

HUMAN RIGHTS COMMITTEE

Kalaba v. Hungary

Communication No. 735/1997

7 November 1997

CCPR/C/61/D/735/1997

ADMISSIBILITY

Submitted by: Lazar Kalaba

Victim: The author

State party: Hungary

Date of communication: 6 November 1996 (initial submission)

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

Meeting on 7 November 1997,

Adopts the following:

Decision on admissibility

1. The author of the communication is Lazar Kalaba, an Australian citizen who claims to be a victim of a violation of his human rights by Hungary. He does not invoke any specific right contained in the Covenant, but the facts of the case may raise issues under article 26 (and article 14, paragraph 1) of the Covenant.

The facts as presented by the author

2.1 On 1 May 1941, the author was interned in Sárvár Concentration Camp by the Hungarian authorities, together with his mother and sisters. His two sisters died in the camp. The family's home and farm was totally destroyed. The author was released from the camp on 1 October 1942, undernourished and suffering with pneumonia.

2.2 At the time of his internment, the author was a Yugoslav citizen. On 18 February 1984, the author became an Australian citizen.

2.3 In 1993, the author applied for compensation from Hungary under Act XXXII of 1992. On 21 January 1994, the Compensation Department Budapest V rejected his claim, on the basis that he was not a Hungarian citizen either at the time of his internment, or at the time of his application.

2.4 On 21 August 1995, the author appealed the decision to the Supreme Court of the Metropole in Budapest. He states that, despite three reminders, he still has not received a reply from the Supreme Court. He concludes that the Court does not wish to rule on his appeal, and requests the Human Rights Committee to examine his case.

The complaint

3.1 The author complains that the failure of the Hungarian Government to compensate him is a violation of his human rights and constitutes discrimination.

3.2 The facts of the case may seem to raise issues under article 26 of the Covenant, since the author appears to have been discriminated against on the basis of his nationality. The failure of the Supreme Court to reply to the author's appeal, may also raise issues under article 14, paragraph 1.

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

4.1 By submission of 5 May 1997, the State party limits its observations with regard to the author's claims in so far as they may appear to raise issues under articles 14 and 26.

4.2 The State party recalls that the author's claim for compensation because of his internment at the Sárvár camp, which he submitted on 9 July 1993 under Act XXXII of 1992, was dismissed by the National Office for Compensation on 21 January 1994. The author's appeal was submitted on 11 July 1996¹ to the Budapest Municipal Court (Fővárosi Bíróság) (not to the Supreme Court, as stated by the author). The author's statement of claim was forwarded to the National Office for Compensation for comments. The Office submitted its comments on 11 July 1996². According to the State party, the Court has since tried in vain to provide the author with a copy of the Office's reply. Further, the Court, following the applicable rules in case of overseas claimants that there should be a delay of at least six months between the summons and the date of the hearing, set the hearing for 19 September 1997.

4.3 The State party submits that the procedure is still pending before the Court, and that the author's complaint should thus be declared inadmissible under article 5, paragraph 2(b), of the Optional Protocol. In this context, the State party explains that section 14 of Act XXXII of 1992 enables applicants to seek review of the decision of the National Office for Compensation before the Courts. The Courts can take procedural aspects as well as merits of the decision into account. Furthermore, articles 44 to 47 of Act XXX of 1989 empower

the Constitutional Court to repeal any provision of domestic law which it finds contrary to an international treaty in force with regard to Hungary. It is thus open to the author to raise the alleged violation of article 26 of the Covenant, first, before the Budapest Municipal Court where his case is pending. Second, he could request the Court to send the case to the Constitutional Court to consider the validity of the challenged provision of the compensation legislation. The State party thus argues that the remedy which the author has already initiated is an effective one and should be exhausted before the Committee is to consider the communication.

4.4 The State party explains that Act XXXII of 1992 provides for compensation to persons (or their relatives) who were unlawfully deprived of their life or liberty for political reasons.³ The State party points out that the author, in the application form, only requested compensation for his internment between May 1941 and October 1942. He has never claimed compensation for unlawful confiscation of property, and in this respect the State party argues that his claim is inadmissible for non-exhaustion of domestic remedies.

5.1 In his comments on the State party's submission, the author recalls the horrors of the Sárvár concentration camp in which he and his family were interned. He adds that his family's house was confiscated together with its furniture and farm equipment.

5.2 The author submits that he completed his application for compensation in July 1993, and mailed it to the National Office for Compensation with an explanatory letter. He received a negative reply, based on his nationality. He then, on 21 August 1995, appealed this decision to the Supreme Court of the Metropole indicated on the decision⁴, with three copies to the National Office for Compensation, as required. He indicated his Australian address and has not changed addresses since.

