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HUMAN RIGHTS COMMITTEE
Fiftieth session

DECISIONS

Communication No. 520/1992

Submitted by: Edith and Arpad Könye

Alleged victims: The authors

State party: Hungary

Date of communication: 22 September 1992 (initial submission)

Documentation references: Prior decisions :

- Special Rapporteur's rule 91 decision, dated 4 January 1993 (not issued in document form)

Date of present decision: 7 April 1994

[Annex]

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ANNEX*

**Decision of the Human Rights Committee under the Optional Protocol
to the International Covenant on Civil and Political Rights
Fiftieth session**

concerning

Communication No. 520/1992**

Submitted by: E. and A.K. [names deleted]
Alleged victims: The authors
State party: Hungary
Date of communication: 22 September 1992 (initial submission)

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

Meeting on 7 April 1994,

Adopts the following:

Decision on admissibility

1. The authors of the communication are E. and A.K., two Hungarian citizens residing in Switzerland. They claim to be victims of violations by Hungary of articles 2, paragraphs 1 and 2; 12, paragraphs 2 and 3; 14, paragraph 1; and 17, paragraph 1, 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 authors:

2.1 A.K. has been a staff member of the International Labour Office (ILO) in Geneva since 1976. Until 1984, each change in his contractual status and each extension of his contract was subject to the issuance of a foreign work permit by the Hungarian authorities. Under Hungarian law applicable at the time, this permit was a precondition for the issue of an exit visa by the authorities, which would allow the author to leave Hungary together with his family and work abroad.

* Made public by decision of the Human Rights Committee.

** An individual opinion submitted by Ms. Christine Chanet is appended to the present document.

2.2 In March 1984, Mr. K. was appointed to an established post in ILO. As a result, the Hungarian authorities refused to extend his work permit and summoned him to resign from the post and return to Budapest. The author refused to comply and instead resigned from his post in the Hungarian Ministry of Housing and Urban Development.

2.3 In the autumn of 1984, the municipal police of Budapest, by decision No. 21.320/1984, declared Mr. and Mrs. K. to be citizens staying abroad unlawfully, with effect as of 31 December 1983 (the author's work permit was valid until 30 June 1984). On the basis of this decision, the administration of the Budapest City Council confiscated the authors' apartment property as well as the family home and took them into State ownership. The authors were denied compensation. Their subsequent appeals were rejected by the City Council of Budapest, acting as an administrative court, on the grounds that under the then applicable rules and regulations, property of individuals found to be unlawfully staying or residing abroad had to be taken into State ownership. Another consequence of the police decision was that the Hungarian Embassy in Berne, Switzerland, refused to issue to Mr. K. a certificate confirming his accrued rights to social security benefits.

2.4 The authors contend that during this period, and in subsequent years, they have had to endure numerous arbitrary interferences with their private and professional lives. Thus, letters sent from Switzerland to relatives in Hungary were regularly opened and/or delayed for weeks; Mr. K. was denied permission to attend the funeral of his father; in June 1985, the Hungarian Ministry of Labour allegedly intervened with the ILO administration, with a view to securing Mr. K.'s dismissal. From 1984 to 1989, the authors complained to the authorities in Budapest about the arbitrary nature of the decisions adopted against them, to no avail. On the contrary, their property was auctioned off in November 1988.

2.5 In January 1990, the authors requested the newly appointed Minister of Justice to reopen their case. The Minister's reply was negative, allegedly only confirming that all domestic remedies had been exhausted. Towards the end of 1991, the authors wrote to the Secretariat for Rehabilitation attached to the Prime Minister's Office and asked that their case be reconsidered. Although the Secretariat's reply presented an apology on behalf of the new government and promised assistance with respect to the recovery of the authors' property, and although the authors' passports were returned to them, there was no subsequent follow-up on the property issue.

