



**International covenant
on civil and political
rights**

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HUMAN RIGHTS COMMITTEE
Ninety-third session
7 to 25 July 2008

DECISION

Communication No. 1543/2007

<u>Submitted by:</u>	Aduhene, Claudia and Agyeman, Daniel (not represented by counsel)
<u>Alleged victim:</u>	The author
<u>State party:</u>	Germany
<u>Date of communication:</u>	14 December 2006 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 97 decision, transmitted to the State party on 23 January 2007 (not issued in document form)
<u>Date of adoption of decision:</u>	22 July 2008

* Made public by decision of the Human Rights Committee.

Subject matter: Deportation

Procedural issues: Admissibility

Substantive issues: Protection of the family, interference of the family

Articles of the Covenant: 6, paragraph 1; 17, paragraph 1; and 23, paragraphs 1 and 2

Article of the Optional Protocol: 2, 5, paragraph 2 (b)

[ANNEX]

ANNEX

DECISION OF THE HUMAN RIGHTS COMMITTEE UNDER THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Ninety-third session

concerning

Communication No.1543/2007*

Submitted by: Aduhene, Claudia and Agyeman, Daniel (not represented by counsel)

Alleged victim: The author

State party: Germany

Date of communication: 14 December 2006 (initial submission)

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

Meeting on 22 July 2008

Aadopts the following:

DECISION ON ADMISSIBILITY

1.1 The authors of the communication are Claudia Aduhene and her husband Daniel Agyeman, both citizens of Ghana. Ms. Aduhene is a permanent resident of Germany. Mr. Agyeman was deported back to Ghana on 6 June 2007. The authors claim to be victims of violations by Germany of articles 6, paragraph 1; 17, paragraph 1; and 23, paragraphs 1 and 2 of the International Covenant on Civil and Political Rights. They are not represented.

1.2 On 23 January 2007, the Human Rights Committee, through its Special Rapporteur on New Communications denied a request for interim measures of protection under rule 91 of its

* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine Chanet, Mr. Maurice Glèlè Ahanhanzo, Mr. Yuji Iwasawa, Mr. Edwin Johnson, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Mr. Michael O'Flaherty, Ms. Elisabeth Palm, Mr. José Luis Pérez Sanchez-Cerro, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Ivan Shearer and Ms. Ruth Wedgwood.

rules of procedure. On 27 April 2007, the Special Rapporteur, decided to examine the question of admissibility of this communication separately from the merits.

The facts as submitted by the authors

2.1 In or around 1987, Ms. Aduhene moved to Germany where she was granted a permanent resident permit. In 2002, she met Mr. Agyeman in Ghana and married him in Denmark on 3 November 2005. In 2004, she was diagnosed with a “chronic disease”, which has made her unfit to work. She needs a carer to assist her in her daily life and until his deportation Mr. Agyeman, who is unemployed, fulfilled this role. According to Ms Aduhene, she cannot go back to Ghana to join her husband, as she cannot get the necessary medical treatment there.

2.2 On 5 December 2005, Mr. Agyeman submitted an application for a residence permit to the Immigration Office in Berlin, as the spouse of his legally resident wife. On 14 February 2006, the Immigration Office refused his application on the grounds that he did not have a secure livelihood, in accordance with S5 Abs. 1 Nr. 1 of the Residence Act – AufenthaltsG) and informed him that he would be deported if he did not leave the State party voluntarily. On 14 March 2006, Mr. Agyeman filed an application against this decision with the Administrative Court of Berlin, and requested the suspension of his deportation. On 25 April 2006, the Administrative Court refused to suspend his deportation on the grounds that he had no legal right to a residence permit. On 26 June 2006, the Higher Administrative Court confirmed this decision. Several further requests to suspend the immediate effect of the Immigration Office’s decision were denied. On 30 August 2006, the Federal Constitutional Court rejected a constitutional complaint. On 17 October 2006, a constitutional complaint filed in the Constitutional Court of Berlin was rejected as inadmissible.

The complaint

3. Ms. Aduhene invokes article 6, claiming a violation of her right to live a “normal life” since the deportation of her husband, who was her chief carer. Both authors claim that Mr. Agyeman’s deportation has interfered with their family life and deprived them of their right to marry and live together, in violation of articles 17, 23, paragraphs 1 and 2.

