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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. 2499/2014**, ***

Communication submitted by:	P.L. and M.L. (not represented by counsel)
Alleged victims:	The authors
State party:	Estonia
Date of communication:	19 August 2013 (initial submission)
Document references:	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 10 December 2014 (not issued in document form)
Date of adoption of decision:	8 November 2019
Subject matter:	Denial of restitution of property
Procedural issues:	Non-exhaustion of domestic remedies; insufficient substantiation; incompatibility with the Covenant
Substantive issues:	Discrimination on the grounds of national, ethnic or social origin
Articles of the Covenant:	2, 14 and 26
Articles of the Optional Protocol:	2, 3 and 5 (2)

1.1 The authors of the communication are P.L. and M.L., nationals of Germany born on 23 August 1986 and 28 November 1990 respectively. They claim that the State party has violated their rights under articles 2, 14 and 26 of the Covenant. The Optional Protocol entered into force for the State party on 21 January 1992. The authors are not represented by counsel.

1.2 On 3 February 2016, the Committee, acting through its Special Rapporteur on new communications and interim measures, denied the State party's request for the admissibility of the communication to be considered separately from the merits.

* Reissued for technical reasons on 16 December 2019.

** Adopted by the Committee at its 127th session (14 October–8 November 2019).

*** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Arif Bulkan, Ahmed Amin Fathalla, Shuichi Furuya, Christof Heyns, Bamariam Koita, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany and Hélène Tigroudja.

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The facts as presented by the authors

2.1 The authors' grandmother was a citizen of Estonia. She owned property in Tallinn, which was illegally expropriated in the 1940s during the Soviet occupation. In 1941, she fled Estonia with her family, and returned in 1942. They left again in 1944. In 1991,[1] the grandmother initiated proceedings before the Tallinn City Commission for the Return and Compensation of Unlawfully Expropriated Property under the Principles of Ownership Reform Act.[2] In 1992, she recovered her property.[3]

2.2 However, in 1999, the Tallinn City Commission annulled its previous decision, and the property was recovered by the municipality and became public. In 2002, the 1999 decision was declared unconstitutional by the Supreme Court.[4] Nevertheless, the Commission has not returned the property. The grandmother died in 2006, but the authors pursued the proceedings as inheritors. On 31 August 2010, the Commission informed the authors that their property would not be returned and they would not receive compensation. The Commission held that the grandmother had received compensation from Germany under the Equalization of Burdens Act (*Lastenausgleichsgesetz*), and thus the authors could not claim restitution under section 17 (5) of the Estonian Principles of Ownership Reform Act. The authors contested the decision.

2.3 On 1 June 2011, the Tallinn Administrative Court upheld the authors' complaint and declared that the payment under the German Equalization of Burdens Act could not be considered as compensation for loss of property. However, on 18 October 2012, the Court of Appeal reversed the decision, taking the view that the payment did amount to compensation and thus restitution was precluded. On 27 February 2013, the Supreme Court declined to examine the authors' further appeal.

The complaint

3.1 The authors claim that the State party's denial of restitution of their property amounts to a violation of articles 2, 14 and 26 of the Covenant. The authors are entitled to recover their property or to receive equivalent compensation. They claim that they suffered discrimination because other claimants in the same position were able to recover their property from the State party, regardless of whether they had received payments under the German Equalization of Burdens Act.[5] In particular, Estonians living in Estonia were able to recover their property, which was not the case for those living abroad. Other Baltic Germans were also able to fully recover their property.[6]

3.2 Since August 2010, the Mayor of Tallinn has refused to grant payments to those who claim restitution of property but have already received payments in Germany through the Equalization of Burdens Act. This practice was contested by the Minister of Finance of Estonia at the time. The purpose of the Equalization of Burdens Act is to offer compensation not for loss of property, but for loss of use of property.[7] Except for Estonia, no other European country has refused restitution of property based on payments under the Equalization of Burdens Act. In accordance with that Act, those who are able to recover

[1] In their observations of 20 March 2015, the authors submit that their grandmother initiated the claim for the return of property in 1992.

[2] The name of the Act in Estonian is *Eesti Vabariigi omandireformi aluste seadus* (RT 1991, 21, 257; 13 June 1991).