2.6 In 1990, the authors sought legal advice. Their representative first submitted the matter to the Constitutional Court, which declared that it was not competent to decide on the issue of restitution of the authors' property. The Budapest Central District Court was then asked to review the case, but it dismissed the petition on 15 January 1992, without summoning any of the parties. In its decision, the Court confirmed that the authorities had acted

lawfully in 1984; it also admitted, albeit in vague terms, that there was no possibility of appealing the decisions of 1984, and that the courts could only have reviewed them from a strictly procedural point of view. Mr. K.'s lawyer appealed to the Court of Appeal, which confirmed the decision of first instance on 10 March 1992 and held that "there was no place for further appeal"; this would appear to imply that leave to appeal to the Supreme Court was denied. Both the Central District Court and the Court of Appeal further held that the authors had failed to submit their case within the statutory deadlines.

2.7 The authors indicate that they have not submitted their case to another instance of international investigation or settlement.

The complaint:

3.1 The authors contend that the Hungarian authorities have violated their rights under article 12 of the Covenant. Thus, the restrictions in their foreign work permit, which specified the country, the period of time and the place of work for which it could exclusively be used, are said to have violated their "right to be free to leave any country". The authors do concede, however, that such restrictions as were imposed by the former regime have been lifted.

3.2 The authors alleged a violation of article 14, paragraph 1, as they were denied the possibility of attending a court hearing in their case or, prior to 1991, to be represented by a lawyer. They argue that the principle of equality of arms was not respected as neither the municipal police, the Budapest City Council nor the local courts gave them an opportunity to put properly their claims before the competent authorities. Thus, in 1984, the authors only learned about the police decision through the administrative decisions confiscating their property. In 1991, the Central District Court decided without summoning the parties. The authors further contend that the fact that the City Council's actions, whose effect was similar to that of the decisions of an administrative tribunal, could not be challenged before the regular courts violated article 14. Finally, it is submitted that the proceedings in the case violated the principle of audiatur et altera pars, under which parties to a case should be entitled to be heard by the courts.

3.3 Finally, the authors allege a violation of article 17, as they were subjected to unlawful interferences with their family and their private life, as well as to unlawful attacks on the professional integrity and the career development prospects of Mr. K. They also consider the confiscation and auctioning of their home and apartment in Budapest an unlawful interference with their family life.

3.4 The authors do acknowledge that many of the events in their case occurred prior to the date of entry into force of the Optional Protocol for Hungary. They note, however, that Hungary ratified the Covenant on 23 March 1976 and that, by March 1984, the Government should have adopted, in accordance with its obligations under article 2, paragraphs 1 and 2, of the Covenant, all the

legislative and other measures necessary to give full effect to the rights protected under the Covenant. The fact that the alleged violations of the authors' rights occurred between the entry into force of the Covenant and that of the Optional Protocol for Hungary should not lead to a simple dismissal of their complaint ratione temporis.

The State party's information and observations and authors' comments:

4. In its submission on the admissibility of the communication, the Government points out that the events complained of occurred prior to 7 December 1988, the date of entry into force of the Optional Protocol for the State party. It therefore considers the case inadmissible ratione temporis, referring in this context to article 28 of the Vienna Convention on the Law of Treaties, concerning the non-retroactivity of international agreements.

5.1 In their comments, the authors challenge the State party's argument. They contend that the 1984 decision to declare them persons unlawfully staying abroad still has serious and continuing effects for their present life. Thus, the decision was combined with sanctions which had lasting consequences for their family life: their children, without passports and de facto stateless, applied for Swiss and Canadian citizenship, respectively, whereas the authors retained Hungarian citizenship. The fact that the Government confiscated their property and refused to restitute it to them, which made it impossible for the authors to return to their home, is said to constitute a continuing violation of the Covenant. Finally, the intervention of the Hungarian authorities with the ILO administration is said to continue to affect Mr. K.'s career development prospects, as he continues to be considered a "special case" by ILO.

5.2 The authors further reiterate that they did not get a fair and public hearing before an independent and impartial tribunal, neither under the former communist regime nor under the present democratically-elected government. Until the change of government in 1989, the judicial decisions were handed down "without a public hearing and by incompetent administrative authorities". The decisions of these authorities were final, and the authors allegedly did not have the possibility of appealing against them. Under the new Government, in 1990-1991, the authors' request for reopening of the matter was again rejected in proceedings which did not include a public hearing. This again is said to constitute an ongoing and continuing violation of article 14 of the Covenant.

