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International Covenant on Civil and Political Rights

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Human Rights Committee

Decision adopted by the Committee under the Optional Protocol, concerning communication No. 2682/2015*, **

Communication submitted by:	P.E.E.P.
Alleged victim:	The author
State party:	Estonia
Dates of communication:	27 March 2013 (initial submission)
Document references:	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 20 November 2015 (not issued in document form)
Date of adoption of decision:	13 March 2020
Subject matter:	Expropriation of property; fair trial; discrimination
Procedural issues:	Exhaustion of domestic remedies; manifestly ill-founded; incompatibility with the provisions of the Covenant
Substantive issues:	Property rights; fair trial; discrimination on the ground of national, ethnic or social origin
Articles of the Covenant:	2, 14 (1) and 26
Articles of the Optional Protocol:	2, 3 and 5 (2) (b)

1. The author of the communication is P.E.E.P., a national of Germany born in 1927. He claims that the State party has violated his rights under article 2, article 14 (1) and article 26 of the Covenant. The Optional Protocol entered into force for Estonia on 21 January 1992. The author is not represented by counsel.

The facts as submitted by the author

2.1 The author, P.E.E.P., is the son and one of the legal heirs of M.P., who used to be the owner of a residential building in Tallinn containing a number of apartments. In 1941, the author's family resettled from Estonia to Germany and the properties were unlawfully nationalized by the Soviet authorities. After Estonia regained its independence in 1991, an

* Adopted by the Committee at its 128th session (2–27 March 2020).

** The following members of the Committee participated in the examination of the communication: Yadh Ben Achour, Arif Bulkan, Ahmed Amin Fathalla, Christof Heyns, Bamariam Koita, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Hélène Tigroudja and Gentian Zyberi.

ownership reform process was put in place, governed by the Principles of Ownership Reform Act. The aim of the Act was to return the confiscated properties to their former owners or their legal successors, or in the alternative, to provide them with compensation. In 1992, the author, together with his brother, successfully claimed restitution of their late father's property in Tallinn, which was returned to them, by a decision dated 25 October 1993 of the Tallinn City Committee for the Return and Compensation of Unlawfully Expropriated Properties (hereinafter the Tallinn City Committee), on 28 April 1994.

2.2 On 8 November 1999, the Tallinn City Committee annulled the order of 28 April 1994 on the basis of paragraph 7 (3) of the Principles of Ownership Reform Act, finding that the author's father had left Estonia on the basis of agreements between the Third Reich and the former Union of Soviet Socialist Republics on 10 January 1941. On 28 August 2000, the Tallinn City Committee reversed that decision as it found no evidence that the author's father had left Estonia on the basis of such an agreement.

2.3 On 20 March 2001, Tallinn Administrative Court declared the decision of the Tallinn City Committee of 1994 unlawful and remitted the case to the Tallinn City Committee. Subsequently, on 25 June 2001, the Tallinn City Committee established that the author's father had left Estonia on the basis of the above-mentioned bilateral agreement and that the Principles of Ownership Reform Act could not apply to individuals whose compensation should be resolved on the basis of international agreements. The author appealed against this decision. On 4 March 2010, Tallinn Administrative Court annulled the decision of the Tallinn City Committee of 25 June 2001. Subsequently, by a decision of the Tallinn City Committee of 9 June 2010, the author and his late brother's legal heir regained ownership of the property.

2.4 However, by a decision of 31 August 2010, the Tallinn City Committee rescinded its former decision. The Tallinn City Committee based its decision on new information provided by an expert who had been retained by Tallinn City Chancellery to conduct research in archives located in Germany and verify whether the applicants who had claimed restitution of their confiscated properties under the Principles of Ownership Reform Act had already been paid compensation for their respective properties. On the basis of the information received from the German archives, the Tallinn City Committee established that in 1953 the author's father had already requested compensation for the property concerned in the Federal Republic of Germany in compliance with the relevant provisions of the so-called *Lastenausgleichgesetz*. It transpired from the file that the author's father had received payments totalling 60,000 German marks from 1961 to 1970. Considering that the relevant provision of the Principles of Ownership Reform Act does not allow for restitution or compensation in respect of properties for which redress has already been provided, the author and the legal heir of his late brother again lost their property.

