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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. 3024/2017*, **

Communication submitted by:	X et al. (represented by counsel, Tomaz Petrovic)
Alleged victims:	The authors
State party:	Slovenia
Date of communication:	5 December 2013 (initial submission)
Document references:	Decision taken pursuant to rule 92 (2) of the Committee's rules of procedure, transmitted to the State party on 26 September 2017 (not issued in document form)
Date of adoption of decision:	4 November 2022
Subject matter:	Equal protection of the law; access to citizenship as a precondition for denationalization of property; non-discrimination
Procedural issues:	Inadmissibility – the same matter has been considered by another procedure of international investigation or settlement; non-exhaustion of domestic remedies; lack of sufficient substantiation
Substantive issues:	Right to equality before courts; equal protection of the law; non-discrimination
Articles of the Covenant:	2 and 26
Articles of the Optional Protocol:	2, 3 and 5 (2) (a) and (b)

1.1 The authors of the communication, dated 5 December 2013, supplemented by further submissions in 2015, 2016 and 2017, are X, an Austrian citizen born on 9 May 1926 in Maribor, Slovenia; Y, an Austrian citizen born on 7 May 1934 in Ptuj, Slovenia; and Z, an Austro-French citizen born on 30 July 1936 in Graz, Austria. The authors (sons of the initial owners) submit that they have been victims of a violation of their rights under articles 2 and

* Adopted by the Committee at its 136th session (10 October–4 November 2022).

** The following members of the Committee participated in the examination of the communication: Wafaa Ashraf Moharram Bassim, Yadh Ben Achour, Arif Bulkan, Mahjoub El Haiba, Furuya Shuichi, Carlos Gómez Martínez, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, José Manuel Santos Pais, Soh Changrok, Kobauyah Tchamdja Kpatcha, Hélène Tigroudja, Imeru Tamerat Yigezu and Gentian Zyberi. Pursuant to rule 108 of the Committee's rules of procedure, Vasilka Sancin did not participate in the examination of the communication.

26 of the Covenant by Slovenia during the legal proceedings regarding the recognition of the citizenship of their ancestors, in relation to their request for the denationalization of their ancestors' properties. The Optional Protocol entered into force for the State Party on 16 October 1993. The authors are represented by counsel.

1.2 On 14 May 2018, pursuant to rule 94 of its rules of procedure, the Committee, acting through its Special Rapporteurs on new communications and interim measures, has decided to examine the admissibility of the communication together with its merits.

Facts as submitted by the authors

2.1 On 7 December 1993, the authors filed a claim for the denationalization (i.e., restitution) of the Ptuj, Hrastovec and Vurberk castle complexes, as well as Vila Herberstein in Velenje, in accordance with the Denationalization Act.[1] These properties belonged to their ancestors and were nationalized in 1945 by the local confiscation committees after the family fled the country during the Second World War. On 23 February 2010, the Ministry of Culture rejected the denationalization claim on the grounds that none of the legal successors or their wives met the Slovenian citizenship requirement contained in the Denationalization Act.

2.2 On 1 April 2010, the authors appealed the decision of the Ministry of Culture to the Administrative Court. On 7 December 2010, the Administrative Court rejected the appeal. The authors applied for a review by the Supreme Court, which rejected the application on 9 March 2011. The authors then brought their complaint to the Constitutional Court, claiming that their rights to equality before the law, equal protection of rights, judicial protection, legal remedies, property and nationality had been violated by the judgment of 9 March 2011 of the Supreme Court. On 9 December 2011, the Constitutional Court declared the complaint inadmissible.

2.3 In parallel with the proceedings under the Denationalization Act, the authors undertook two legal procedures for the recognition of Slovenian citizenship of Magdalena von Herberstein (mother of X) and Wilhelmina von Herberstein (mother of Y) in 2006. The citizenship of Magdalena and Wilhelmina had to be established as the records in the registries of Ptuj and Maribor, where the records of the two mothers were kept, had been lost during the Second World War.

2.4 On 14 May 2007, Ptuj Administrative Unit decided that Magdalena von Herberstein was not a citizen of Slovenia because: (a) it had not been proven that she was a Yugoslavian citizen before marriage; and (b) even if she had been one, by marrying a male foreign national (Johann Joseph von Herberstein) she would have lost her Yugoslavian citizenship, as stipulated in the Citizenship Act.[2] This decision was appealed to all superior tribunals up to the Supreme Court, which rejected the appeal on 26 March 2009. The courts refused to accept Magdalena von Herberstein's Yugoslavian identity card, issued in 1945, which the authors presented as evidence, as a public document; they considered that during the war identity cards had been issued without all the necessary preliminary verifications regarding nationality. The authors then filed a constitutional complaint, which was refused on 19 November 2009 on the basis that the facts did not reveal a violation of rights guaranteed by the Constitution.

2.5 On 15 May 2007, Ptuj Administrative Unit decided that Wilhelmina von Herberstein was not a citizen of Slovenia on the basis that she had lost her Yugoslavian citizenship by marrying a foreign national (Johann Gundeger Herberstein) on 25 June 1930, as stipulated in the Citizenship Act. This decision was appealed to all superior tribunals up to the Supreme Court, which rejected the appeal on 20 March 2008. The authors' constitutional complaint was rejected on 6 October 2008 on the basis that the alleged facts did not reveal a violation of constitutional rights.

