXII of 1992., only Act XXV of 1991 is relevant to the author's case. Its Section 1, Subsection 2, stipulates that compensation is due to those individuals whose property had been seized through application of regulations enacted after 8 June 1949. Compensation is partial, and its sum total must be calculated on the basis of a chart contained in Section 4, Subsection 2, of the Act. Regarding the modalities of compensation, Section 5, Subsection 1, provides that compensation vouchers will be issued for the total amount of compensation. Under Subsection 2, these vouchers are bearer securities, transferable, and their face value is the sum total of debt owed by the State. Under Section 7, Subsection 1, the State must ensure that bearers of such vouchers may use them under the conditions laid down in the Act (a) for purchasing property etc. sold during privatization of State property, or (b) for obtaining farmland.

7.2 As to privatization legislation, the State party indicates that in as far as the author's case is concerned, Act LXXVIII of 1993 on the privatization of residential property is relevant. Its Section 45 confers on tenants of apartments in State or local Government ownership the right to purchase the property they occupy. The State party emphasizes that the right to purchase an apartment is conferred upon tenants irrespective of his/her being a past victim of violation of the right to property or other rights. Nor is the right to buy the apartment dependant on the tenant's other status, such as residence or citizenship; it is immaterial whether the tenant was or was not the owner of the property he/she currently rents before the extensive nationalization of property in the 1940s and 1950s. The only criterion for eligibility to buy the property is that the buyer is currently the tenant.

7.3 As to the claim under article 26, the State party dismisses the author's contention that as victims of political persecution under the former political regime, he and his mother face specific disadvantages since, contrary to tenants currently occupying property and enjoy an option to buy the same from the Government at attractive prices, they cannot do the same. It notes that the reason why the author and his mother cannot recover their old property is factual, not legal, as they are not tenants of any residential property in State or local Government ownership. In the State party's view, the difference in treatment of two different

groups of people - tenants and non-tenants - and the difference in treatment of these two groups by law is based on objective criteria and is reasonable in the sense that tenants have, in the practice of the Hungarian tenancy system, always contributed financially to the maintenance of their apartments or invested money in those apartments so as to increase their comfort. The difference in treatment thus cannot be said to constitute prohibited discrimination.

7.4 In respect of the author's claim that, in the 1991 and 1992 legislation on compensation for past violations of property rights, Hungary failed to distinguish between cases in which expropriation was the result of breaches of the ICCPR and the majority of cases where expropriation had resulted from the nationalization of private property, the State party points out that at the material time (i.e. in the early 1950s), no clear-cut distinction between confiscation or nationalization on political or other grounds existed in Hungary: at the time, nationalization provided for by law and confiscation pronounced by court or administrative orders served a political end, namely to dispossess the wealthy and others considered as opponents of the regime. Thus, in the State party's opinion, the author's starting point is incorrect. In this context, it notes that the transfer of the author's parents' home into State property was, contrary to Mr. Somers' assertion, precisely based on Law Decree 4 of 1952, entitled "[O]n the transfer of certain buildings into State ownership". The extract from the land register and decision No. 21-1122543-00 15598 on the author's compensation show that Mr. Somers' father was dispossessed on the basis of Law Decree No. 4.

7.5 The State party argues that the wording of Section 1 of this Law Decree clearly shows that the Decree was motivated by the intention to dispossess owners of real estate on political grounds. As Mr. Somers was compensated for the deprivation of his father's property pursuant to Law Decree 4, the State party argues that it cannot be said that the author suffered harm since the legislation on compensation failed to take into account that his father had been dispossessed of his property as a result of political persecution. Hence, this claim is said to be unfounded.

7.6 The State party concedes that the value of the vouchers the author was given as compensation was indeed lower than the value of his father's home. But, the State party adds, Hungarian compensation legislation only provides for partial compensation of past grievances, as full compensation cannot be granted owing to the "huge number of claims and the difficult economic situation of the country". Such exceptions as exist to this rule do not in any event apply to the author's case. The calculation of compensation due is based on objective criteria: pursuant to Section 4 of Act XXV of 1991, the same criteria are applied to all applicants. Moreover, all decisions on compensation are subject to appeal if the applicant believes that the law was not applied correctly to his case. The State party notes that on the basis of available information, the author did not appeal against the decision on compensation.