[3] Located at the following addresses in Tallinn: Tina 3, Metsa 45 and Metsa 47. In their observations of 20 March 2015, the authors submit that their grandmother recovered her property in 1996. In its observations of 10 February 2015, the State party submits that the authors' grandmother claimed the property in 1992, which was returned in 1996.

[4] No further details or evidence provided.

[5] The authors mention that they are relying on evidence given by P.E. from Munich and other applicants. No further information is provided.

[6] The authors invoke the case of A.R.P. from Munich and an article by Anto Raukas in the Baltic magazine *Mitteilungen aus baltischem Leben* (No. 9, September 2001).

[7] The authors submit that the President of the Federal Equalization of Burdens Office explained that the word "*Hauptentschädigung*" (main compensation) used in the Act stands for "*Hauptentschädigung für entgangene Nutzung*" (main compensation for lost use).

their property or to receive compensation are obliged to return any payment received under the Act.

3.3 The reason for payments under the German Equalization of Burdens Act was to help victims to reintegrate into society, although the actual payments did not reflect the value of lost property. People who had lost houses and land received, pursuant to the Act, an average of only 6.33 per cent of the property's value.[8] The amount that the authors received was much less than the amount that they could have earned if they had rented out their properties. This shows that the purpose of the Act was no more than social aid. Furthermore, payments did not exclude future property restitution because the Act foresaw the possible ending of the occupation, after which owners could claim restitution. That moment became reality in 1991, following the end of the Soviet occupation, when the revocation of previous illegal expropriation became possible.

3.4 The Court of Appeal erred in deciding that the authors had received adequate compensation through payments under the German Equalization of Burdens Act. It used incorrect calculations and did not consult any experts on that Act. The compensation that the authors received far from reflects the real value of their property. The European Court of Human Rights held that extremely disproportionate compensation for expropriated land cannot be deemed adequate.[9]

3.5 It is a historical fact that Baltic German resettlers in 1940–1941 were promised compensation for property left behind, which they could not sell in 1940 due to the lack of market in the Union of Soviet Socialist Republics. The promise of compensation was based on an agreement of 10 January 1941 between the Governments of the Soviet Union and Germany, whereby the latter transferred the resettlers' property to the former against a global amount of 200 million.[10] Although this amount was provided to compensate for property left behind, the resettlers themselves have never received any compensation. In 1989, the previous Nazi-Soviet treaties were annulled. The Court of Appeal did not take this decision into account and did not want to consider its consequences for resettlers and for the State party's Government.

3.6 On 8 October 2012, the Minister of Finance sent a letter to the Ambassador of Germany to Estonia in which he admitted the injustice against Baltic German resettlers and their heirs, and proposed solutions. He proposed that if claimants would return payments received under the German Equalization of Burdens Act, the procedure for property recovery or compensation would be pursued in Estonia. The authors are not sure whether such a solution would also apply in cases such as theirs, which has already been examined by the Estonian courts.

3.7 Lastly, the authors claim that the composition of the Court of Appeal was manipulated because the judge who was supposed to preside was replaced by another judge who had rejected the return of property in a previous, similar case. The authors also complain about the length of proceedings, which lasted from their applications to recover property in 1991 until the court's refusal on 31 August 2010.[11]

State party's observations on admissibility and the merits

4.1 On 10 February 2015, the State party contested the admissibility of the communication under articles 2, 3 and 5 (2) of the Optional Protocol. As to the facts, it submits that compensation for property in Estonia has actually been paid to the authors' grandmother in accordance to the German Equalization of Burdens Act, which precludes the possibility of return of or compensation for unlawfully expropriated property. The Court of Appeal found that even though no documents proving the effective bank transfer of compensation or confirmation by the authors' grandmother that she had received the money

[8] The authors refer to research by the "refugees' peasants union".

[9] European Court of Human Rights, *Case of Vistiņš and Perepjolkins v. Latvia*, Case No. 71243/01, Judgment (Just satisfaction), 25 March 2014.

[10] The authors do not specify the currency.