[1] Act No. 27/1991 Coll.

[2] Act No. 109/1928 Coll.

2.6 The authors refer to the Committee's decisions in the restitution cases against Czechia[3] for comparison.

2.7 The authors filed several complaints to the European Court of Human Rights, which were all declared inadmissible in a set of single-judge decisions. The latest decision, dated 21 September 2012, rejected the admissibility of the complaint on the grounds that the criteria set out in articles 34 and 35 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) had not been met.[4] The remaining single-judge decisions by the Court concluded that the complaint was inadmissible due to a lack of substantiation of the alleged violations. The authors claim to have exhausted all available domestic remedies.

Complaint

3.1 The authors allege that their rights under articles 2 and 26 of the Covenant (equality before the law and non-discrimination) have been violated in an aggravated manner by the administrative and judicial authorities in connection with the legal proceedings to recognize the citizenship of the members of the Herberstein family, as a preliminary question in the context of denationalization procedure. The authors add that they have been discriminated against during all legal proceedings and that the courts have not seriously considered their claims or dealt with their merits.

3.2 In particular, the authors claim that the judicial proceedings for the recognition of the Slovenian citizenship of Magdalena von Herberstein (mother of X) were unfair, especially due to the non-acceptance of the authenticity of certain documents provided by the authors as evidence, in particular her identity card of 1945, which identified her as Yugoslavian. The authors further claim to be victims of discrimination on the grounds of their national origin, and also in relation to other claimants of denationalization who had no problems in proving the nationality of their ancestors because their records had not been lost during the Second World War. They further claim that, since the records relating to Magdalena were lost during the war, the burden of proof should not have been borne by the authors to prove her citizenship, but by the State to prove that she was not a citizen.

3.3 The authors submit that the alleged discrimination is substantiated by the fact that, in its decision on the citizenship of the authors' predecessors, Magdalena and Wilhelmina von Herberstein, Ptuj Administrative Unit did not take into account individual pieces of evidence, including certificates of residence and certified copies of a provisional identification card issued after the Second World War. In the appeal proceedings, all of the appeal bodies merely concurred with the Administrative Unit and dismissed the authors' objections and actions without any reasoning to support the dismissal.

3.4 Due to the non-recognition by the courts of the evidence submitted in their claims, the present case demonstrates a lack of clarity concerning the applicable legislation as regards the individual's right to citizenship in the State party. The authors claim that no one should be arbitrarily deprived of citizenship or denied the right to change citizenship. The finding of Ptuj Administrative Unit that the authors' predecessors did not have Yugoslavian citizenship also breached article 15 of the Universal Declaration of Human Rights, by violating the right to citizenship of Magdalena von Herberstein.

[3] See *Adam v. Czech Republic* (CCPR/C/57/D/586/1994), para. 12.8; *Simunek et al. v. Czech Republic* (CCPR/C/54/D/516/1992), para. 12.1; *Malik v. Czech Republic* (CCPR/C/64/D/669/1995), para. 6.5; and *Schlosser v. Czech Republic* (CCPR/C/64/D/670/1995), para. 6.5.

[4] Slovenia made a reservation to article 5 (2) (a) of the Optional Protocol, extending its scope of application to cover also cases in which the same matter has already been considered (see para. 4.6 below). Although the authors submitted the case to the European Court of Human Rights, their complaints were rejected with a generic and ambiguous formulation, which does not allow the Committee to assess whether an examination of the merits was conducted. The authors emphasize that their claims before the Committee relate to the decision by the national courts not to recognize their mothers' Slovenian nationality, and in particular the non-acceptance of the authenticity of certain documents as evidence during the legal procedures. While this could be considered as a claim on "facts and evidence", the allegations also raise the issues of arbitrariness and denial of justice.

3.5 The authors also claim that the State party violated Magdalena von Herberstein's right, which every child possesses, to acquire a nationality, pursuant to article 24 (3) of the Covenant. They add that the decisions and actions in the procedure violated the rights of Magdalena and Wilhelmina von Herberstein to the equal protection of their rights under article 22 of the Constitution of the State party during the court proceedings.

State party's observations on admissibility

4.1 On 18 December 2017, the State party submitted its observations on admissibility, and requested that the Committee examine the admissibility of the communication separately from its merits.

4.2 The State party notes that the communication is exceptional, as it relates to 13 separate procedures before the Constitutional Court and numerous proceedings before the domestic administrative and judicial authorities between 2005 and 2011, as well as 6 cases decided by the European Court of Human Rights. The authors do not refer either to a single event or to continuous events as the source of the alleged violations of Covenant rights, but to several separate and unconnected events before various domestic bodies. This would require an extremely complex legal assessment of the merits of the communication, as it would be necessary to evaluate each of the violations claimed separately in each of the administrative and judicial proceedings.

4.3 The State party recalls that the Committee has no competence regarding the right to property or entitlement to the citizenship of a specific State. Since the Committee has no jurisdiction *ratione materiae* in regard to such claims, that part of the communication should be declared inadmissible pursuant to article 2 of the Optional Protocol.