2.5 The author appealed this decision to Tallinn Administrative Court, which ruled on 4 March 2011 that the compensation previously paid to the author's father did not constitute compensation within the meaning of section 17 (5) of the Principles of Ownership Reform Act. The Tallinn City Government, as the legal successor of the Tallinn City Committee, challenged that decision. On 15 June 2011, the Tallinn Court of Appeal quashed the decision of Tallinn Administrative Court and dismissed the author's claim. The Tallinn Court of Appeal concurred with the finding of the Tallinn City Committee which established that the author's father had already received compensation for the property concerned. In its reasoning, the Tallinn Court of Appeal closely followed the interpretation of the Principles of Ownership Reform Act by the Supreme Court of Estonia[1] holding that persons who are basing their claim on a property in respect of which redress had already been provided shall be excluded from the compensation scheme under the Act. Hence, the Tallinn Court of Appeal concluded that those applicants who had already received compensation from the Federal Republic of Germany could not hold a legitimate expectation of obtaining additional redress in the country of location of the property concerned.

[1] Decision No. 3-3-1-84-09 of the Supreme Court of Estonia of 10 December 2009.

2.6 On 19 December 2011, the author filed a cassation appeal with the Supreme Court of Estonia, which found his appeal inadmissible for lack of substantiation.

2.7 On 6 November 2012, the Supreme Court of Estonia rejected the author's request to reopen his case, since no new facts had emerged that would necessitate a retrial.

The complaint

3.1 The author submits that the domestic authorities should not have considered the payments received by his father under the *Lastenausgleichgesetz* from the Federal Republic of Germany to be compensation within the meaning of section 17 (5) of the Principles of Ownership Reform Act. This failure, according to the author, follows from an arbitrary and unfair interpretation of the *Lastenausgleichgesetz* as well as of the Principles of Ownership Reform Act. In this context, the author argues that the general purpose of the *Lastenausgleichgesetz* was to provide an integration subsidy to displaced persons, rather than full compensation. This is why the real value of the property served only a basis for calculating the amount of compensation, but the amount awarded was not even close to the actual value of the property. Moreover, the preamble to the *Lastenausgleichgesetz* included a disclaimer expressly stipulating that persons accepting payments under the *Lastenausgleichgesetz* did not waive their property claims in respect of the property concerned. He claims that the decision of the State authorities to reject his claim for restitution or compensation for his late father's property follows from the unfair proceedings before Tallinn Administrative Court and discriminates against him on the ground of his Baltic German origin. In that respect, he alleges that mainly persons living in Estonia could benefit from the property compensation schemes of Estonia, however those living abroad were prevented from making use of those opportunities. He acknowledges that in some sporadic cases restitution indeed took place even in respect of properties of Baltic German persons, but he submits that in the majority of the cases the property claims of these people were refused by Estonia. He therefore claims that the State party has violated his right to a fair trial, and prohibition of discrimination, in breach of articles 2, 14 (1) and 26 of the Covenant.

3.2 He also complains about the length of the domestic proceedings, which started in 1991 and ended on 15 June 2011, lasting for 20 years, in breach of article 14 (1) of the Covenant.

State party's observations on admissibility[2]

4.1 In a note verbale dated 18 January 2016, the State party requested the Committee to declare the communication inadmissible for non-substantiation, for being incompatible *ratione materiae* with the provisions of the Covenant and for non-exhaustion of domestic remedies, under articles 2, 3 and 5 (2) (b) of the Optional Protocol.

4.2 First of all, the State party argues that the author's claims relate mainly to the rejection of his request for restitution or compensation for his late father's property as a result of an arbitrary interpretation of the relevant laws and discrimination against him on the basis of his ethnic origin. The State party submits, however, that property rights are not protected under the Covenant and that the communication should therefore be declared inadmissible for being incompatible *ratione materiae* with the provisions of the Covenant pursuant to article 3 of the Optional Protocol.

4.3 The State party further asserts that the author's claims concerning the alleged unfairness of his trial and the issue of whether he was discriminated against on the ground of his ethnic origin have not been raised by the author before the domestic courts. The State party submits that the author, in the pursuit of local remedies, only challenged the interpretation of the Principles of Ownership Reform Act, and the domestic proceedings were therefore limited to focusing solely on the author's property rights. It submits that discrimination is prohibited by article 12 of the Constitution of Estonia and that the author failed to bring his discrimination claims before any court for adjudication at the domestic

[2] The State party submitted its observations on the admissibility of the communication, however some of its arguments are intimately linked to the merits of the case.

level. Accordingly, his claims concerning unfairness of the trial and discrimination against him should be declared inadmissible for non-exhaustion of domestic remedies.

