UNITED NATIONS

CCPR

International covenant on civil and political rights

Distr.
RESTRICTED*

CCPR/C/84/D/969/2001
26 August 2005

ENGLISH
Original: FRENCH

HUMAN RIGHTS COMMITTEE
Eighty-fourth session
11-29 July 2005

DECISION

Communication No. 969/2001*

Submitted by:	Abel da Silva Queiroz et al. (represented by counsel, João Pedro Gonçalves Gomes and Rui Falcão de Campos)
Alleged victims:	The authors
State party:	Portugal
Date of communication:	16 April 2000 (date of initial submission)
Document references:	Special Rapporteur's rule 97 decision, transmitted to the State party on 21 March 2001 (not issued in document form)
Date of decision:	26 July 2005

* Made public by decision of the Human Rights Committee.

Subject matter: Loss of property in Angola by Portuguese citizens at the time of decolonization by Portugal and non-compensation for losses constituting a possible case of discrimination

Procedural issues: Admissibility *ratione temporis* - continuing effect

Substantive issues: Right to own property; right to compensation; discrimination

Articles of the Covenant: 26

Articles of the Optional Protocol: Article 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

Eighty-third session

Communication No. 969/2001[*]

Submitted by:	Abel da Silva Queiroz et al. (represented by counsel, João Pedro Gonçalves Gomes and Rui Falcão de Campos)
Alleged victims:	The authors
State party:	Portugal
Date of communication:	16 April 2000 (date of initial submission)

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

Meeting on 26 July 2005,

Adopts the following:

DECISION ON ADMISSIBILITY

1.1 The authors are Portuguese citizens who lost their property in Angola at the time of decolonization by Portugal and have received no compensation for the loss. The authors claim to be victims of a violation by Portugal of article 26 of the International Covenant on Civil and Political Rights. They are represented by counsel.

1.2 Portugal has been a party to the International Covenant on Civil and Political Rights since 15 September 1978 and a party to the Optional Protocol since 3 August 1983.

[*] The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Alfredo Castillero Hoyos, Ms. Christine Chanet, Mr. Maurice Glèlè Ahanhanzo, Mr. Edwin Johnson, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Mr. Michael O'Flaherty, Ms. Elisabeth Palm, Sir Nigel Rodley, Mr. Ivan Shearer, Mr. Hipólito Solari-Yrigoyen, Ms. Ruth Wedgwood and Mr. Roman Wieruszewski.

An individual opinion signed by Committee member Ms. Ruth Wedgwood is appended to the present document.

Facts as presented by the authors

2.1 The authors, a group of Portuguese citizens forming the "Association of the Dispossessed of Angola", lost all their property during the decolonization of Angola, which was a Portuguese colony until it acquired independence on 11 November 1975. They have received no compensation.

2.2 On 26 October 1977, Portugal promulgated Act No. 80/77, recognizing the right of Portuguese citizens and foreign nationals whose property on Portuguese metropolitan territory had been expropriated or nationalized during the troubles of 1975 and 1976 to receive compensation.

2.3 Article 40 of the Act excludes from its sphere of application property that was situated in the former Portuguese colonies, referring such cases to the legislation of the State in which the expropriated property is situated.[1]

2.4 The authors contend that, as a part of the decolonization process that began in 1974, the Alvor Agreement was signed on 15 January 1975 between Portugal, the National Front for the Liberation of Angola (FNLA), the Popular Movement for the Liberation of Angola (MPLA) and the National Union for the Total Independence of Angola (UNITA). Under the agreement, the State party recognized the Angolan people's right to independence and set out arrangements for the exercise of power during the transitional period, i.e. up to 11 November 1975, the date set for the declaration of independence. The powers of the Angolan Governments known as the transitional Governments, which were made up of representatives of the signatories of the Agreement, included that of ensuring the security of property and individuals. However, the authors claim that most of the property belonging to Portuguese citizens in Angola had to be abandoned owing to poor security, and was seized in particular by the population and armed groups of insurgents. Because of these violations, Portugal abrogated the Alvor Agreement by Decree-Law No. 458-A/75 of 22 August 1975. The authors state that the transitional Governments of Angola authorized the confiscation of certain property by a decree-law of 7 October 1975. Most of the property was subsequently confiscated and nationalized by the State of Angola.

