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HUMAN RIGHTS COMMITTEE
Sixty-sixth session
12 - 30 July 1999

DECISIONS

Communication Nº 724/1996

Submitted by:	Jarmila Mazurkiewiczova
Alleged victim:	The author and her father, Jaroslav Jakes
State party:	Czech Republic
Date of communication:	22 January 1996
Documentation references:	Prior decisions - Committee's rule 91 decision, transmitted to the State party on 18 November 1996 (not issued in document form)
Date of present decision	26 July 1999

[ANNEX]

*Made public by deciison of the Human rights Committee.
Inadec.724

ANNEX*

DECISION OF THE HUMAN RIGHTS COMMITTEE UNDER
THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT
ON CIVIL AND POLITICAL RIGHTS
- Sixty-sixth session -

concerning

Communication Nº 724/1996**

Submitted by:	Jarmila Mazurkiewiczova
Alleged victim:	The author and her father, Jaroslav Jakes
State party:	Czech Republic
Date of communication:	22 January 1996

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

Meeting on 26 July 1999

Adopts the following:

Decision on admissibility

1. The author of the communication is Jarmila Mazurkiewiczova, a Czech citizen, currently residing in Brno, Czech Republic. She submits the communication on her own behalf and in name of her father, Jaroslav Jakes, who was born in 1897 and died in 1979. She claims to be a victim of human rights violations by the Czech Republic, without invoking specific articles of the Covenant.

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*The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr. Prafullachandra N. Bhagwati, Ms. Christine Chanet, Ms. Elizabeth Evatt, Ms. Pilar Gaitán de Pombo, Mr. Eckart Klein, Mr. David Kretzmer, Ms. Cecilia Medina Quiroga, Mr. Martin Scheinin, Mr. Hipólito Solari Yrigoyen, Mr. Roman Wieruszewski, Mr. Maxwell Yalden and Mr. Abdallah Zakhia.

**The text of an individual opinion by one Committee member is attached to the present document.

Facts as submitted by the author

2.1 The author's father, Jaroslav Jakes, was a Czech citizen and businessman, married to a German woman. He owned a hotel with restaurant in Brno. After the Second World War, he was accused of being a collaborator and detained. Later however, he was acquitted and received his certificate of reliability.

2.2 While Mr. Jakes' case was being investigated, his hotel was placed under national administration. On 27 January 1948, after his name had been cleared, Mr. Jakes requested the abolition of this measure. But on 17 January 1950, the National Committee of Brno issued an order (No. 252.067/46-VII/3) confiscating Mr. Jakes' property in application of presidential decree No. 108/1945. The author explains that as of 1950, her father was seen as a capitalist and thus an enemy of the regime.

2.3 Following the publication of Law No. 87/1991, regulating the restitution of property unlawfully taken by the Communist regime, the author's mother, who was then still alive but subsequently died in April 1992, initiated the procedure to regain her property rights. She argued that decree 108/1945 had not been applied correctly in Mr. Jakes' case, but had been abused to confiscate his property because he was an opponent of the regime.

2.4 When her mother died, the author, as her heir, continued the procedure she had initiated. Her request was rejected on the ground that the law did not apply to confiscation under the Benes decrees, nor to confiscation occurring prior to 25 February 1948.

2.5 The author appealed the judgment of the City Court of Brno to the Regional Court of Brno, and further to the Supreme Court and then to the Constitutional Court, which rejected her claim in 1994. With this all domestic remedies are said to have been exhausted.

The complaint

3. The author argues that her father has been unjustly treated on suspicion that he was a collaborator. She further claims that in other similar cases, property has been restored by the Constitutional Court on the ground that the presidential decree had been abused to confiscate property for political reasons. She requests the Committee to determine that her father was not a collaborator and that the Benes decree was unlawfully applied to him.

State party’s observations

4.1 By submission of 14 February 1997, the State party argues that the communication is inadmissible.

4.2 According to the State party, Mr. Jakes’ property was confiscated under decree 108/1945 on 5 October 1946, and the confiscation was reaffirmed on 17 January 1950. Law No. 87/1991 applies only to confiscations after 25 February 1948, and is thus not applicable in the author’s case, as affirmed by the courts.

4.3 The State party notes that the author filed an application with the European Commission of Human Rights. The application was declared inadmissible.