4.4 In addition, the State party submits that the author failed to explain how the domestic proceedings had constituted unequal or unfair treatment in his specific case. The State party argues that the author mainly disagrees with the assessment of the specific circumstances of his case as concerns, in particular, the domestic courts' application and interpretation of the relevant domestic laws. Nevertheless, the fact that the Tallinn Court of Appeal did not agree with the author's position does not mean that its evaluation was clearly arbitrary or amounted to a manifest error or denial of justice. The State party stresses that the right to a fair trial only guarantees procedural fairness and does not encompass the right to a favourable outcome. It further submits that the Tallinn Court of Appeal thoroughly examined the case and explained the reasons at length why it had come to the conclusion that the payment provided to the author's father in Germany was to be considered compensation within the meaning of the Principles of Ownership Reform Act. For these purposes, the Tallinn Court of Appeal has analysed the *Lastenausgleichgesetz* in detail, namely its general aims, the types of compensation available under its provisions, the methods of calculation of the amount of compensation, its application to the author's case, and its relationship with the Principles of Ownership Reform Act. In addition, the State party notes that the author was able to provide written and oral evidence to support his claims during the court hearing, which included having the opportunity to submit expert opinions concerning the general purpose and interpretation of the *Lastenausgleichgesetz*. As to the author's argument that the Tallinn Court of Appeal failed to make reference to the practice of other European countries regarding similar restitution claims, the State party stresses that the right to a fair trial indeed entails an obligation for the courts to provide reasoning for their decisions. However, it does not stem from the requirements under article 14 that the domestic courts are obliged to follow a certain path of reasoning as suggested by the parties to the lawsuit. Accordingly, the author's arguments should be declared inadmissible for lack of sufficient substantiation.

4.5 The State party reiterates that although the author challenges the assessment of facts and evidence reached by the Tallinn Court of Appeal, he does not explain why and how that assessment would be arbitrary or otherwise amount to a denial of justice. In the absence of any evidence to prove such misconduct or lack of impartiality on the part of the domestic court, the Committee is not in a position to question the domestic courts' evaluation of facts and evidence.

4.6 In a subsequent note verbale dated 15 July 2016, the State party reiterated its position that the Committee should find the communication inadmissible under articles 2, 3 and 5 (2) (b) of the Optional Protocol. The State party also submitted that should the Committee examine the merits of the complaint, it was of the view that there had been no violation of the author's rights under article 14, read alone or in conjunction with article 26, of the Covenant.

4.7 In addition, the State party contests the author's arguments as to the protracted domestic proceedings and claims that the author failed to bring this issue to the attention of the domestic courts. The State party refers to the domestic courts' jurisprudence establishing that in cases where a person's fundamental rights have been violated, the injured party has the right to claim damages through administrative court proceedings in compliance with article 25 of the Constitution.[3] As the author failed to avail himself of this opportunity, and nor did he refer to any specific circumstances that could have absolved him from this requirement, his communication should be declared inadmissible for non-exhaustion of domestic remedies.

4.8 The State party further submits that the author's allegations about the undue delay of the proceedings lack substantiation. First, the State party disagrees with the starting date of the proceedings and argues that the determination of the rights and obligations in a suit at

[3] The State party submits that, on 30 November 2012, Tartu Administrative Court partially satisfied a claim for non-pecuniary damages for the length of criminal court proceedings and for the excessive length of "preventive measures" imposed in that case (case No. 3-11-1108).

law under article 14 of the Covenant only encompasses judicial procedures. The author's property claim was the subject of judicial proceedings for the first time in 2000, however, these varied not only in their nature (administrative and civil proceedings) but also as regards the parties involved. The State party therefore considers that the duration of those judicial proceedings, exclusively, should be taken into account for calculating the overall length of the procedures that are the subject of the present communication. These proceedings started with the author's filing of a claim to Tallinn Administrative Court in order to request judicial review of the decision of the Tallinn City Committee of 31 August 2010. Tallinn Administrative Court delivered its decision on 4 March 2011. The Tallinn Court of Appeal quashed this decision and dismissed the author's claims on 15 June 2011. On 19 December 2011, the Supreme Court of Estonia rejected the author's cassation appeal and thereby put an end to the domestic proceedings. Accordingly, the State party argues that the proceedings lasted for only about a year and cannot thus be considered unreasonably long.

4.9 In addition, the State party underlines that the property reform in Estonia involved complicated legal and political issues that were challenging to adjudicate on, let alone to implement, especially taking into account the difficulties that had arisen from the passage of time, which further contributed to the protraction of certain processes. Furthermore, the author's case required the State party's authorities to collect data from the archives of Germany, which had been a time-consuming undertaking. In that respect, the State party submits that the length of the proceedings is also attributable to the author himself, as these would not have been so tedious had he willingly informed the authorities about the compensation his father had previously received in Germany.