[11] In their observations of 9 September 2017, the authors submit that the relevant period starts in 1991 and ends in 2013, when the judgment of the Court of Appeal became final.

had been produced, it had been plausibly demonstrated by other evidence that compensation had indeed been paid to their grandmother. The State party has never promised to return or compensate for property for which compensation has already been obtained.

4.2 The communication is inadmissible under article 3 of the Optional Protocol because the authors have abused their right to submit a communication. They did not inform the Committee that they had submitted a complaint on the same matter to the European Court of Human Rights, which declared it inadmissible on 24 October 2013. The same matter has thus been examined under another procedure of international investigation or settlement, which means that the communication should be declared inadmissible in accordance with article 5 (2) (a) of the Optional Protocol. The authors have also failed to sufficiently establish their claims because they have not produced all the referenced annexes, translated into one of the four working languages used in the communications procedure. Moreover, property rights are not recognized by the Covenant, hence the Committee does not have the competence to consider the communication.

4.3 The communication is also inadmissible under article 2 of the Optional Protocol because the Committee has repeatedly established in its jurisprudence that it is not for itself, but for the courts of States parties to review or evaluate facts and evidence or to examine the interpretation of domestic legislation by national courts and tribunals, unless it can be ascertained that the conduct of the trial, the evaluation of facts and evidence or the interpretation of legislation were manifestly arbitrary or amounted to denial of justice, which is not the case with the present communication.

4.4 Lastly, under article 5 (2) (b) of the Optional Protocol, the Committee will not consider a communication if the complainant has failed to exhaust all available domestic remedies. The authors have never raised their claim of discrimination before the State party's courts and have failed to lodge a petition with the Chancellor of Justice. According to the Chancellor of Justice Act, the Chancellor of Justice protects fundamental rights and freedoms, ensuring that the authorities and officials performing public duties do not violate people's constitutional rights and freedoms, laws and other legislation of general application, and good administrative practice. All individuals invoking arbitrary actions can easily contact the Chancellor for a consultation, and may use the most common foreign languages, including English and German.

4.5 On 4 July 2017 and 24 November 2017, the State party submitted additional observations on admissibility, and observations on the merits. It notes that when the authors submitted the present communication, proceedings in respect of their property situated at Metsa 45 were still pending before the State party's courts. Those proceedings ended with a final decision by the Supreme Court on 25 September 2014. When they submitted their communication, therefore, the authors had not exhausted domestic remedies, as required by article 2 of the Optional Protocol.

4.6 The authors do not dispute the fact that property rights are not protected by the Covenant. However, they are essentially invoking a right to property expropriated by the Soviet authorities and for which they received compensation from Germany. The authors do not want to accept that – as provided by section 17 (5) of the Principles of Ownership Reform Act – persons who have already received compensation for their property cannot hold legitimate expectations of securing restitution or additional compensation. The communication is therefore inadmissible *ratione materiae*. The State party recalls that it is at the discretion of States to choose the conditions for the return of or compensation for unlawfully expropriated property.

4.7 The authors also failed to substantiate their claim that the conduct of the Court of Appeal amounted to arbitrariness or denial of justice, contrary to article 14 of the Covenant. They contest the substance of the domestic jurisprudence, the evaluation of which remains outside the competence of the Committee. The authors disagree with the view of the Court of Appeal that the compensation awarded to their legal predecessor in Germany should be considered as compensation within the meaning of section 17 (5) of the Principles of Ownership Reform Act. The Committee has already noted that article 14 of the Covenant

guarantees procedural equality and fairness only and cannot be interpreted as ensuring the absence of error on the part of the competent tribunal.[12]

4.8 The allegation that the composition of the Court of Appeal was manipulated has not been substantiated. The court file shows that a judge was replaced in accordance with a decision of the Board of the Court of Appeal for health-related issues. To the knowledge of the State party, the authors did not raise any concerns or complaints during proceedings about the court's composition or about the impartiality of the replacing judge.

4.9 The authors have also failed to substantiate their claim that the State party's courts discriminated against them on account of their Baltic German origin by deciding that they were not entitled to the return of property or compensation because they had already received compensation. In contrast with the Committee's decisions in *Simunek et al.* (CCPR/C/54/D/516/1992) and *Adam v. Czech Republic* (CCPR/C/57/D/586/1994), the facts of the present case do not raise an issue under article 26 of the Covenant.