2.5 Although Portugal compensated its nationals for losses suffered in Portuguese territory in 1975 and 1976, Portuguese citizens who were dispossessed in Angola have not been compensated.

The complaint

3.1 The authors consider that Act No. 80/77[2] is discriminatory within the meaning of article 26 of the Covenant, since Portuguese nationals were treated differently with respect to

[1] The Act limits its applicability to expropriations and nationalizations effected respectively under Decree-Law No. 407-A/75 of 30 July 1975 and agrarian reform legislation adopted from 25 April 1974 onwards (art. 1, para. 2). It expressly excludes certain acts of nationalization undertaken during that period in Portugal (art. 1, para. 4), together with those carried out in Portugal's former colonies (art. 40, para. 1).

the granting of compensation depending on whether their property was located in Portugal or in the former Portuguese colonies, including Angola.

3.2 The authors consider that Portugal bears responsibility under civil law for the acts that took place in Angola prior to independence. They hold that, during that period, Angola was in law a Portuguese territory, over which the State party had full jurisdiction, including jurisdiction for the application of its legislation (in particular articles 6 and 8 of the 1933 Constitution, which lay down the duty of the State to guarantee respect for rights and liberties and ensure their realization, and the right to the non-confiscation of property). The authors also consider that Portugal is jointly responsible for the material harm suffered by its citizens in Angola after independence, by virtue of the duty of diplomatic protection. In that regard, they point out that the present Portuguese Constitution provides (art. 14) that "Portuguese citizens who are located or reside abroad shall enjoy the protection of the State in the exercise of their rights …". According to the authors, Portugal's responsibility is also demonstrated by the fact that an allocation is included in the State budget each year to cover compensation arising from the decolonization process. Lastly, the authors hold that the State party's responsibility arises both from the actions described above which it permitted prior to Angola's independence, and from a continuous failure to discharge its duty to provide diplomatic protection since then. The authors' right to compensation is therefore not time-barred, but continuous. It is an acquired right.

3.3 The authors seek reparation for the spoliation of their property in the form of compensation, either directly on the part of Portugal or indirectly on the part of Angola through diplomatic channels.

3.4 The authors consider that they have exhausted domestic remedies, as no recourse to the courts is available to them. As Portuguese legislation does not allow individuals to challenge Act No. 80/77 directly before the Constitutional Court, they report that they lodged their claim with the Ombudsman (Provedor de Justiça), who decided on 5 July 1993 not to follow up their complaints. The authors add, in their initial communication, that no judicial appeal may be made against the Ombudsman's decision.

Observations by the State party

4.1 In its observations dated 18 June 2001, the State party challenges the admissibility of the communication.

4.2 Firstly, the State party considers, on the basis of the Committee's jurisprudence,[3] that the complaint is inadmissible *ratione temporis*, since the authors complain of events that

[2] Act No. 80/77 of 26 October 1977, whose original title is "Indemnizações aos ex-titulares de direitos sobre bens nacionalizados ou expropriados", recognized the right to compensation of Portuguese citizens and foreign nationals whose property on Portuguese territory had been expropriated or nationalized during the troubles of 1975 and 1976.

[3] Communication No. 490/1991 (*A.S. and L.S. v. Australia*) and communication No. 579/1994 (*K. Werenbeck v. Australia*).

occurred between 1975 and 1976 and of Act No. 80/77, which entered into force on 26 October 1977, whereas Portugal ratified the Optional Protocol on 3 May 1983.[4]

4.3 Secondly, the State party considers, on the basis of the Committee's jurisprudence,[5] that domestic remedies have not been exhausted. In the present case, and on the basis of the jurisprudence of the Supreme Administrative Court of Portugal, it is necessary to consider the issue of the civil liability of the State arising from a legislative or political act.[6] According to the State party, Portuguese law recognizes this form of State liability, but the authors should in this case have instituted proceedings before the ordinary courts.[7] The jurisprudence of the Supreme Court acknowledges this liability for legislative acts, according to the State party.[8] Consequently, according to the State party, it was open to the authors to institute civil proceedings against the State, to seek compensation from the State in the courts of justice and to challenge the constitutionality of the law in those courts. The Public Prosecutor would then immediately have placed the matter before the Constitutional Court, where it would have been considered, as desired by the complainants. They would have been able to pursue their remedy in the ordinary courts, in respect of the matter of compensation. In the present case, the authors had not exhausted such remedies.