4.10 As regards the alleged discrimination against the author, the State party maintains that the author's claim is without any substance and is not proven by evidence, as he failed to demonstrate that Baltic Germans were treated differently or less favourably than any other group of persons who filed for compensation or restitution under the Principles of Ownership Reform Act. In that respect, the State party explains that the provision in the Act that the author challenges applies to everyone without any distinction based on any ground. What is decisive in the application of the impugned law is the question of whether the person claiming compensation has ever been offered redress for the same property either by the State party or by any other countries. In that respect, the State party refers to various decisions of the domestic courts where the Tallinn City Committee's decisions to deny compensation to the claimants were quashed due to a lack of sufficient evidence to prove that redress had already been provided for the confiscated property in Germany.[4] In the light of the foregoing, the State party concludes that the facts of the case do not reveal a breach of articles 2, 14 (1) or 26 of the Covenant.

Additional submissions

From the author

5.1 In a letter dated 21 November 2016, the author responded to the observations of the State party. The author submits that one of the reasons why the property in question was not returned to him is that certain Estonian officials from the Soviet era occupy important positions even to this day, and instead of providing redress to the injured parties they have an interest in commercializing the properties for their own political purposes. He adds that it is very unfortunate that decisions taken by the domestic courts cannot be challenged before the European Court of Human Rights, as the State party entered into a reservation with regard to its laws on the property reform. The author further points out that the general aim of the *Lastenausgleichgesetz* was to equalize burden-sharing for damages suffered during the Second World War, but not to afford full compensation for the losses of the individuals concerned. He recalls that the preamble of the *Lastenausgleichgesetz* included a disclaimer indicating that the recipients of payments under the *Lastenausgleichgesetz* did not waive their right to claim restitution of their properties, and that if restitution eventually

[4] Decision of Tallinn Administrative Court dated 22 March 2012 in case No. 3-10-2817 and decision of the Tallinn Court of Appeal dated 5 December 2011 in case No. 3-10-2971.

occurred, the owners of the properties would be obliged to repay the amount they had received under the *Lastenausgleichgesetz*. In this context, he argues that recipients of adequate compensation are never required to pay the compensation back, which clearly shows that the legislators' intent concerning the *Lastenausgleichgesetz* had been different and was arbitrarily disregarded by the domestic courts when finding that the payments received by his father under the *Lastenausgleichgesetz* were to be regarded as compensation for the purposes of the Principles of Ownership Reform Act. In addition, he submits that his father received payments in the amount of €4,980, which does not correspond at all to the real market value of the apartment block concerned.

5.2 Regarding the complaint about the protracted domestic proceedings, the author submits that the period to be considered started with his application for the restitution of his property, filed in 1991, and that the proceedings ended on 15 June 2011, which is clearly an unreasonably long period of time. He notes that the remedy under article 25 of the Constitution of Estonia is ineffective and that his lawyer advised him not to avail himself of this legal avenue as it did not offer any prospect of success.

5.3 Regarding his claim that he was discriminated against in the domestic proceedings, he submits that the Supreme Court of Estonia ruled in 2008 that Baltic Germans should not be discriminated against in the context of the property reform; that ruling then created an impediment to the legislators' intent to exclude Baltic Germans from the compensation scheme at the time. Nevertheless, lawmakers, by declaring that the *Lastenausgleichgesetz* payments were to be considered to be compensation for the purposes of the Principles of Ownership Reform Act, invented a seemingly lawful way for the State party to deny redress to Baltic Germans. As this provision is applicable to the majority of cases submitted by Baltic Germans, in practical terms, despite the Supreme Court's decision, the result remains the same. The author acknowledges that, in a small number of cases, payments under the *Lastenausgleichgesetz* could not be proven by the authorities, which indeed resulted, in some isolated cases, in compensation eventually being offered for the injured parties under the Principles of Ownership Reform Act. Those sporadic cases, however, cannot prove the lack of intent of the State party to discriminate against persons of Baltic German origin.

5.4 The author did not respond to the State party's observation that the author failed to exhaust domestic remedies in respect of his claim of discrimination.

5.5 In a submission dated 25 April 2017, the author reiterated the above arguments.

From the State party

6. In a note verbale dated 20 March 2017, the State party reiterated its position that the Committee should find the communication inadmissible for being incompatible with the provisions of the Covenant, for non-exhaustion of domestic remedies and for lack of substantiation.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

7.2 The Committee notes, as required by article 5 (2) (a) of the Optional Protocol, that the matter is not being examined under any other international procedure of investigation or settlement.