4.4 The State party considers that the authors' allegations regarding a violation of their rights under articles 2 and 26 of the Covenant have been formulated in general terms, and that they have failed to specify their complaint regarding unequal treatment in the context of the right to an effective remedy by, for instance, providing examples of different decisions by Slovenian authorities in similar cases. The State party notes that the national origin or nationality of the authors have not been decisive in domestic proceedings, since the key element for gaining citizenship was the existence or non-existence of the "right to homeland".

4.5 While the authors presented very complex argumentation referring to numerous proceedings, facts and evidence, the communication should be considered inadmissible on several grounds; firstly, since the claims are not sufficiently substantiated, as required by article 2 of the Optional Protocol. In addition, the Committee is not competent to evaluate facts or evidence that have been decided on by the national courts, in accordance with article 2 of the Optional Protocol.

4.6 The State party notes that it has made a reservation to article 5 (2) (a) of the Optional Protocol, stating that the Committee shall not have competence to consider a communication from an individual if the same matter is being examined "or has already been considered" under another procedure of international investigation or settlement. In at least four of the six applications submitted by the authors to the European Court of Human Rights, the Court, by a single-judge decision, declared that, having considered all the material submitted, it had not found any signs of violations of human rights and fundamental freedoms as guaranteed by the European Convention on Human Rights and its protocols. Since the same matter has already been examined by the European Court of Human Rights, the competence of the Committee in such a case is precluded by the State party's reservation to article 5 (2) (a) of the Optional Protocol, made upon ratification.

4.7 Subsidiary to the above objection as regards other international procedures, the State party claims that the authors have not exhausted all domestic remedies, as they did not claim substantial violations of the same human rights during the proceedings before the Slovenian authorities. In one case before the Constitutional Court, the authors asserted a breach of the right to equal treatment; however, according to the State party, this claim was not substantiated. The State party considers that the authors have shifted their argumentation as they filed complaints with various courts and with the Committee. The requirements of article 5 (2) (b) of the Optional Protocol have not been met regarding all claims or at least the majority of them.

4.8 The State party submits that the authors' submissions to the Committee were filed after the expiry of the five-year and three-year deadlines, respectively, without a sufficient explanation for the delays.[5] It notes that submissions sent to the Committee prior to the latest submissions of 3 January 2017 and 4 August 2017 were found inadmissible by the Committee secretariat, and cannot be taken into consideration for the purposes of establishing a date of submission. It thus concludes that more than five years have passed from the time of the exhaustion of domestic remedies, on 9 December 2011, and the decision of the European Court of Human Rights of 21 September 2012, by the time of filing the communication, which constitutes an abuse of the right of submission.

4.9 The State party asserts that the authors presented five different submissions to the Committee secretariat. An initial communication of 5 December 2013 was supplemented at the request of the secretariat on 17 October 2014 and again on 15 June 2015. Based on the second letter of the secretariat, dated 24 June 2015, the authors submitted further explanations on 22 September 2015. In 2016, the authors received a response from the secretariat, dated 26 October 2016, in which they were informed that the communication did not meet the requirements for the purpose of registration of the communication. On 3 January 2017, the authors submitted a request for reconsideration. On 21 April 2017, the authors were provided with a new opportunity to further explain their claims. Such additional explanations were submitted on 4 August 2017.

4.10 It was on the basis of the authors' letter of 4 August 2017 that the Committee eventually registered the communication, which was subsequently transmitted to the State party. The State party notes that it received the original submission of the authors from December 2013, along with major supplements, presenting the historic and family background concerning the denationalization of property procedures in Slovenia resulting from their predecessors' (mothers') loss of Yugoslavian citizenship in 1945. They claim that the Slovenian administrative and judicial authorities systematically committed several violations of human rights between 2005 and 2011, when the applicable legal provisions (in particular, the Denationalization Act) were issued and amended between 1993 and 2000. The State party reiterates that the initial communication, dated 5 December 2013, was not found to fulfil the preliminary requirements for registration; yet, the authors refer to that document in their further explanation, dated 4 August 2017, which was submitted to the State party for its attention by the Committee secretariat. In challenging the admissibility of the communication, the State party emphasizes its understanding that the authors' claims were narrowed to the violations of rights presented in their letters of 4 August 2017, preceded by a letter of 3 January 2017, while the initial submission, along with its two supplements, were attached only as background information.

4.11 Accordingly, the State party requests that the Committee declare either the entire communication inadmissible *ratione temporis*, or that it do so partially, treating only those claims relating to the seven cases concluded by the Constitutional Court less than five years before 5 December 2013, or less than three years before 5 December 2013 by the European Court of Human Rights.

4.12 The State party notes that the authors launched several procedures before domestic courts and the European Court of Human Rights, all of which were unsuccessful. Their claims regarding alleged violations of human rights are slight and general, and are not related to a single judicial procedure or single legal action in the court proceedings. While from the authors' perspective all the procedures were initiated in order to acquire the nationalized property, they can be seen as different paths leading to the same goal. From the perspective of the law, each of these procedures had different decision makers and concluded with different decisions containing specific reasonings for their findings. It is therefore unacceptable to submit that all the alleged violations were generally attributable to all these

[5] In accordance with rule 96 (c) of the Committee's rules of procedure, a delay in submission will not automatically constitute an abuse of the right of submission. However, a communication may constitute an abuse of the right of submission, when it is submitted after five years from the exhaustion of domestic remedies by the author of the communication, or, where applicable, after three years from the conclusion of another procedure of international investigation or settlement, unless there are reasons justifying the delay taking into account all the circumstances of the communication.

specific, separate procedures, without any serious evidence to demonstrate that their arguments would amount to more than mere disagreements with the establishment of the facts, the evaluation of the evidence and application of the law by the domestic courts.