4.4 Thirdly, the State party holds that the communication is inadmissible as the matter was submitted to the Human Rights Committee on 16 April 1998, five years after the Ombudsman handed down his decision on 5 July 1993.

4.5 In a note verbale dated 21 September 2001, the State party presents its observations on the merits, which it considers relate to the issue of whether there was discrimination between citizens depending on whether their property was located in Portuguese territory or in territory under Portuguese administration.

---

[4] Portugal ratified the Optional Protocol on 3 August 1983.

[5] Communication No. 427/1990 (*H.H. v. Austria*).

[6] In a ruling dated 17 December 1998, in case No. 43881, the Supreme Administrative Court states that this liability "has passed, with the promulgation of the present Constitution, from the simple sphere of acts of public management, under Decree-Law No. 48051, to that of universal liability under article 22 of the Constitution for all acts or omissions which were committed in the exercise or by virtue of this exercise, and which gave rise to violations of rights, liberties and guarantees, or harm to another person". According to Gomes Canotilho and Vital Moreira (Commentary on the Constitution, third edition), this principle of State liability for harm caused to citizens is one of the inherent principles of the democratic rule of law, as an element of the general right of individuals to compensation for harm caused by others. Hence the liability of the State for harm caused to others goes beyond the simple administrative function and, subject to specific conditions, extends to acts committed in the exercise of the legislative function, the judicial function and even the political or governmental function.

[7] Ruling quoted: "Cases which are not assigned to other courts fall within the competence of the courts of justice."

[8] Ruling of 22 April 1999 in case No. 98B750, ruling of 18 April 1991 in case No. 0811351, and ruling of 10 November 1991 in case No. 082051.

4.6 The State party considers that the issue of discrimination is connected with the status of Angola and Portugal in international law.

4.7 According to the State party, without wishing to deny a priori any responsibility which might devolve upon Portugal vis-à-vis its nationals which it has a duty to protect as the country of nationality, the question arises of whether Angola's legal status is the same as that of Portugal, where Portuguese citizens are concerned, and whether Portugal is consequently in a position to grant the same treatment to nationals within Portugal and those who are located in Angola, which was still a Portuguese responsibility at the time of the events. There would be discrimination only if the situation was the same.

4.8 The State party, referring to the jurisprudence of the European Court of Human Rights, explains that, under the concept of discrimination, situations that are the same are treated in the same way, and situations that are different are treated differently.

4.9 The State party holds that the distinction established in Act No. 80/77 is linked not to a particular purpose - that of granting compensation - but to a de facto situation, namely the material, actual and possible exercise of jurisdiction by the Portuguese State in Angola at the time of the events. According to the State party, the concept of jurisdiction is clearly established in international law:

"The expression 'under their jurisdiction' seems to restrict the number of beneficiaries of the Convention, but it merely establishes the necessary link between the victim of a violation of the Convention and the State party to which this violation may be ascribed. In other words, in order for the Convention to be applicable, it must be possible for the State to recognize the rights guaranteed under the Convention; however, the existence of a stable juridical link such as nationality, residence or domicile is not required, as it is enough for the State to be able to exercise a degree of authority over the person concerned."

4.10 According to the State party, the following questions arise: why, then, should action taken with regard to those dispossessed in Angola be restricted to Portuguese citizens who possessed property there, and not extended to non-Portuguese? And was the Portuguese State in a position to exercise a degree of authority over the property of the persons concerned?

