

HUMAN RIGHTS COMMITTEE

Neremberg v. Germany

Communication No 991/2001

27 July 2001

CCPR/C/72/D/991/2001

ADMISSIBILITY

Submitted by: Ms. Hena Neremberg et al. (represented by counsel, Mr. Edward Kossoy)

Alleged victims: The authors

State Party: Germany

Date of Communication: 30 October 1999

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

Meeting on 27 July 2001,

Adopts the following:

Decision on Admissibility

1. The authors of the communication are Ms. Hena Neremberg and ten other individuals currently residing in Canada, France, and Israel respectively. The authors claim to be victims of violations by Germany of article 14 of the International Covenant on Civil and Political Rights. The authors are represented by counsel. The Optional Protocol entered into force for Germany on 25 November 1993. Germany entered reservations *ratione temporis* and concerning article 5, paragraph 2 (a) of the Optional Protocol.

The facts as submitted on behalf of the author

2.1 The authors are heirs and assigns of the property of a tannery in the city of Radom (Poland). Shortly after the German occupation in World War II, the enterprise had been confiscated for being owned by ethnic Jews and, from then on, had been controlled by the administrative authorities established in Poland by the German Reich. During this time, on different occasions, high quantities of leather produced in the tannery had been delivered to Hannover (Germany). Furthermore, other property of the authors' ancestors had been confiscated or seized.

2.2 In November 1958, the authors and/or other relatives claimed compensation for the leather delivered to Hannover and other confiscated or seized property as provided for in the relevant provisions of the Federal Restitution Act ("Bundesrückerstattungsgesetz"). From 1962 on, the case was pending at the district court of Berlin ("Landgericht"). In 1971, the authors agreed on a friendly settlement concerning one part of the claim. With regard to another part of the claim the court procedure continued.

2.3 In separate partial decisions, in 1983 and in 1987, the district court Hannover granted the authors compensation for other confiscated property of the tannery, while the procedure continued. In 1992, some of the authors assigned their claims to a commercial trust company, reserving their right to claim compensation for damage caused by the delay of proceedings. In 1993, after further evidence was established, the district court awarded the authors compensation for other material losses. The appeal against the partial decisions by Germany has been rejected as unsubstantiated in second and third instance. Further appeals against the costs order were dismissed. At that time, the total compensation granted by the court amounted to several million DM.

2.4 In 1995, the authors agreed to a friendly settlement on all outstanding compensation claims against payment of DM 1,000,000.

2.5 In 1996, the authors claimed, before the district court Hannover, compensation for the length of procedure regarding their compensation claims.

2.6 The court rejected the claim arguing that the Federal Restitution Act does not provide for compensation claims other than those mentioned in this act. In 1998, the appeal of the authors against this decision was rejected finally by the Federal Court ("Bundesgerichtshof").

2.7 The authors then turned to the European Commission of Human Rights with a complaint against the delay in the procedures. In 1998, the European Commission of Human Rights declared the application of the authors inadmissible for lack of exhaustion of remedies available under German law, i.e. the authors neither instituted official liability proceedings ("Amtshaftungsklage") nor lodged a constitutional complaint ("Verfassungsbeschwerde") with the Federal Constitutional Court ("Bundesverfassungsgericht").

Decision on inadmissibility

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

3.2 The Committee observes that, when ratifying the Optional Protocol and recognizing the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction, the State party made the following reservation, with reference to article 5, paragraph 2 (a) of the Optional Protocol:

"the competence of the Committee shall not apply to communications

a) which have already been considered under another procedure of international investigation or settlement"

Moreover, the State party made a reservation *ratione temporis* excluding the Committee's competence in any case:

"having its origin in events occurring prior to the entry into force of the Optional Protocol for the Federal Republic of Germany".

3.3 The Committee notes that the author's claim of undue delay in violation of article 14, paragraph 1 of the Covenant is mainly related to proceedings that were pending prior to 25 November 1993, the entry into force of the Optional Protocol for the State party, and that no part of the claim relates to events that occurred after 1995.

3.4 Moreover, the Committee notes that the authors have not availed themselves of existing redress possibilities, including official liability proceedings ("Amtshaftungsklage") or constitutional complaint ("Verfassungsbeschwerde"). Consequently, their complaint was declared inadmissible by the European Commission of Human Rights due to the non-exhaustion of domestic remedies, an admissibility requirement that appears also in article 5, paragraph 2 (b) of the Optional Protocol.

4. The Committee, therefore, decides:

(a) that the communication is inadmissible under articles 1, 2, 3, 5, paragraph 2 (a) and (b) of the Optional Protocol;

(b) that this decision shall be communicated to the author and, for information, to the State party.

* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Prafullachandra Natwarlal Bhagwati, Ms. Christine Chanet, Mr. Maurice Glèlè Ahanhanzo, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Martin Scheinin, Mr. Ivan Shearer, Mr. Hipólito Solari Yrigoyen, Mr. Ahmed Tawfik Khalil, Mr. Patrick Vella and Mr. Maxwell Yalden.

Under rule 85 of the Committee's rules of procedure, Mr. Eckart Klein did not participate in the examination of the case.

[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.]