4.10 In the authors' case, the applicable laws do not differentiate between former owners of expropriated property on any grounds, including those mentioned in article 26 of the Covenant. According to section 17 (5) of the Principles of Ownership Reform Act, the only criterion for deciding whether a person covered by that provision can claim return or compensation is whether the property has already been returned to that person or whether he or she has received compensation. The authors have provided no arguments or evidence to substantiate their claim that in considering the payments received by their grandmother from Germany as compensation in the sense of section 17 (5) of the Principles of Ownership Reform Act, the Court of Appeal was motivated by their Baltic German heritage. The authors have also failed to explain how the conditions established by section 17 (5) of that Act are linked to national or ethnic origin.

4.11 The claim concerning the length of proceedings is inadmissible *ratione materiae* under article 3 of the Optional Protocol. According to the Committee's general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, article 14 of the Covenant sets out guarantees for proceedings that are judicial in nature. The proceedings before the Tallinn City Commission that the authors consider disproportionally long were not judicial proceedings, but administrative proceedings. Administrative proceedings are not covered by article 14 of the Covenant. Additionally, this claim should be declared inadmissible also under articles 2 and 5 (2) (b) of the Optional Protocol for non-exhaustion of domestic remedies. Under domestic law, it is possible to claim compensation for the length of proceedings.[13] The authors have not applied to the administrative court in that respect, and have also not cited any special circumstances which could have absolved them from the obligation to use that remedy.

4.12 Should the Committee declare the communication admissible, none of the authors' claims under articles 14 and 26 of the Covenant is substantiated by facts or evidence.

4.13 Regarding to article 14, the Court of Appeal gave detailed reasons in its judgment of 18 October 2012 as to why it had concluded that the authors' grandmother had already received compensation and thus the authors were no longer entitled to return or compensation. The judgment shows that the Court has thoroughly examined the nature of the German payments and explained why it deemed them to amount to compensation for the property left in Estonia. For that purpose, the Court has analysed in detail the German Equalization of Burdens Act, including its purpose, the types of compensation afforded, the methods for calculating compensation, the way it was applied to the authors' grandmother and its relationship with the Estonian Principles of Ownership Reform Act. The Court also addressed the authors' claim that the German payments were merely "social payments" or payments allocated for integration. In particular – and contrary to the authors' allegations – it found that the German authorities had determined the amount of compensation based on the value of the property.

[12] *V.S. v. Lithuania* (CCPR/C/114/D/2437/2014), para. 6.3.

[13] The State party refers to a case in which partial compensation was granted for the length of the criminal proceedings and for the duration of the preventive measure.

4.14 The State party further explains that, contrary to the misleading suggestions made by the authors, persons who claimed compensation for their expropriated property in Estonia received compensation that was also determined on the basis of the value of property at the time of expropriation. Accordingly, the compensation that they received was smaller compared to the market prices at the time at which they were able to file an application for compensation or compared to the current market prices. The State party emphasizes that one of the central aims of the property reform was to provide redress for wrongs or damage caused by a foreign occupying force or another State.

4.15 The authors' claim that the German payments cannot be considered as compensation since they do not reflect the real value of the expropriated property relate to the application of section 17 (5) of the Estonian Principles of Ownership Reform Act, which has properly been addressed by the Court of Appeal. The authors contested the application of that legal provision before the Supreme Court, which did not find an incorrect application by the Court of Appeal.

4.16 The authors have also not submitted any evidence to demonstrate that, contrary to article 26 of the Covenant, Baltic Germans were treated differently or less favorably than any other group of people, including native Estonians, who filed claims for return of or compensation for unlawfully expropriated property. Their statements about the "unpopularity" of granting restitution to the Baltic Germans are arbitrary and false. Even more arbitrary is to suggest that Estonian courts operate according to the alleged popularity or unpopularity of certain ethnic groups. Section 17 (5) of the Principles of Ownership Reform Act applies to everyone, without distinction based on nationality, ethnic origin or any other ground. The only criterion is whether the property has been returned or compensation paid.