4.11 The State party explains that the genesis of a new State in international terms depends on factors related to actual events rather than to the law. It concludes that, in the present case, there was no discrimination, because the situation was not the same in Portugal and in Angola. According to the State party, Angola, even before decolonization, was a territory that was distinct from Portugal and, under international law, legally ready for separation. It was a potential State. Portugal, on the other hand, is a unitary State only in respect of the Iberian rectangle and the autonomous regions - which do not have colonial status internationally. Hence the State party considers that Portugal is required to protect property only in that territory.

4.12 Similarly, according to the State party, it cannot be asserted that the status of metropolitan territory or colony is conferred by the State. For 50 years it has been conferred by the international community, and this undermines the Portuguese State's jurisdiction over Angola as from the moment when decolonization is in the transitional phase. Besides, according to the State party, from the moment when the status of territories was determined

by the international community, such territories were no longer a Portuguese responsibility, and it was for that reason that Portugal moved to decolonize them during the 1970s.

4.13 The State party holds that, even if one must be able to assert that private circumstances must be maintained in the event that a new State is created, the colonizing State cannot guarantee such circumstances when they pass under the de facto jurisdiction of the new State, even if the moment is a moment of transition, and even if the State is still in the process of formation. The protection of such circumstances should fall to the new State, without prejudice, of course, to the provisions, inter alia, of United Nations General Assembly resolution 1314 (XIII) of 12 December 1958 and resolution 1803 (XVII) of 12 December 1962 on "Permanent sovereignty over natural resources". This is confirmed, according to the State party, by the United Nations Declaration of 24 October 1970 on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations and by United Nations General Assembly resolution 1514 (XV) of 14 December 1960 on the granting of independence to colonial countries and peoples.

4.14 The State party concludes that there is no discrimination between Portuguese citizens whose property was located in Portugal and Portuguese citizens whose property was located in Angola at the time of the entry into force of Act No. 80/77, and hence that there was no violation of article 26 of the Covenant by the State party. It adds that, notwithstanding the above-mentioned legal aspects, which demonstrate that the authors' complaint is not justified, Portugal did not abandon the Portuguese citizens who were located in Angola and, as far as it was able, sought to protect them and their property and to secure their reintegration in Portugal.[9]

4.15 Hence it has been established that the State party did not infringe article 26 of the Covenant, nor did it abandon Portuguese citizens located in Angola at the time of decolonization.

4.16 In its observations of 29 December 2004 on the authors' comments of 6 December 2004, the State party again argues that the communication is inadmissible. It emphasizes that to date only the proceedings in the Cascais civil courts have given rise to a Supreme Court ruling. In the State party's view, the question is whether an issue of constitutionality was brought before the Constitutional Court and if so, whether it was relevant. As to the merits, the State party repeats its contention that it is not possible to seek compensation for acts perpetrated outside the State party's jurisdiction.

---

[9] By Decree-Law No. 308-A/75 of 24 July 1975, the State party sought to maintain the nationality of Portuguese nationals returning from the former colonies. It set up the Institute for Support to Returning Nationals under Decree-Law No. 169/75 of 31 March 1975. Moreover, under the Alvor Agreement, Portugal undertook to transfer property or securities belonging to Angola which were outside Angola, while the liberation movements undertook to respect the property and legitimate interests of Portuguese nationals domiciled in Angola. By virtue of a unilateral declaration issued by Portugal under Decree-Law No. 458-A/75 of 22 August 1975, this agreement was suspended owing to the frequent violations committed by the liberation movements.

Comments by the authors

5.1 In a letter dated 28 November 2001, the authors challenge the State party's observations and maintain that domestic remedies have been exhausted. They cite the appeals lodged in Lisbon administrative court on 25 September 1997,[10] in Lisbon civil court on 20 November 1998 and 20 April 2000, in Viseu and Cascais civil court on 2 May 2000 and in Tomar civil court on 3 May 2000. They state that, as of the date of submission of their letter to the Committee, no rulings have been handed down.