The State party’s submission on admissibility

4.1 On 24 April 2007, the State party contested the admissibility of the communication on grounds of non-exhaustion of domestic remedies. On the facts, it confirms that Ms. Aduhene has a permanent residence permit to live in the State party, but that Mr. Agyeman has never had such a permit. It submits that it is unclear when and how he entered the State party.

4.2 On admissibility, the State party submits that Ms. Aduhene has not submitted any application or request through the courts on her own behalf and has thus failed to exhaust domestic remedies in this regard. As to the efforts made by Mr. Agyeman, it submits that although he filed a complaint against the decision of the Higher Administrative Court of Berlin of 26 June 2006, to the Constitutional Court, he did so outside the time-limit of one-month after service of the Administrative Court decision, in accordance with S93 of the Federal Constitutional Court Act (BVerfGG). The decision of the Higher Administrative Court was sent to Mr Agyeman’s representative on 28 June 2006, but Mr. Agyeman only filed his complaint on

13 August 2006. The Federal Constitutional Court thus refused to accept his complaint. The State party refers to the Committee's jurisprudence¹, that any failure of a complainant to avail himself in time of the remedies available to him under domestic law renders the communication inadmissible.

4.3 In addition, the State party submits that Mr. Agyeman failed to give even a rudimentary reasoning for his complaint to the Constitutional Court. He merely stated that he wished to pursue his action in the administrative courts but failed to refer to any specific fundamental right he believed to have been violated, nor the nature of the alleged violation. It explains that the Constitutional Court only deals with violations of the Constitution. As Mr. Agyeman did not comply with the procedural requirements of the domestic procedure he is himself responsible for the failure of his submission. The State party also submits that he failed to exhaust domestic remedies with respect to the further proceedings before the administrative courts. He did not file constitutional complaints with respect to the decisions of the Administrative Court of Berlin of 20 September 2006 and the Higher Administrative Court of Berlin of October 2006.

Authors' comments on State party's submission

5.1. On 25 May and 21 June 2007, the authors responded to the State party's comments. Ms. Aduhene submits that in her application to the Immigration Office requesting a visa for her husband, she mentioned that she was reliant on him to assist her in her daily activities due to her physical incapacity. The German authorities dismissed her request on the basis that although she was sick she was not considered disabled. She denies this assessment and provides a letter, dated 1 April 2007, from the Regional Office, Centre of Berlin, which she purports to demonstrate that she is disabled. She admits that she has been provided with a carer, who comes at specified times of the day, but claims that her husband would be preferable.

5.2 As to her husband, she submits that after spending five months in jail, he was deported on 6 June 2007. He wishes to maintain his complaint. The authors deny that they have not exhausted domestic remedies. They submit that Mr. Agyeman submitted his appeal immediately to the Federal Constitutional Court but that legal representation is compulsory for proceedings before this court and he had to seek legal aid for which he was subsequently denied. As neither he nor his wife is a lawyer, they were unable to represent themselves properly. Mr. Agyeman had requested legal assistance but this was rejected. As to the decisions of 20 September and October 2006, the authors state that it was not possible to appeal from these decisions, as they were not subject to appeal.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 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.

¹ N.S. v Canada, Communication no. 26/1978, decision of 28 July 1978.

6.2 The Committee notes the State party's argument that the authors have not exhausted domestic remedies. It observes that the first-named author, Ms. Aduhene, does not contest that she failed to take any action through the courts on her own behalf. As to the case of the second-named author, Mr. Agyeman, he appealed the decision of the Higher Administrative Court of Berlin, of 26 June 2006, to the Federal Constitutional Court. However, the Committee notes the State party's argument that the case was not accepted by that court, as Mr. Agyeman had not submitted his application within the requisite deadline and had not referred to the violation of any of his fundamental rights or explained how they had been violated in his application. It would appear from the decision that, although it is not clear in precise terms why the case was not accepted by the Constitutional Court, it is clear that it was dismissed for procedural failure/s. The Committee considers that the fulfilment of reasonable procedural rules is the responsibility of the applicant himself. It finds, therefore, that neither of the authors can be considered to have exhausted the remedies available to them under the law of the State party. For this reason, the Committee finds the communication inadmissible for failure to exhaust domestic remedies under article 2, and article 5, paragraph 2 (b), of the Optional Protocol.

7. The Human Rights Committee therefore decides:

- (a) That the communication is inadmissible under article 2, and article 5, paragraph 2 (b), of the Optional Protocol;
- (b) 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.]