4.4 The State party submits that confiscation orders may be classified as implying an abuse of the decree for the purposes of political persecution only in cases where it is proven beyond doubt that the person concerned did not come under any of the categories defined in the decree. In such cases, the property is deemed to have devolved to the State by virtue of an administrative act effected in consequence of political persecution or actions violating the generally recognized human rights and freedoms and the former owners have the legal right to restitution, if the confiscation order was issued in the period to which Law No. 87/1991 applies, i.e. after 25 February 1948.

4.5 In the instant case, the confiscation order was issued in 1946, thus prior to the decisive period, and the property remained in possession of the State. The second confiscation order, reaffirming the previous one, is thus irrelevant for purposes of Law No. 87/1991.

4.6 With regard to the author's claim that the confiscation order affected her father's personal integrity and reputation, the State party argues that the claim is inadmissible ratione temporis.

4.7 With regard to the author's reference to other cases, the State party explains that the Constitutional Court in two cases has ruled in favour of a person whose property was unlawfully confiscated under the Benes decrees. However, in those cases the confiscation order was issued after 25 February 1948, and the courts where thus competent to review whether the confiscation orders complied with the decree. Since the evidence showed that it did not, and that the decree was abused in the context of political persecution, the transfers of the property were not effected ex lege on 30 October 1945. The Constitutional Court therefore annulled the decisions of the lower courts which had refused to review the legality of the confiscation orders, considering that they had violated the right to fair trial.

4.8 The State party recalls that in the author's case, the confiscation order was issued in 1946, before the decisive period of Law No. 87/1991, and can thus not be reviewed. Since the author in her application to the Constitutional Court, did not explain how her constitutional rights were allegedly violated, the Constitutional Court could do nothing but dismiss her complaint. The State party concludes that the communication is inadmissible for failure to exhaust domestic remedies, as the Constitutional Court never made a finding on the merits of the author's case.

4.9 The State party further argues that the communication is inadmissible ratione materiae in so far as it invokes the right to property, which is not protected by the Covenant.

4.10 The State party further notes that the main issue in the communication is the author's disagreement with the legal views expressed by the courts. In this context, the State party argues that the Human Rights Committee is not competent to consider whether the domestic authorities and courts correctly interpret and

apply national legislation, and that the communication is thus inadmissible ratione materiae.

4.11 The State party also challenges the admissibility of the communication ratione temporis, as the act affecting the father's right to property dates from before the entry into force of the Covenant for the Czech Republic. In this context, the State party submits that the courts were not competent under Law No. 87/1991 to examine the ownership and the manner in which it was extinguished, and that their decisions can thus not violate the right to property or the author's right to inheritance.

Author's comments

5. In her comments, the author provides evidence to show that her father was not a collaborator, but loyal to the Czech Republic. She requests the Committee to rehabilitate her father and states that she has exhausted all available domestic remedies.

Issues and proceedings before the Committee

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

6.2 The author complains that the confiscation of her father's property was a result of political persecution and that decree No. 108/1945 was unlawfully applied to him. The Committee recalls that the right to property is not protected by the Covenant[1], and that it is thus incompetent ratione materiae to consider any alleged continuing violations of this right after the entry into force of the Covenant and Optional Protocol for the Czech Republic.

6.3 In so far as the author's communication may raise issues under article 26 of the Covenant, the Committee notes that the author has failed to bring the claims of discrimination before the Constitutional Court. This part of the communication is therefore inadmissible for non-exhaustion of dometic remedies under article 5, paragraph 2 (b), of the Optional Protocol.

7. The Committee therefore decides:

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

b) that this decision shall be communicated to the State party and to the author.

[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.]

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[1]See also the Committee's decision in communication No. 544/1993, K. J. L. v. Finland, declared inadmissible on 3 November 1993.

Individual opinion by Committee member Nisuke Ando (partly dissenting)

I am unable to concur with the Committee's conclusion that the author's claim be declared inadmissible on the two grounds: one, on the basis of ratione materiae; the other, on the basis of non-exhaustion of domestic remedies.

While I agree with the first ground, the Committee simply notes that the author has failed to bring the claim of discrimination before the Constitutional Court and concludes that the communication is inadmissible. In this connection, the State party contends that the Committee is not competent to consider whether the domestic authorities and courts correctly interprete and apply national legislation. This contention causes me to wonder if the author could have raised the issue under article 26 of the Covenant before the domestic courts. Consequently, the Committee should have examined the possibility and availability for the author to raise that issue at domestic courts before it concluded that the claim is inadmissible.

Nisuke Ando [signed]

[Done in English, French and Spanish, the English text being the original version. Subsequently to be translated also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]