7.7 As to the allegation that the Hungarian compensation legislation is discriminatory because those who are authorized to buy the residential property they occupy can set off the total face value of the vouchers against the purchase price whereas the author, as a non-tenant, cannot do so, the State notes that while this possibility is indeed provided for under

Section 7, Subsection 1, of Act XXV of 1991, there can be no question of prohibited discriminatory treatment. In the State party's view, the author simply compares two groups of people without in fact taking into account the substantial difference between the situation of the two groups - i.e. those who are the tenants of the apartment against the purchase price of which vouchers can be set off, and those who are neither occupants nor tenants of any apartment in State or local Government ownership. For the State party, "not taking into account this difference leads to an arbitrary comparison of two situations under article 26 of the Covenant." An issue under article 26 would only arise if Hungarian law treated occupants or tenants of State-owned dwellings differently, allowing some to set off vouchers and denying others the possibility to do so. As this is not the author's situation, the State party concludes that he is not discriminated against, as he is not the tenant of any residential property to be sold under the privatization legislation.

7.8 In conclusion, and by reference to paragraph 13 of the Committee's General Comment 18[37] on article 26², the State party argues that the Hungarian legislation on compensation of past grievances and on privatization of residential property, as well as their application to the author's case, is in compliance with the provisions of article 26 of the Covenant.

8.1 In his comments, the author notes that the State party itself admits that confiscation of residential property under the former regime violated the Covenant, as the nationalization legislation and confiscation orders served the purpose of dispossessing the wealthy and opponents to the regime (see paragraph 7.4 above). That being the case, the State party should have provided an "effective remedy" to the victims of such violations. The author refers to the Committee's Views on communication 516/1992³, where it was held that the appropriate remedy in respect of unlawful compensation of property "may be compensation if the property in question cannot be returned". He recalls that his communication referred inter alia to Hungary's failure (in contrast to laws adopted by Germany or the Czech Republic and Slovakia) to return property confiscated from individuals during the Communist period. No explanations were offered by the State party about its failure to return residential property to its rightful owners: Mr. Somers observes that the State party still could, if it wanted, return his father's home to him, subject to the protection of the current tenants, as the property exists and former ownership is not disputed.

8.2 As to the amount of compensation awarded by the State party, the author recalls that the sum payable for notional losses in excess of Hungarian Forint (HUF) 200,000 (appr. \$ 2,000.-) is progressively reduced by applying the compensation scale in Section 4, Subsection 2, of Act XXV of 1991. Compensation is reduced to 10% for any part of the loss over HUF 500,000. For the author, this "scale of compensation" displays the same ideological prejudice as Law Decree 4 of 1952, i.e. to dispossess the wealthy and others considered opponents of the regime. The negative effect on someone in Mr. Somers' situation, it is pointed out, is compounded by the fact that there is no compensation in respect of the land component of the property, loss of income from rent, or confiscation of the contents of someone's home. That compensation is paid in vouchers rather than cash, and that only "current tenants" of residential property in State ownership may use vouchers to buy property, contrary to the former owners of the property who were displaced from it in violation of their rights, is said to further underline the discriminatory nature of the

compensation legislation.

8.3 Mr. Somers challenges the justification of the State party's argument that the face value of the vouchers given to him is lower than the value of his late father's property because of the "difficult economic situation of the country". He notes that Hungary's economic situation is no worse than that of the Czech Republic or Slovakia, which have restituted property to their rightful owners: the State party's obligation to provide for adequate compensation arises from the State party's refusal to restate property it confiscated. Its current economic situation is irrelevant considering that the income it has derived from the property since 1952, i.e. net proceeds from rent for more than four decades and the proceeds from the privatization sale of the property, is sufficient to cover adequate compensation. Mr. Somers deplores that the State party has failed to address this part of his claim.