Authors' comments on the State party's observations on admissibility

5.1 On 5 March 2018, the authors submitted their comments on the State party's observations on admissibility.

5.2 The authors argue that, at the national level, they have focused their claims on the establishment of citizenship on the legitimate expectation that this would allow them to have their parents' property returned to them. However, the national judicial authorities have not provided them with the same legal protection as they have extended to others in similar cases. The authors recall that, at first instance, the administrative authorities of Ptuj decided not to recognize the content of a public document (their ancestor's identity card) as evidence and all the higher courts simply rejected the authors' objections to this decision. The authors claim that Ptuj Administrative Unit was unable to conduct an objective examination of their claims as it had an a priori negative and sometimes offensive attitude towards the authors, which was evident from the negative comments and criticisms made by the Head of Ptuj Administrative Unit, as reflected in the local press. Consequently, the authors requested that their application be examined by a different administrative unit, but their request was declined.

5.3 The authors contest the State party's allegation that their claim refers to the facts and evidence examined by the domestic courts, and reiterate that it instead refers to the question of whether the administrative and judicial authorities have violated their rights protected under the Covenant in the domestic proceedings.

5.4 Regarding the decisions issued by the European Court of Human Rights, the authors allege that the European Court did not decide on the merits of their case, as the complaints were declared inadmissible. They add that the complaints submitted to the European Court referred to different facts and different substantive rights (the right to property).

5.5 Regarding the exhaustion of domestic remedies, the authors argue that they specifically referred to the Covenant in their submissions to the Supreme Court and the Constitutional Court, when it became obvious that their claims would be rejected.

5.6 The authors recall that, while the complexity of the case required additional time for the preparation of the communication, they nevertheless presented their communication two years after the exhaustion of domestic remedies.

State party's observations on the merits

6.1 On 28 August 2018, the State party submitted its observations on the merits, reiterating its objections to the admissibility of the communication.

6.2 The State party notes the vagueness of the authors' claims and the absence of additional substantive arguments. Instead, the authors reiterate their only specific allegation, regarding what they claim was an inappropriate assessment of evidence by the domestic authorities in the procedure to establish citizenship, which, according to the authors, could demonstrate systematic discrimination against them on the grounds of their national origin.[6] The State party objects to the authors' claims that the State party's decisions were not impartial owing to the great wealth at stake. The authors did not substantively exhaust legal remedies in certain procedures (regarding the establishment of citizenship and decision-making on the denationalization claim). They also did not allege discrimination on grounds of national origin when seeking remedies to establish citizenship as a preliminary question in the denationalization procedure, in appeals to the administrative authority of second instance and in actions before the court of first instance.

[6] The authors refer to the period between 2005 and 2011, during which the administrative and judicial authorities allegedly violated their rights. However, the initial decisions on the citizenship of the authors' predecessors were issued in 1996.

6.3 As to legal remedies, the authors proposed transferring competence to another administrative authority of the first instance; however, such cases did not concern the reasons for appeal, but a proposal that the appellate body or the court should take into account in case of a potential annulment of the first-instance decision. In addition, this proposal did not comply with the applicable legislation. The authors also alleged bias with regard to legal remedies, but not discrimination on the grounds of national origin. They did not specify the reasons or submit evidence for such claims.

6.4 In accordance with the established practice of the Constitutional Court, the authors should have raised their substantive allegations at all levels of decision-making prior to the Constitutional Court.[7] The Constitutional Court did not accept their constitutional complaints for substantive consideration, as it assessed prima facie that no violation of human rights was involved. In view of this, the Court did not state its opinion on the question of the substantive or formal exhaustion of legal remedies, as it was not required to do so. All national authorities and courts must render decisions and make judgments not only in accordance with the law but also the Constitution.[8] The parties are also bound to raise potential allegations that refer to violations of the Constitution or fundamental human rights, which constitute a violation of relevant international conventions that apply directly in the State party. The failure to exhaust legal remedies for their substantive claims is indirectly admitted by the authors in their comments of 5 March 2018, stating that they alleged discrimination "particularly" before the Supreme Court and the Constitutional Court. In the initial procedure, they neither alleged discrimination nor submitted evidence in that regard; they did not refer to the relevant provisions of the Constitution or to international conventions, which are directly applicable.[9] Therefore, the authors did not exhaust domestic remedies, pursuant to article 5 (2) (b) of the Optional Protocol.[10]

6.5 The State party has further responded to the authors' substantive claims, requesting that, if the Committee did not find them inadmissible for non-exhaustion of legal remedies, it should alternatively dismiss them as unfounded, since no violations occurred in the administrative or judicial procedures. Their allegations of discrimination on grounds of national origin have not been substantiated. The authors were treated equally in the five specific procedures for establishing citizenship, as a preliminary question in the denationalization procedure, which is governed by a legal framework that guarantees equality.