4.17 The falseness of the authors' claim that the Estonian authorities discriminate against Baltic Germans by refusing to return or to compensate for unlawfully expropriated property can be further demonstrated by several similar cases, in which the courts decided in claimants' favor when there was no concrete evidence that compensation had been paid by Germany.[14] These cases demonstrate that the solution is based on law and evidence, not on biases against certain ethnic groups. In the authors' case, evidence existed to conclude that the compensation payments were indeed made and that they were made for the loss of their grandmother's property in Tallinn.

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

5.1 In their comments on admissibility of 20 March 2015, the authors claim that they suffered discrimination because the Tallinn City Commission took no action for years and ignored their questions. Their grandmother never applied for or received compensation for her property in Germany. Payments received through the Equalization of Burdens Act do not amount to compensation for lost property. Although the right of property is not protected by the Covenant, discrimination is prohibited, and the two are closely interlinked.[15] The Committee held that legislation must not discriminate between the victims of prior confiscation because all victims are entitled to redress without arbitrary distinction.[16]

5.2 The authors contest the allegation that their communication should be considered abusive because they did not provide translations. They claim that the decision of the Court of Appeal amounts to denial of justice and was biased because it ignored a letter from the President of the German Federal Equalization of Burdens Office, who had declared that domestic payments under the Equalization of Burdens Act did not represent compensation for lost property. Whatever the motivation of that judgment, its effect is discriminatory.

5.3 The application to the European Court of Human Rights was declared inadmissible because the State party had made a reservation on 16 April 1996 in which it declared that

[14] The State party cites two cases in which the Tallinn Administrative Court invalidated decisions by the Tallinn City Commission.

[15] See *Simunek et al. v. Czech Republic.*

[16] *Adam v. Czech Republic*, para. 12.5.

the provisions of article 1 of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) would not apply to the laws or reform which regulate the restoration of or compensation for property nationalized or otherwise unlawfully expropriated during the period of Soviet annexation. Moreover, the authors did not invoke a violation of article 14 of the European Convention on Human Rights in conjunction with article 1 of Protocol No. 1.

5.4 The authors clarify that they have exhausted those remedies that are both available and effective. Given that they have been trying, unsuccessfully, to recover their property since 1992, the application of domestic remedies has been unreasonably prolonged. Their counsel also raised the issue of discrimination during the trial.[17] Under section 25 (2) of the Chancellor of Justice Act, the authors are not allowed to submit a petition to the Chancellor of Justice if there is a final judgment with respect to their case. Moreover, even though during proceedings the authors' counsel repeatedly raised the unconstitutionality of Estonian property law, the courts never referred the issue for constitutional review by the Supreme Court.

5.5 Lastly, the authors submit that domestic proceedings have also concluded in respect of their property situated at Metsa 45.[18]

5.6 In their comments of 9 September 2017, the authors clarify that the reason why they did not bring a complaint in respect of the length of proceedings under section 25 of the Constitution is because their Estonian lawyer informed them that that section was not an effective remedy. Moreover, that section does not allow for the restitution of their property.

5.7 Regarding their property situated at Metsa 45, the authors consider that further remedies should be considered ineffective and that the question of that property should be considered by the Committee at the same time as that of the other two properties, situated at Tina 3 and Metsa 47.

5.8 As to the merits, the relevant question before the Committee is to determine whether the State party's authorities have discriminated against those who resettled in 1941. In particular, on 10 March 2008, the General Assembly of the Supreme Court held that these Baltic German resettlers must be treated equally to other subjects entitled to restitution and that applications for the return of property should be reconsidered. The authors therefore, had a legitimate expectation for the return of their property. However, in almost all the applications for return of property – that is, more than 30 cases – the Estonian authorities invoked evidence of compensation under the German Equalization of Burdens Act.

5.9 The authors insist that the administrative and judicial proceedings that lasted from 1991 to 2013 exceeded the reasonable time required by article 2 of the Covenant, which requires States parties to ensure the Covenant rights to all persons subject to their jurisdiction.