8.4 The author rejects the State party's contention that he did not appeal against the compensation decision as misleading, since the 1991 legislation (Act XXV) does not provide for an avenue of appeal in respect of the criteria used to calculate the amount of the author's compensation.

8.5 Mr. Somers asserts that the State party "conveniently ignores" his claim that as victims of political persecution during the communist period, he and his mother are faced with addition - discriminatory - disadvantages under the 1991 and 1993 legislation. Thus, Act XXV of 1991 gives no remedy or compensation for the violation inherent in his and his mother's removal from their apartment. Moreover, Section 45 of Act LXXVIII of 1993 gives continuing effect to this removal by restricting the participation in the privatization of all State-owned residential property to "current tenants". The discriminatory effect of Section 45 is allegedly reinforced by Section 7, Subsection 1, of Act XXV of 1991, which confers on "current tenants" of residential property an exclusive right to use compensation vouchers introduced under the 1991 legislation to purchase the property from the local authority.

8.6 The author dismisses as absurd the State party's contention that it is both fair and reasonable that current tenants should participate in the privatization of residential property on a priority basis as tenants have contributed to the maintenance and improvement of their apartments during their tenancy. To the author, this is tantamount to the State party in fact confirming the violations that continue to affect him and his mother as a result of political persecution during the communist period, as the sole reason for their not being the tenants or occupants of their apartment is their removal from said apartment in 1951 and the sequence of violations which finally made them leave Hungary. The author moreover recalls that his late father's entitlement to the apartment was not based on tenancy; hence, to stipulate tenancy as a precondition for entitlement to participation in the privatization of the apartment is wholly unreasonable.

8.7 In respect of the latter argument, the author explains that there are two kinds of residential property in Hungary: unencumbered freehold properties and properties "affected", i.e. encumbered by the rights of current tenants. In practice, under Act LXXVIII of 1993, current tenants of state owned property can buy their apartment/home from the local authority for less than half the current unencumbered freehold value of the property. As the

author cannot, under Section 45 of Act LXXVIII of 1993, participate in the privatization of residential property, he would have, in order to buy an apartment comparable to the one he and his family occupied in 1951, pay the unencumbered freehold value, that is appr. double the amount paid for the property by the current tenants. This is said to be another discriminatory element in the State party's legislation.

8.8 The author summarizes the discriminatory elements and disadvantages he and his mother are facing under the 1991 and 1993 legislation as follows:

(a) absence of any remedy in respect of the unlawful deprivation of their right to occupy their apartment, i.e. forced displacement from their home;

(b) absence of any remedy in respect of the confiscation of the contents of their apartment;

(c) exclusion, under Section 45 of Act LXXVIII of 1993 from the right to participate in the privatization of residential property;

(d) exclusion, under Section 7, Subsection 1, of Act XXV of 1991, from the right to use the compensation vouchers they received as nominal compensation for the expropriation of the author's father's home to purchase residential property;

(e) and, because of the exclusions referred to in (c) and (d) above, the authors were forced to sell their compensation vouchers on the Hungarian stock exchange where they traded for less than half of their face value.

The author suggests that so as to redress the discrimination inherent in his exclusion, under the 1993 legislation, from any right to participate in the privatization of their former home, the State party should award them (at least) the full proceeds of the sale of their former apartment.

Examination on the merits:

9.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as provided in article 5, paragraph 1, of the Optional Protocol.

9.2 The present communication was declared admissible only in so far as it may raise issues under article 26 of the Covenant. As the Committee explained in its admissibility decision, the right to property as such is not protected under the Covenant. However, confiscation of private property or failure by a State party to pay compensation for such confiscation could still entail a breach of the Covenant if the relevant act or omission was based on discriminatory grounds in violation of article 26 of the Covenant.

9.3 The principal issue before the Committee is whether the application of Act XXV of 1991 and of Act LXXVIII of 1993 to the author and his mother resulted in a violation of their right to equality before the law and to equal protection of the law. The author contends that these

laws, in their effect, confirm the earlier discriminatory confiscation of his father's property. The Committee notes that the confiscation itself is not at issue here, but rather the alleged discriminatory effect of the compensation law on the author and his mother.