6.6 The authors' statements regarding the violation of their rights under the Covenant and the Optional Protocol are vague and are not supported by evidence. The arguments presented actually refer to the establishment of facts or the assessment of evidence, in particular to the provisional identity card of Magdalena von Herberstein and the certificate of residence of Wilhelmina von Herberstein. These are the issues within the competence of regular national courts, not the constitutional courts or international protection mechanisms.

6.7 The allegations of discriminatory treatment remain general; the authors claimed that all courts "blindly" followed the decision-making of the Administrative Unit without considering the authors' arguments. To substantiate their allegation of bias (not discrimination) on the part of Ptuj Administrative Unit, the authors specified that, for example, the head of the Unit did not wish to meet them informally, and that he had explained their case to the media before the decision had become final. Such assertions were not supported by the evidence. In the submission of 5 March 2018, the authors claim that Ptuj Administrative Unit made a decision prior to the commencement of the procedure. They add that most property concerned by the denationalization procedure was under the territorial jurisdiction of Ptuj Administrative Unit, which could "be put under various formal and other types of pressure". However, they do not substantiate or prove their allegations from the perspective of discrimination. The authors' goal in the specific denationalization procedure

[7] Decision No. Up-587/02 of 29 September 2004, OdlUS XIII, 95, para. 8.

[8] Art. 120.

[9] Constitution, art. 8.

[10] *V.H. v. Czech Republic* (CCPR/C/102/D/1546/2007), which was declared inadmissible, as the author never raised the issue of discrimination based on political opinion and social background or any other status, as provided by article 26, before the national authorities (para. 7.3).

has been to obtain property, which they cannot claim before the Committee, as cases concerning the right to property are in the purview of national law. Consequently, the authors have opted to allege discrimination before the Committee. In that context, an alleged false assessment of evidence does not suffice; it must be proven that the authors were treated differently due to their national origin, and that the rejection of the specific piece of evidence in question was not reasonable or objective, or comparable to the decisions in other similar situations. The administrative and judicial authorities justifiably dismissed the authors' statements and explained why they had not taken their evidence into account.

6.8 The State party further provides a brief presentation of the administrative and judicial procedures regarding denationalization and the establishment of citizenship. It asserts that the authors specified their allegations only in regard to the procedure to establish citizenship, which constituted a preliminary question in the denationalization procedure. After the Second World War, the authorities took the property from the authors' ancestors into State ownership. Ptuj, Vurberk and Hrastovec castles were taken into State ownership from Johann Joseph von Herberstein by the Ptuj local confiscation commission on 27 August 1945 (No. 64/45), while Vila Herberstein was taken into State ownership from Maria Anna von Herberstein by the Šoštajn local confiscation commission on 8 September 1945 (No. 158/45). The authors are the grandchildren of the two persons whose property was confiscated. The denationalization procedure commenced on 7 December 1993, when the authors lodged a request for the denationalization of the confiscated property. The procedure was managed by the Ministry of Culture.

6.9 According to the applicable legislation, a prerequisite for denationalization is the Yugoslavian citizenship of the persons whose property was confiscated; therefore, the Ministry requested Ptuj Administrative Unit to resolve the preliminary question and issue declaratory decisions on the status of citizenship of the persons whose property had been confiscated. In November 1996, Ptuj Administrative Unit established that Johann Joseph von Herberstein (born on 19 March 1898),[11] Joannes Gundaccarus von Herberstein (born on 4 December 1902),[12] and Johann Hubertus von Herberstein (born on 4 May 1905),[13] who are deemed denationalization beneficiaries, were not citizens of Slovenia or Yugoslavia when the property was taken into State ownership.

6.10 The authors filed an appeal of this decision with the Ministry of the Interior, which is the administrative authority of second instance in the procedure to establish citizenship. After it studied the case, the Ministry of the Interior dismissed the appeal on 4 June 1997, and upheld the aforementioned decisions of the Administrative Unit. The authors appealed to the Administrative Court against the decision of the Ministry of the Interior, which the Administrative Court dismissed on 12 November 1999, upholding the decisions of the lower instances. The authors filed for a review of the judgment, which was decided by the Supreme Court, which upheld the decision of the Administrative Court on 5 February 2003. On the basis of the final decision on citizenship (as a preliminary question), the Ministry of Culture dismissed the authors' claim for the denationalization of the property taken into State ownership on 14 April 2003. The authors appealed to the Administrative Court against the decision of the Ministry of Culture with regard to their denationalization claim, which the Administrative Court granted on 9 November 2004, setting aside the decision, since there had been no oral hearing, and referring the case back to the Ministry of Culture for reconsideration.

6.11 In the repeated procedure, the Ministry of Culture followed the reasoning by the Administrative Court and expanded the group of potential denationalization beneficiaries. On 24 October 2005, it requested Ptuj Administrative Unit to decide on preliminary questions and issue decisions on the status of citizenship of an additional 13 persons, including all three authors and the mothers of two of them: Magdalena von Herberstein (mother of X) and Wilhelmina von Herberstein (mother of Y). Ptuj Administrative Unit decided on the status

[11] Father of X.
[12] Father of Y.
[13] Father of Z.

of citizenship of the 13 persons in separate decisions, and issued the last decision on 16 May 2007.