5.3 He contests the State party's statement that he submitted a claim on 11 July 1996 to the Budapest Municipal Court and reiterates that it seems that the Supreme Court has not wished to reply to his appeal of 21 August 1995, in violation of article 14, paragraph 1, of the Covenant. He adds copies of records held at the Wagga Wagga Post Office in Australia, showing that he addressed registered letters to the National Office for Compensation on 28 August 1995, 23 October 1995, 13 November 1995 and 15 December 1995.

Committee's further rule 91 request

6. During its 60th session, in July 1997, the Committee, acting through its Working Group, decided that more information was required before the Committee could take a decision concerning the admissibility of the communication. It requested the State party to explain what actual steps the Budapest Municipal Court took to provide the author with the comments of the National Office for Compensation, the notification of the appeal hearing on 19 September 1997 or any other necessary documents.

Further State party's submission and the author's comments

7.1 By submission of 15 October 1997, the State party explains that the Budapest Municipal

Court transmitted the comments of the National Office for Compensation to the author by registered mail, on 21 August and again on 6 December 1996, inviting him to make observations. No reaction arrived, upon which the Court, in order to avoid further delay, set a hearing for 19 September 1997, informing the author by letter of 22 April 1997. The author was advised that he could answer in writing to the questions posed by the Court, if he preferred.

7.2 On 19 August 1997, the author replied to this last letter from the Court. In his letter, the author observed that the appropriate court was the Supreme Court of the Metropole of Budapest and not the Budapest Municipal Court. He stated that he had never received any correspondence before and told the court that he did not want it to do anything with his claim. He did not reply to the questions put to him by the court.

7.3 The State party explains that normally such lack of cooperation would have led to the dismissal of the appeal. In the instant case however, the Court was considering sending the files to the Constitutional Court in the light of the author's claim that the compensation legislation is discriminatory, and would thus have welcomed the author's observations.

7.4 The State party maintains that the Budapest Municipal Court is the competent court to hear appeals against the decision of the National Office for Compensation. The State party submits that the appeal is still pending and that the communication should thus be declared inadmissible for failure to exhaust domestic remedies.

8.1 In several letters, the author maintains that the Supreme Court of the Metropole is the only competent court to deal with his case. He states that he has not received any letters from the Hungarian courts until the letter of 22 April 1997 (which he only received on 7 August 1997), although his address was known throughout. He expresses his doubts about the good faith of the Hungarian authorities in dealing with his case, and requests the Committee to finalise his claim at its 61st session in October/November 1997.

8.2 The author explains that the Australian authorities translated his letters from English into Hungarian, and states that he has followed the instructions issued by Hungary regarding the claim, and that he is not responsible for any mistakes in the translation.

Issues and proceedings before the Committee

9.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with article 87 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

9.2 The information before the Committee shows that the author was informed that a hearing in his appeal would take place on 19 September 1997, and that he was requested to submit observations in respect to his claim. The Committee notes that the author has challenged the competence of the Budapest Municipal Court to hear his case. However, nothing in the information before the Committee suggests that this court is not competent to deal with appeals against decisions of the National Office of Compensation, or that it would not be

able to provide the author with an effective remedy. In the circumstances, the Committee considers that the communication does not fulfill the requirement of article 5, paragraph 2(b), of the Optional Protocol, that all domestic remedies must have been exhausted before the Committee can examine a case.

10. The Human Rights Committee therefore decides:

(a) that the communication is inadmissible under article 5, paragraph 2(b), of the Optional Protocol;

(b) that this decision may be reviewed under rule 92, paragraph 2, of the Committee's rules of procedure upon receipt of a written request by or on behalf of the author containing information to the effect that the reasons for inadmissibility no longer apply;

(c) that this decision shall be communicated 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 also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

*/ 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, Mr. Omran El Shafei, Ms. Elizabeth Evatt, Mr. David Kretzmer, Mr. Rajsoomer Lallah, Ms. Cecilia Medina Quiroga, Mr. Julio Prado Vallejo, Mr. Martin Scheinin, Mr. Danilo Türk and Mr. Maxwell Yalden.

1/ There seems to be a confusion of dates. The author states that he appealed on 21 August 1995.

2/ See footnote 1.

3/ Acts XXV of 1991 and XXIV of 1992 provide for compensation for the loss of property caused by the State.

4/ The decision by the National Office for Compensation of 21 January 1994, states (in certified translation): "Appeal against this decision may be lodged within 30 days of receipt of this notification addressed to the Supreme Court of the Metropole, appeal to be lodged in three copies either at the National Compensation and Retribution Department or the Supreme Court of the capital city".