5.2 In a letter dated 6 December 2004, the authors state that to date, only the proceedings in the Cascais civil court have given rise to a judgement, namely the ruling by the courts that the authors' right to compensation has lapsed (judgement of the Cascais civil court dated 18 June 2002, upheld by the Appeal Court on 5 May 2003 and by the Supreme Court on 14 May 2004).

The Committee's deliberations concerning admissibility

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 ascertained, as it is required to do under article 5, paragraph 2 (a), of the Optional Protocol, that the case was not under examination by another instance of international investigation or settlement.

6.3 The Committee has taken note of the State party's arguments concerning the inadmissibility of the complaint *ratione temporis* and the comments by the authors on this subject.

6.4 In keeping with its jurisprudence,[11] the Committee considers that it cannot consider alleged violations which occurred before the entry into force of the Covenant for the State party, unless the violations complained of continue after the entry into force of the Optional Protocol. The Committee finds that the discrimination arising from Act No. 80/77 of 26 October 1977 occurred before ratification by the State party of the Covenant on 15 September 1978 and of the Optional Protocol on 3 August 1983. The Committee does not consider that the ongoing effects of such discrimination pursuant to the Act constitute violations of the Covenant as such. The communication is therefore inadmissible *ratione temporis*.[12] In such circumstances, it is not necessary for the Committee to pronounce on whether domestic remedies have been exhausted.

7. The Committee therefore decides:

---

[10] This appeal did not refer to Act No. 80/77 and its discriminatory nature, which are the subject of the present complaint.

[11] Communication No. 24/1977 (*S. Lovelace v. Canada*), communication No. 196/1985 (*I. Gueye v. France*), communication No. 516/1992 (*J. Simunek et al. v. Czech Republic*), communication No. 520/1992 (*E. and A.K. v. Hungary*) and communication No. 566/1993 (*Ivan Somers v. Hungary*).

[12] Communication No. 983/2001, *John K. Love et al. v. Australia*, para. 7.3.

(a) That the communication is inadmissible under article 1 of the Optional Protocol;

(b) That this decision shall be communicated to the State party and the authors.

[Adopted in English, French and Spanish, the French 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.]

APPENDIX

Individual opinion of Committee member Ms. Ruth Wedgwood

The authors complain that their properties in Angola were seized, without compensation, during the transition to independence in 1974 to 1975, and that Portugal has not paid compensation for these actions of the Angolan authorities. This is said to violate a right to equal treatment under Article 26 of the Covenant on Civil and Political Rights, because Portugal chose to pay compensation for any expropriations within its European territory during the same period. The claim of unlawful discrimination is maintained even though Portugal's influence and control within Angola in this time period was waning, if not eclipsed.

The Committee has found that this complaint, claiming unlawful discrimination, is inadmissible *ratione temporis*. The Committee notes that Portugal's law on compensation was promulgated in October 1977, nearly six years before Portugal joined the Covenant's Optional Protocol in August 1983.

However, where a violation has "continuing effect," the Committee has at times examined events that predate a state party's accession to the Optional Protocol. It is thus *apropos* to note the authors' petition would fail on an independent ground, namely, the failure to exhaust local domestic remedies. Litigation before the courts of Portugal is still ongoing, and the authors have not shown that these remedies would be futile.

The authors' petition commingles several theories. One addresses the scope of "diplomatic protection" – does a government have a duty, as well as a right, to champion its citizens' claims against foreign states, and can a government use its discretion in deciding how, and whether, to propound such foreign claims? The second is the assertion that a state party has a duty to provide compensation where such foreign claims are not successful. The third is the claim that Portugal remained legally responsible for property seizures carried out before the formal date of Angola's independence, on November 11, 1975, even though Lisbon may have lost effective control of events in the colony and attempted to protect Portuguese properties through the Alvor Agreement. Each of these questions may interest international lawyers. But their merits, and asserted relationship to Article 26 of the Covenant, cannot be addressed in a petition that does not meet the first prerequisite of an admissible communication under the Optional Protocol, namely, the clear exhaustion of local remedies.

[*Signed*] Ruth Wedgwood

[Done 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.]

- - - - -