6.12 The authors filed appeals against five decisions establishing the status of citizenship, including decisions on all the three authors and the mothers of two of them, which were decided at the second instance by the Ministry of the Interior. All five appeals were dismissed, the last on 17 July 2007. The authors appealed to the Administrative Court against the decisions rejecting their claims handed down in the appeal proceedings. The appeal was dismissed by the Administrative Court in a series of judgments, the last dated 21 February 2008. The authors proposed a review of all five judgments, and the Supreme Court dismissed all five motions with decisions on the grounds of unfulfilled procedural prerequisites; the last motion was dismissed on 26 March 2009.

6.13 The Ministry of Culture again dismissed the authors' denationalization claim by a decision of 23 February 2010. In their action before the Administrative Court, the authors claimed a violation of the right to private property and inheritance, in accordance with article 33 of the Constitution, and the violation of their right to citizenship. The Administrative Court, as the court of first instance, confirmed the arguments of the Ministry of Culture. On appeal, the Supreme Court dismissed the authors' request for the extraordinary legal remedy of review on 9 March 2011, since they had not demonstrated the procedural prerequisites for its admissibility. The Constitutional Court refused to consider the constitutional complaint on 9 November 2011, since the alleged violations of human rights and fundamental freedoms had not been proven.

6.14 In addition, the authors' complaints to the Constitutional Court and the European Court of Human Rights were unsuccessful. The complaints were declared unfounded prima facie, as both courts found no violations of human rights, including with regard to discrimination or lack of equality. The authors were unsuccessful even at the European Court of Human Rights, where they could claim the right to property, in accordance with article 1 of Protocol No. 1 to the European Convention on Human Rights.

6.15 When establishing the authors' citizenship, the national authorities and courts applied, in accordance with the law, the *ius sanguinis* principle and the continuity principle contained in the national legislation on citizenship. Since it was established in the final decision that the authors' fathers had not been Yugoslavian citizens, which was not questioned by the authors in their communication, the decision on the authors' citizenship could not be different. The citizenship of the authors follows the citizenship of their fathers.

6.16 Regarding the establishment of the citizenship of Wilhelmina von Herberstein (mother of Y) and Magdalena von Herberstein (mother of X), the State party explains that the two women were potential denationalization beneficiaries, but, according to the *ius sanguinis* principle, the establishment of their citizenship (as a preliminary question in the denationalization procedure) would not affect the establishment of the authors' citizenship, since the citizenship of children follows that of the father. These rules for establishing citizenship were applicable in the territory of present-day Slovenia in the relevant period. All the authorities that rendered decisions in the procedure to establish citizenship came to the same findings regarding the provisional identity card of Magdalena von Herberstein and the certificate of residence of Wilhelmina von Herberstein on the basis of arguments. The State party also points out that the authors selectively refer to these individual pieces of evidence and employ a false literal translation of "*domovnica*", which they translate as "certificate of citizenship", while the correct translation should be "certificate of residence".

6.17 The State party also encloses the established case law, which shows that the treatment of the authors was equal and non-discriminatory.

6.18 By the time of the State party's observations, the denationalization process in the State party has almost been concluded, with 99.6 per cent of all claims filed having been finalized. The State party provides statistics showing that beneficiaries were very successful in enforcing their claims, with over two thirds of decisions in such cases finding in favour of the beneficiaries. Therefore, from a systemic perspective, no discrimination has occurred.

6.19 The principle of equality regardless of citizenship, as a statutory requirement for eligibility for denationalization, was extensively explained by the Constitutional Court in its

case No. U-I-23/93. The State party did not require citizenship as a prerequisite beneficiaries had to fulfil when filing a denationalization claim at present. This is contrary to the criteria set out in the restitution legislation of some other countries (e.g., Czechia and Slovakia), which the Committee has considered in similar cases. The State party also did not request that the claimants return to the country (obtain permanent residence) or show in another way their current relation to the new country (e.g., residence for tax purposes). In view of the international legal arrangements regarding compensation, including treaties concluded with other countries, the State party used the prerequisite of Yugoslavian citizenship to ensure that it would grant compensation for damages to those beneficiaries whose damages could not (or would not) be compensated by other countries, while pursuing the objective of not compensating for damages twice, thus protecting its legitimate economic interests.

6.20 In view of the above, the State party requests the Committee to find the authors' claims unfounded.

Additional comments from the authors

7.1 On 28 December 2018, the authors submitted that the breaches in the procedure related to the assessment of evidence represented an aggravated violation of their right to a fair trial, as well as discrimination under article 26 of the Covenant, and a violation of other rights as outlined in the original communication of 5 December 2013, with supplements and appendices.

7.2 On 16 August 2019, the authors responded to the State party's observations of 18 March 2019, objecting to the assertions that the authors had failed to specify the alleged discriminatory treatment, and that they had made such allegations simply because they were dissatisfied with the decisions related to the assessment of evidence in the administrative procedure.

