



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE
Eightieth session
15 March – 2 April 2004

DECISION

Communication No. 1106/2002

Submitted by: Rebecca Palandjian and her brother Aghabab Paladjian
(Not represented by counsel)

Alleged victim: The authors

State party: Hungary

Date of communication: 21 June 1999 (initial submission)

Document references: Special Rapporteur's rule 91 decision, transmitted to the State party on 21 June 1999 (not issued in document form)

Date of adoption of decision: 31 March 2004

[ANNEX]

* Made public by decision of the Human Rights Committee.

ANNEX

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

Eightieth session

concerning

Communication No. 1106/2002**

Submitted by: Rebecca Palandjian and her brother Aghabab Paladjian
(Not represented by counsel)

Alleged victim: The authors

State party: Hungary

Date of communication: 21 June 1999 (initial submission)

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

Meeting on 31 March 2004

Adopts the following:

Decision on admissibility

1.1 The authors of the communication are Ms. Palandjian and her brother Aghabab Palandjian¹, Hungarian citizens by birth but American citizens since 1966, and are currently residing in the United States. They claim to be victims of violations of the Covenant on Civil and Political Rights. The authors are not represented by counsel.

1.2 The Optional Protocol to the International Covenant on Civil and Political Rights entered into force for Hungary on 7 December 1988.

** The following members of the Committee participated in the examination of the present communication: Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Alfredo Castillero Hoyos, Mr. Maurice Glèlè Ahanhanzo, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Martin Scheinin, Mr. Ivan Shearer, Mr. Hipólito Solari Yrigoyen, Ms. Ruth Wedgwood, Mr. Roman Wieruszewski and Mr. Maxwell Yalden.

¹ Aghabab Palandjian has severe muscular degeneration which prevents him from being able to see or to read or write. He has given authorisation to his sister to act on his behalf.

The facts as submitted by the authors

2.1 In 1952, the property of the authors' father in Budapest, which he co-owned with his brother, was nationalized by the former communist regime. In the same year, the family went to live in Austria. In 1960, the authors' father, an Armenian/Iranian citizen, died and the authors emigrated to the United States.

2.2 In 1991, the Hungarian authorities adopted Act No. XXV of 1991 (hereafter referred to as the "Compensation Act"), providing partial compensation for property that had been nationalised during the communist regime. According to paragraph 2 of this law, the following persons were entitled to compensation: (1) Hungarian citizens; (2) former Hungarian citizens; (3) and foreign citizens who were residents of Hungary on December 31, 1990.

2.3 On 11 December 1992 and 30 April 1993, the Hungarian consulate in New York replied to inquiries from Ms. Palandjian about her entitlement to compensation, explaining that she was ineligible, as her father was not a person entitled under the Compensation Act, since he was not a Hungarian citizen at the time of nationalisation.

2.4 On 16 March 1993, the Budapest Loss Settlement Office rejected Ms. Palandjian's request for compensation, as her father did not meet the criteria established in the Compensation Act. On 29 April 1993, she filed an appeal against this decision. On 2 May 1996, the National Loss Settlement and Compensation Office affirmed the decision of the Budapest Loss Settlement Office. On 1 April 1998, the Pest District Court confirmed the decision of the Budapest Loss Settlement Office.

2.5 In or around 1994, Ms. Palandjian requested advice from the Chief Secretary of the Constitutional Court. By letter, of 21 November 1994, the Chief Secretary explained that an appeal to that Court had to challenge the constitutionality of an act where there was no other legal remedy available and that her request for a mere *opinion* on a legal question fell outside the remit of the Court. Ms. Palandjian did not pursue a constitutional action, as she had received advice from a lawyer in 1990 that he required a deposit of \$ 240,000 to pursue an application to the Constitutional Court.

2.6 On 26 February 1999, an application by Ms. Palandjian to the European Court of Human Rights was declared inadmissible, in the light of all the materials in its possession, and in so far as the matters complained of were within its competence, the Court found that they did not disclose any appearance of a violation of the rights and freedoms set out in the Convention to its Protocols.

The complaint

3.1 The authors state that they have not made an application to the Constitutional Court as the cost would be prohibitive. In view of this, they claim to have exhausted all domestic remedies.

3.2 The authors claim that their right to property was violated, as the Hungarian authorities failed to return their father's property to them or to compensate them for the nationalisation of his property in 1952.

3.3 The authors also claim that they were discriminated against as they did not receive compensation for the loss of their father's property due to the fact that their father was not a Hungarian citizen at the time of nationalisation and therefore did not fulfil the criteria of the 1991 Compensation Act.