7.3 The Committee first notes the author's complaint that the length of the civil proceedings was incompatible with the reasonable time requirement under article 14 (1) of the Covenant. In that respect, the Committee notes the author's concern about the effectiveness of the remedies available. The Committee observes, however, that the author does not make any reference to previous jurisprudence or otherwise substantiate his allegations that the domestic remedies available would be ineffective in his case. In contrast, the Committee observes that the State party referred to the recent developments in domestic

case law and argued that it would have been possible for the author to claim damages before the administrative courts. The State party also provided examples of cases in order to show that such remedies were indeed available and effective. The Committee recalls that, according to its jurisprudence, the author's doubts about the effectiveness of domestic remedies do not absolve him from exhausting them.[5] The Committee therefore concludes that this part of the author's communication is inadmissible under article 5 (2) (b) of the Optional Protocol.

7.4 The Committee notes the author's claim under article 14 (1) of the Covenant about the allegedly unfair proceedings before Tallinn Administrative Court. In this respect, the Committee is mindful of the State party's argument that the author failed to explain how the domestic proceedings had constituted unfair treatment in his specific case. The State party submitted that the Tallinn Court of Appeal had thoroughly examined the case and explained at length the reasons why it had come to the conclusion that the payment provided to the author's father in Germany was to be considered compensation within the meaning of the Principles of Ownership Reform Act. In addition, the State party noted that the author had been able to provide written and oral evidence to support his claims during the court hearing, including the opportunity to submit expert opinions concerning the general purpose and interpretation of the *Lastenausgleichgesetz*. The author did not contest those arguments. In addition, the Committee observes that the author's arguments under article 14 (1) are intimately linked to his claim under article 26 of the Covenant. In the light of these considerations, the Committee considers that the author's communication falls short of substantiating how his rights under article 14 (1) would be violated by the State party and declares this part of the communication inadmissible pursuant to article 2 of the Optional Protocol.

7.5 The Committee further notes the author's claim under article 26 of the Covenant that the Tallinn Court of Appeal, in its judgment of 15 June 2011, wrongly interpreted a 1991 restitution law excluding those individuals from its application who were basing their claims on properties in respect of which restitution had already taken place or compensation had been paid. The erroneous decision of Tallinn Administrative Court, according to the author, stemmed from the unfair proceedings before Tallinn Administrative Court and discriminated against him on the ground of his Baltic German origin.

7.6 The Committee recalls that the right to property is not protected by the Covenant, and considers that it is thus incompetent *ratione materiae* to consider any alleged violations of that right pursuant to articles 2 and 3 of the Optional Protocol. However, confiscation of private property or failure by a State party to pay compensation for such confiscation could indeed entail a breach of the Covenant if the relevant act or omission was based on discriminatory grounds in violation of article 26 of the Covenant.[6]

7.7 In this regard, the Committee notes the State party's argument that the author's claims concerning the alleged unfairness of his trial and the issue of whether he was discriminated against on the ground of his Baltic German origin have not been raised before the domestic courts. The State party submits that the author's claims, in the pursuit of local remedies, were focused solely on his property rights, and that although discrimination is prohibited by article 12 of the Constitution of Estonia, the author failed to bring his discrimination claims before any court for adjudication at the domestic level. The Committee observes that the author did not respond to this argument and has not advanced any reasons as to why he did not raise the issue of discrimination before the domestic courts. In such circumstances, the Committee concludes that the author has failed to exhaust available domestic remedies. This complaint must therefore be declared inadmissible under article 5 (2) (b) of the Optional Protocol.

7.8 Finally, the Committee notes the author's claim under article 2 of the Covenant. The Committee observes in this respect that the author only invoked this article in his very first submission, without, however, specifying which right he was relying on under the article cited. The Committee further observes that the author failed to put forward any arguments

[5] See, for example, *J.B. v. Australia* (CCPR/C/120/D/2798/2016), para. 7.5.

[6] See, for example, *P.L. and M.L. v. Estonia* (CCPR/C/127/D/2499/2014), para. 6.3.

to substantiate the violation of this article in connection with the alleged violation of article 26 of the Covenant. The Committee recalls that article 2 can be invoked by individuals only in conjunction with other articles of the Covenant and cannot, in and of itself, give rise to a claim under the Optional Protocol.[7] In such circumstances, the Committee considers that it is precluded from examining this part of the communication for lack of sufficient substantiation pursuant to article 2 of the Optional Protocol.

8. The Committee therefore decides:

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

(b) That this decision shall be transmitted to the State party and to the author of the communication.

[7] See, for example, *X v. Norway* (CCPR/C/115/D/2474/2014), para. 6.3.