7.3 In the authors' view, the alleged discriminatory conduct has been most obvious when the evidence submitted was not taken into consideration by the Administrative Unit, as described in the preceding submission. They reiterate that the administrative procedure was conducted in a discriminatory manner due to their foreign nationality. The discriminatory nature of the procedure was reflected in the complete refusal by the authorities to follow rules related to the assessment of the public documents submitted as evidence, in particular the provisional identity card and the certificate of residence. Since such documents are subject to evidence standards as applicable in the administrative law, the authorities should treat the information provided therein as valid or explain legally why such information was not considered. This was not done by Ptuj Administrative Unit or any higher instance in the State party. Such behaviour represents concrete discriminatory treatment of the authors by the authorities of the State party. The State party's objections to these claims of discrimination have not been supported by any evidence and should therefore be dismissed.

7.4 The authors do not object to the incorrect assessment of the evidence, but argue that the authorities decided not to consider the evidence submitted in the first instance procedure, without providing any substantive reasons. Such a shortcoming in the conduct of a legal procedure represents a violation of the law, including the rights set out in the Covenant, which cannot be limited to an assessment of certain evidence. A mere statement that the provisional identity card of Magdalena von Herberstein will not be considered cannot represent an assessment of evidence, which would be outside the Committee's competence, since none of the State authorities have materially assessed the provisional identity card. On the contrary, the decision of authorities is clearly a substantive decision on the application of law, that is, whether a provisional identity card represents an authentic instrument in accordance with the General Administrative Procedure Act. Given that the provisional identity card was issued in a then-valid prescribed form by a State authority or self-governing local authority within their competence, the provisional identity card submitted in the present case should be considered as proof of the information contained in it.

7.5 Since the provisional identity card of Magdalena von Herberstein was never assessed by any authority, it implies that the authors cannot in fact oppose the assessment of evidence, as it was never performed. They would have challenged the assessment of the provisional identity card only if administrative bodies had evaluated its probative value and had

explained why it could not be considered as a public document. Since no such evaluation was made, the administrative bodies breached the material law by their discriminatory decisions concerning the inadmissibility of evidence that was in favour of the authors and was rightfully presented during the procedure. Similar considerations apply for the treatment of the term "*domovnica*" to signify a certificate of residence rather than a certificate of nationality in the case of Wilhelmina von Herberstein.

7.6 In light of the above, the authors maintain their previous submissions.

State party's additional observations

8.1 On 30 March 2022, the State party submitted its observations in response to the letter of the authors dated 21 August 2021.

8.2 The State party observes that the latest letter from the authors only contains the arguments and statements submitted and responded to previously, and supplies no new or legally significant facts. The State party reiterates its position expressed in its observations on admissibility of 18 December 2017, and its observations on the merits of August 2018. During the whole procedure, the authors have failed to specify the alleged discriminatory treatment by the national administrative bodies or courts in the process of establishing the citizenship of their ancestors. In particular, the authors failed to present any concrete act or omission that would constitute such alleged discrimination. Prior to addressing the Committee, the authors were also unsuccessful in at least six complaints brought before the European Court of Human Rights.

8.3 According to the State party, the authors continue to complain, now before the Committee, about the decision of the national administrative and judicial authorities related to the assessment of the evidence in the administrative procedure related to the citizenship of the authors' ancestors. In their latest letter, they also refer to the case before the Higher (Appeal) Court in Ljubljana, which is not significant for the decision-making by the Committee in the present case. As emphasized previously, the authors failed to produce relevant evidence in the administrative procedure in relation to the citizenship of their ancestors, according to the applicable legislation. The authors' claim of discrimination can be seen as an expression of their dissatisfaction with the assessment of the evidence, which is outside the competence of the Committee.

8.4 In view of the above, the State party considers the authors' allegations to be unfounded, as explained in its observations on the merits of August 2018, and requests that the Committee dismiss them.

Issues and proceedings before the Committee

Consideration of admissibility

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

9.2 The Committee notes the State party's argument that the communication should be considered inadmissible, pursuant to article 5 (2) (a) of the Optional Protocol, since the same matter has been examined under another procedure of international investigation or settlement.[14] The Committee notes the authors' argument that they invoked different rights, in particular the right to property, in several of their complaints to the European Court of Human Rights. All the complaints to the European Court of Human Rights were rejected as inadmissible by single-judge decisions, as not meeting the conditions of articles 34 and 35 of the European Convention on Human Rights, or due to a lack of substantiation of the alleged violations. The Committee recalls its jurisprudence that the inadmissibility decision amounts to an "examination", for the purpose of article 5 (2) (a) of the Optional Protocol, when it entails at least the implicit consideration of the merits of a complaint.[15] Taking into account that the claims submitted to the Committee are of a different nature and scope than the ones

[14] In accordance with the State party's reservation to article 5 (2) (a) of the Optional Protocol.

[15] *Jesús Rivera Fernández v. Spain* (CCPR/C/85/D/1396/2005), para. 6.2.

presented to the European Court of Human Rights, and that the single-judge decisions of 2011 and 2012 do not appear to have made a determination whether any considerations of the merits of a complaint were undertaken, the Committee does not consider itself precluded from examining the authors' claims under articles 2 and 26 by the requirements of article 5 (2) (a) of the Optional Protocol.[16]