The State party's submission on admissibility

4.1 By submission of 8 October 2002, the State party submits that insofar as Ms. Palandjian refers to a violation of her right to property, this claim falls outside the scope of the Covenant and is therefore inadmissible *ratione materiae*, pursuant to article 3 of the Optional Protocol. Insofar as she alleges that she has been discriminated against in respect of compensation for her father's nationalised property, it submits that this claim is inadmissible under articles 2 and 5, 2(b) of the Optional Protocol, as she has failed to exhaust available domestic remedies.

4.2 The State party contends that the claim that Ms. Palandjian was discriminated against by the Compensation Act, in not being granted partial compensation for the loss of her deceased father's property, has never been raised before the competent national authorities notably not before judicial organs. As shown by the documents submitted by her, she filed a request for compensation with the Budapest Loss Settlement Office. This request was rejected on 16 March 1993 on the ground that she did not qualify for compensation because "at the time of the injury the owner was not a Hungarian citizen, as required by section 2, 1 (b) of the Compensation Act". According to the State party, only Aghabab Palandjian appealed this decision to the National Loss Settlement and Compensation Office and subsequently requested judicial review of this decision. Ms. Palandjian, it submits, neither appealed this decision to the National Loss Settlement and Compensation Office, nor requested judicial review in accordance with section 10 of the Compensation Act.

4.3 The State party argues that Ms. Palandjian did not file a constitutional complaint in which she could have raised the issue of alleged discrimination. It explains that the right to non-discrimination is guaranteed under article 70/A of the Hungarian Constitution, which is interpreted by the Constitutional Court in accordance with international treaties, including the provisions of the Covenant. The State party argues that Ms. Palandjian could have availed herself of two remedies to test the constitutionality of the impugned Act. Firstly, and assuming she had appealed her case to the National Loss Settlement and Compensation Office, she could have submitted a complaint to the Constitutional Court under Section 48 of Act No. XXXII of 1989². Secondly, and without requiring the exhaustion of all other legal remedies, she could have filed a motion in the Constitutional Court contesting the constitutionality of the Compensation Act on

² This section of the Act states " (1) Whoever suffered a violation of his rights enshrined in the Constitution on account of the application of an unconstitutional provision and exhausted all other legal remedies or there are no such remedies available to him, may submit a constitutional complaint to the Constitutional Court..."

the basis of alleged discrimination. In either case and in the event that the Court found that the restrictions concerning the scope of persons entitled to compensation were discriminatory, it could have repealed the contested legal provisions.

4.4 The State party submits that Ms. Palandjian could have initiated a civil action against the Hungarian authorities for discrimination on the ground of nationality, relying on Section 76 of the Civil Code and article 26 of the Covenant, which was incorporated into Hungarian law by Law-Decree No. 8 of 1976 and is therefore directly applicable in the domestic courts. Had she done so, she could have been awarded compensation, or the court could have requested the Constitutional Court to examine the constitutionality of the Compensation Act.

Authors' comments

5. On 22 January 2003, the authors reiterate their previous claims and deny that they failed to exhaust available domestic remedies. They claim that the application of remedies has been unreasonably prolonged and is too expensive, and that they were informed by the legal department of the compensation office that it would be impossible to receive compensation under the current law. They submit that for the purposes of Ms. Palandjian their request for advice from the Chief Secretary of the Constitutional Court was sufficient to exhaust domestic remedies.

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 the communication is admissible under the Optional Protocol to the Covenant.

6.2 The Committee notes that the European Court of Human Rights already examined the facts of this case and found "that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention to its Protocols". However, it also notes that as the European Court has already examined the facts of this case it is presently not being examined under another procedure of international investigation or settlement for the purposes of article 5, paragraph 2(a), of the Optional Protocol, and therefore cannot be declared inadmissible on this count.

6.3 Concerning the authors' claim relating to the confiscation of their father's property, the Committee observes that the right to property is not expressly protected under the Covenant. The allegation concerning a violation of the authors' right to property per se is thus inadmissible *ratione materiae*, under article 3 of the Optional Protocol.

6.4 The Committee notes the authors' claim that they were victims of discrimination, in violation of article 26 of the Covenant, as they were refused compensation on the ground that their deceased father was not a Hungarian citizen at the time of the nationalization of his property. In this regard, it notes that although both authors appear to have appealed the decisions of the Budapest Loss Settlement Office to the National Loss Settlement and Compensation Office, they have not shown that any arguments relating to alleged discrimination were ever

raised before any domestic court. Noting that the author has not provided any substantiation for her contention that the cost of exhausting domestic remedies would have been prohibitive, The Committee therefore decides that this claim is inadmissible due to non-exhaustion of domestic remedies, under article 5, paragraph 2(b), of the Optional Protocol.

7. The Human Rights Committee therefore decides:

- (a) that the communication is inadmissible under articles 3, and 5, paragraph 2 (b) of the Optional Protocol;
- (b) that this decision shall be communicated to the author and, for information, to the State party.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]