5.10 The issue before the Committee is whether the judgments of the Court of Appeal amounted to a violation of the authors' rights to equality before the law and to equal protection of the law, contrary to articles 14 and 26 of the Covenant. These resettlers have not received any compensation because the basis for compensation was laid down in agreements between the Soviet Union and Germany concluded in January 1941, which were annulled by the Duma on 24 December 1989. The Court of Appeal upheld the views of the Tallinn City Commission, which were not in compliance with the aims or the wording of the German Equalization of Burdens Act.[19] It was not the intention of that law to compensate the Baltic German resettlers as provided in the agreements of January 1941. Resettlers have received compensation not for their property, but for the harm and loss caused by the loss of their property. The Equalization of Burdens Act is not a compensation

[17] No further information provided.

[18] This is the first time that the authors mention that separate proceedings had been initiated in respect of that property.

[19] The aim of that law is the equalization of burdens for damage or loss as a result of expulsions after the Second World War and the post-war period.

law, but a social domestic "equalization of burdens" law.[20] Disregarding its wording – in particular, its preamble – implies a deliberate false application of that law, which resulted inevitably in an infringement of the authors' right to restitution.

5.11 The Court of Appeal focused on irrelevant parts of the German Equalization of Burdens Act and arbitrarily ignored the fundamental aim of that law laid down in the preamble. It also did not assess whether the compensation was proportional to the value of the property. The amount received by the authors' grandmother in the 1960s was less than 10 per cent of the market value of the property.[21] Those payments were thus extremely disproportionate to the real value of the property.

5.12 The Court of Appeal also disregarded the practice in other European Union countries, such as Germany, Hungary and Romania, where restitution was granted regardless of payments under the German Equalization of Burdens Act.

5.13 The authors did not contest the replacement of the judge in the Court of Appeal because they became aware of it only many months later, when another claimant in a similar situation told them that the same had happened in his case.

5.14 Lastly, the authors disagree that the two cases referred to by the State party represent proof of non-discrimination against Baltic Germans.

5.15 In their comments of 10 February 2018, the authors clarify that the object of their communication before the Committee is not to review the interpretation of domestic legislation, but to review the disregarding of an international agreement and the declaration of its invalidity, as well as the application of a domestic act – the German Equalization of Burdens Act – against its own provisions and in contrast to all other Eastern European countries. They also invoke a case in which restitution was denied even in the absence of application of the German Equalization of Burdens Act.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim 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.

6.2 The Committee has to ascertain that, as required by article 5 (2) (a) of the Optional Protocol, the same matter is not being examined under another procedure of international investigation or settlement. The Committee observes that the authors presented an application based on the same facts before the European Court of Human Rights, which was declared inadmissible on 24 October 2013. The Committee observes that the matter is no longer pending before another procedure of international investigation or settlement and that the State party has not entered a reservation to article 5 (2) (a) of the Optional Protocol. The Committee is therefore not precluded by article 5 (2) (a) of the Optional Protocol from considering the present communication.

6.3 With regard to the authors' claim that they are entitled to restitution of the disputed property, the Committee recalls that the right to property as such is not protected by the Covenant,[22] and that it is thus incompetent *ratione materiae* to consider any alleged violations of this right. Accordingly, the Committee declares this claim inadmissible under article 3 of the Optional Protocol.

6.4 The Committee notes the authors' claims under articles 2, 14 and 26 of the Covenant that they suffered discrimination and denial of justice by the State party's courts and that the administrative and judicial proceedings between 1991 and 2013 have exceeded the reasonable time requirement.

[20] People in the Western part of the Federal Republic of Germany, who had lost nearly nothing, had to pay "equalization" for expellees and refugees from the East, who had lost all of their property.

[21] She received 524 euros for the property at Metsa 45 in Tallinn.

[22] See Human Rights Committee, *K.J.L. v. Finland*, communication No. 544/1993, and *Mazurkiewiczova v. Czech Republic* (CCPR/C/66/D/724/1996), para 6.2.

6.5 With regard to the authors' claim based on article 14 (1) of the Covenant in respect of the composition of the Court of Appeal when it examined the authors' case, the Committee notes that the authors have admitted that they did not raise the issue of the impartiality of the national courts during domestic proceedings. The Committee therefore declares this part of the communication is inadmissible under article 5 (2) (b) of the Optional Protocol.