9.3 The Committee recalls its jurisprudence to the effect that authors must avail themselves of all domestic remedies in order to fulfil the requirement of article 5 (2) (b) of the Optional Protocol, insofar as such remedies appear to be effective in the given case and are de facto available to the author.[17] The Committee notes the State party's argument that, among the three overarching allegations, the authors' main claim concerns its alleged discrimination on grounds of national origin, in the context of the establishment of the citizenship of the authors' ancestors during the administrative procedure, as a prerequisite for the denationalization claim of the confiscated property. In that regard, the Committee also notes the State party's assertion that the authors' claim of discrimination can be seen as an expression of dissatisfaction with the assessment of evidence by Ptuj Administrative Unit. The State party also held that the authors did not allege discrimination when seeking remedies to establish citizenship as a preliminary question in the denationalization procedure (in appeals to the administrative authority of second instance and in actions before the court of first instance). The State party has objected that the authors raised the claims of a lack of equality before the law and of equal protection of the law only before the Supreme Court and the Constitutional Court, which rejected those applications as not meeting formal prerequisites. The State party asserted that the claim of discrimination, due to the alleged non-acceptance of the authenticity of two documents as evidence, has been extrapolated for the purpose of proceedings before the Committee, and that the authors have not substantively exhausted all available domestic remedies in regard to the main claim of discrimination, as well as other alleged violations of the Covenant. The Committee, however, observes that the authors claimed the violation of their rights to equality before the law, equal protection by the authorities and courts, property and access to citizenship in the context of the three types of proceedings, before the higher instance regular courts and the Constitutional Court; however, all the submissions did not meet the formal prerequisites. The Committee observes that the authors have not adequately explained why they did not raise the claims of discrimination at the initial stage of the proceedings before the relevant administrative and judicial bodies, and have not rebutted the State party's claim in that regard. In the present circumstances, the Committee considers that the authors have not exhausted all available domestic remedies, as the claims of discrimination have not been made from the outset of proceedings, thereby not affording the national authorities the opportunity to address the alleged violations of the Covenant first. Accordingly, the Committee concludes that it is precluded from examining the authors' claims under articles 2 and 26 of the Covenant by the requirements of article 5 (2) (b) of the Optional Protocol.

9.4 As regards the State party's objection to admissibility *ratione temporis*, and the argued abuse of submission in contravention of rule 99 (c) of the Committee's rules of procedure, the Committee notes the authors' arguments that their claims concern the proceedings by the administrative and judicial authorities between 2005 and 2011, the last of which was concluded by the decision of the Constitutional Court of 9 December 2011, and the decision of the European Court of Human Rights of 21 September 2012. In light of the above, the Committee considers that the authors' claims are generally admissible *ratione temporis*, since the authors submitted their communication to the Committee on 5 December 2013, as supplemented by additional submissions (i.e., within five years from the national decision on

[16] *B.H. v. Austria* (CCPR/C/119/D/2088/2011), para. 8.5.

[17] See, e.g., *Patiño v. Panama* (CCPR/C/52/D/437/1990), para. 5.2; *P.L. v. Germany* (CCPR/C/79/D/1003/2001), para. 6.5; *Riedl-Riedenstein et al. v. Germany* (CCPR/C/82/D/1188/2003), para. 7.2; *Gilberg v. Germany* (CCPR/C/87/D/1403/2005), para. 6.5; *Warsame v. Canada* (CCPR/C/102/D/1959/2010), para. 7.4; and *H.S. et al. v. Canada* (CCPR/C/125/D/2948/2017), para. 6.4. See also *B.P. and P.B. v. the Netherlands* (CCPR/C/128/D/2974/2017), para. 9.3.

the last available remedy, and within three years from the last decision by the European Court of Human Rights).[18]

9.5 Concerning the State party's objections to admissibility *ratione materiae*, the Committee considers the authors' claims in regard to the right to property, and the acquisition of citizenship of a specific State, to be incompatible *ratione materiae*, as not guaranteed under the Covenant. This part of the authors' claims is declared inadmissible pursuant to article 3 of the Optional Protocol.

9.6 Notwithstanding the above findings, the Committee notes that most of the authors' claims relate to the assessment of evidence and application of domestic law by the administrative and judicial organs of the State party, in particular under articles 2 and 26 of the Covenant. The Committee recalls that it is generally for the courts of States parties to review facts and evidence, or the application of domestic legislation, in a particular case, unless it can be shown that such evaluation or application was clearly arbitrary or amounted to a manifest error or denial of justice, or that the court otherwise violated its obligation of independence and impartiality.[19] In light of the above, the Committee is not in a position to conclude, on the basis of the materials at its disposal, that the administrative organs or domestic courts acted arbitrarily in deciding the authors' case or that their decisions amounted to a denial of justice.

10. Accordingly, the Committee considers that the authors have not exhausted all available domestic remedies and that the communication is also insufficiently substantiated for the purposes of admissibility and declares it inadmissible under articles 2, 3 and 5 (2) (b) of the Optional Protocol.

11. The Committee therefore decides:

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

(b) That the present decision will be communicated to the State party and to the authors.

[18] See *B.H. v. Austria*, para. 8.2.

[19] General comment No. 32 (2007), para. 26. See also *Riedl-Riedenstein et al. v. Germany* (CCPR/C/82/D/1188/2003), para. 7.3; *Schedko v. Belarus* (CCPR/C/77/D/886/1999), para. 9.3; *Arenz et al. v. Germany* (CCPR/C/80/D/1138/2002), para. 8.6; and *M.S. v. the Netherlands* (CCPR/C/127/D/2739/2016), para. 6.6.