9.4 The Committee must first determine whether the application of the State party's compensation legislation, regulated by Act XXV of 1991, to the authors' case, was discriminatory. As noted in the previous paragraph, the only issue is whether the award of less than full compensation for the loss of the author's property, under Act XXV of 1991, is contrary to article 26. The Committee observes that Act XXV contains objective compensation criteria, which are applied equally and without discrimination to individuals in the author's situation.

9.5 As to whether the compensation criteria and calculation tables for compensation in Act XXV are reasonable, the Committee has noted the author's argument that the value of the bearer securities in form of vouchers he received as compensation differs de facto, depending on whether the bearer is the tenant of State owned residential property or not, as only the former can use the vouchers under the conditions of Section 7, Subsection 1, of the Act (i.e. may offset them fully against the purchase price of the property). On the basis of the material available to it, the Committee does not share this reading of Section 7 of Act XXV.

9.6 The corollary of the fact that the Covenant does not protect the right to property is that there is no right, as such, to have (expropriated or nationalized) property restituted. If a State party to the Covenant provides compensation for nationalization or expropriation on equal terms, it does not discriminate against those whose property was expropriated or nationalized. The Committee is of the opinion that Section 7 of Act XXV of 1991 provides for compensation on equal terms. Under Section 7(1), individuals compensated by vouchers but not tenants of any residential property may set off the full face value of their vouchers against the price of any property, shares or business shares sold during the privatization of former State-owned property. This means that if the author wanted to buy former state-owned residential property, he would be able to offset the full face value of the vouchers he received. Similarly, if he decided to invest in other property, such as business shares of former State-owned companies, he would also be able to offset the full face value of the vouchers. Only if he wanted to redeem his vouchers on the open market because he is not interested in any property other than his former apartment will he receive less than the nominal value of the vouchers.

9.7 On the basis of the considerations in paragraphs 9.5 and 9.6 above, the Committee considers that the compensation criteria in Act XXV are both objective and reasonable.

9.8 The Committee has further examined whether article 9 of Act XXV of 1991 and the privatization legislation of 1993 (Act LXXVIII) are compatible with the requirements of article 26. Under Section 9 of Act XXV, if the tenant does not exercise himself/herself the "buy first option" to purchase the residential property he/she occupies, the former owner of the property may purchase it and, in so doing, may offset the full value of the vouchers he/she received against the purchase price. As in the case of Act XXV, the criteria for the

privatization of former State-owned property in Act LXXVIII of 1993 are objective. The State party has justified the (exclusionary) requirement that current tenants of former State-owned residential property have a "buy first option" even vis-à-vis the former owner of the property with the argument that tenants contribute to the maintenance of the property through improvements of their own. The Committee does not consider that the fact of giving the current tenants of former State-owned property priority in the privatization sale of such property is in itself unreasonable; the interests of the "current tenants", who may have been occupying the property for years, are deserving of protection. If the former owners are, moreover, compensated on equal and non-discriminatory terms (paragraph 9.6), the interplay between Act XXV of 1991 and of Act LXVIII of 1993 can be deemed compatible with article 26 of the Covenant; with respect to the application of the privatization legislation to the author's case, the Committee does not dispose of sufficient elements to conclude that its criteria were applied in a discriminatory manner.

10. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts as found by the Committee do not reveal a breach of article 26 or of any other provision of the Covenant.

[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.]

Footnotes

*/ Made public by decision of the Human Rights Committee.

**/ Pursuant to rule 85 of the rules of procedure, Committee member Tamás Bán did not participate in the examination of the communication.

1/ Act XXV of 1991, Act XXVI of 1992

2/ The General Comment states that not every differentiation in treatment constitutes discrimination, if the differentiation criteria are reasonable and objective and if the aim is to achieve a legitimate purpose under the Covenant.

3/ Simunek et al. v. Czech Republic, Views adopted on 19 July 1995.