Issues and proceedings before the Committee:

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

6.2 The Committee has noted the authors' claims relating to the confiscation and auctioning of their property by the Hungarian authorities in 1984 and in November 1988. Irrespective of the fact that these events took place prior to the date of entry into force of the Optional Protocol for Hungary, the Committee recalls that the right to property is not protected by the Covenant. The authors' allegations concerning a violation of their right to property are thus inadmissible ratione materiae, under article 3 of the Optional Protocol.

6.3 The authors contend that the violations of their rights under article 14 and article 17, paragraph 1, have continued after the entry into force of the Optional Protocol for Hungary on 7 December 1988. The State party has not addressed this point and merely argued that all of the authors' claims are inadmissible ratione temporis.

6.4 The Committee begins by noting that the State party's obligations under the Covenant apply as of the date of its entry into force for the State party. There is, however, a different issue as to when the Committee's competence to consider complaints about alleged violations of the Covenant under the Optional Protocol is engaged. In its jurisprudence under the Optional Protocol, the Committee has held that it cannot consider alleged violations of the Covenant which occurred before the entry into force of the Optional Protocol for the State party, unless the violations complained of continue after the entry into force of the Optional Protocol. A continuing violation is to be interpreted as an affirmation, after the entry into force of the Optional Protocol, by act or by clear implication, of the previous violations of the State party.

6.5 In the present case, it is not possible to speak of such a continuing affirmation, by the Hungarian authorities, of the acts committed by the State party prior to 7 December 1988. For one, the authors' passports have been returned to them, and such harassment as they may have been subjected to prior to 7 December 1988 has stopped.

6.6 The only remaining issue, which might arise in relation to article 17, is whether there are continuing effects by virtue of the State party's failure to compensate the authors for the confiscation of their family home or apartment. However, the Committee recalls that there is no autonomous right to compensation under the Covenant (see decision of 26 March 1990 on case No. 275/1988, S.E. v. Argentina); and a failure to compensate after the entry into force of the Optional Protocol does not thereby constitute an affirmation of a prior violation by the State party.

7. In the light of the above, the Human Rights Committee considers that the authors' claims are inadmissible ratione temporis.

8. The Human Rights Committee therefore decides:

- (a) That the communication is inadmissible;

(b) That this decision shall be communicated to the State party and to 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 by Ms. Christine Chanet under rule 94, paragraph 3, of the Committee's rules of procedure,

concerning the Committee's decision on communication No. 520/1992

(E. and A.K. v. Hungary)

I do not share the reasoning behind the Committee's decision to declare the communication inadmissible under article 14 of the Covenant ratione temporis.

The authors' allegations under article 14 referred to procedure that took place during a period subsequent to the entry into force of the Optional Protocol, since they were contesting the procedure followed by the Central District Court in 1991, while the Optional Protocol entered into force for Hungary in December 1988.

The Committee could certainly have found that the allegations were not sufficiently supported, but not that article 14 could not be invoked because of the ratione temporis rule.

With respect to article 14, the contents of the case submitted to the national court can be evaluated by the Committee only in terms of the criteria listed in the text itself, i.e., in this particular case, rights and obligations in a suit at law.

With the exception of this criterion relating to substance, article 14 refers to the conditions under which the procedure is conducted, and it is the dates on which the various procedural acts took place that should be taken into consideration when analysing the communication ratione temporis. The dates relating to the substance of the case brought before the national court should not be taken into consideration when applying the ratione temporis rule.

Finally, it is my view that when the Committee considers a communication under the Optional Protocol, its decisions should be guided only by the legal principles found in the provisions of the Covenant itself, and not by political considerations, even of a general nature, or the fear of a flood of communications from countries that have changed their system of Government.

[Christine Chanet]

[Done 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.]