6.6 The Committee notes the State party's arguments that the authors have not substantiated their claims. It also notes the State party's argument that it is for the domestic courts to review facts and evidence and to interpret domestic law, and that the applicable laws do not differentiate among former owners of expropriated property, the only criterion being whether the property has already been returned or compensation has already been paid. Lastly, the Committee also takes note of the State party's argument that administrative proceedings are not covered by article 14 of the Covenant.

6.7 The Committee notes the State party's argument that the authors have not exhausted all effective domestic remedies available to them because: (a) they have never raised the claim of discrimination, either before the domestic courts or before the Chancellor of Justice; (b) the proceedings in respect of their property situated at Metsa 45 were still pending at the moment of their initial submission and concluded only on 25 September 2014; and (c) they have not raised the issue of the length of proceedings before the administrative court. The Committee also takes notes of the authors' submissions that: (a) their counsel did raise the issue of discrimination during the trial, and they are not allowed to submit a petition to the Chancellor of Justice if there is a final judgment with respect to their case; (b) domestic proceedings in respect of their property situated at Metsa 45 have concluded in the meantime; and (c) a complaint brought in respect of the length of proceedings under section 25 of the Constitution is not effective.

6.8 The Committee notes that the State party has not contested the authors' statement that they did actually raise the issue of discrimination during the proceedings for the return of their property. With respect to the avenue of the Chancellor of Justice, the Committee observes that this remedy became closed to the authors once they had obtained a final judgment. The claim of discrimination, therefore, is not inadmissible for failure to exhaust domestic remedies.

6.9 The Committee notes that although the authors' main claims relate to property rights, which are not themselves protected by the Covenant, the authors also allege that the decision of the Court of Appeal was discriminatory and amounted to denial of justice. In this connection, the Committee notes that the authors' claims relate to the interpretation and application of domestic law and practice by the courts of the State party. 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.[23]

6.10 In the present case, the Committee notes that the authors have not demonstrated that the applicable domestic legislation – that is, section 17 (5) of the Principles of Ownership Reform Act – provides for any distinction, exclusion, restriction or preference based on grounds such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. The Committee notes that the only criterion imposed by that section is whether the property in question has already been returned or compensation has already been paid. The Court of Appeal, after taking into account the authors' situation, based its decision on that provision of the Principles of Ownership Reform Act. The authors have failed to demonstrate that the application of that law was discriminatory, or to cite any relevant jurisprudence that would show a different application of the law based on nationality. The Committee is therefore not in a position to conclude,

[23] General comment No. 32l, 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; and *Arenz et al. v. Germany* (CCPR/C/80/D/1138/2002), para. 8.6.

on the basis of the material at its disposal, that the domestic courts acted arbitrarily or that their decision amounted to discrimination, arbitrariness or denial of justice. Accordingly, the Committee considers that this part of the communication is insufficiently substantiated for the purposes of admissibility and declares it inadmissible under article 2 of the Optional Protocol.

6.11 The Committee also notes that the proceedings in respect of the authors' property situated at Metsa 45, although pending at the moment of their initial submission of 19 August 2013, had ended at the moment when the Committee sent the State party the authors' communication for observations (10 December 2014). The Committee recalls its jurisprudence, according to which, save in exceptional circumstances, the date used for determining whether remedies may be deemed exhausted is the date of the Committee's consideration of the communication.[24] As to the alleged non-exhaustion of domestic remedies in respect of the length of proceedings, the Committee considers that the State party has not demonstrated a remedy that would have had a reasonable prospect of success. In light of all of the above, the Committee considers that the claim related to the length of proceedings is not inadmissible for failure to exhaust domestic remedies.

6.12 Lastly, the Committee notes the authors' claim that the length of administrative and judicial proceedings between 1991 or 1992 and 2013 were unreasonably prolonged. It also notes the State party's argument that administrative proceedings are not covered by article 14 of the Covenant. However, the Committee recalls its general comment No. 32, in which it clearly stated (para. 16) that the concept of determination of rights and obligations "in a suit at law" is based on the nature of the right in question rather than on the status of one of the parties or the particular forum provided by domestic legal systems for the determination of particular rights, and that the concept encompasses judicial procedures aimed at determining rights and obligations pertaining to property as well as equivalent notions in the area of administrative law such as procedures regarding the taking of private property. The Committee therefore considers that the length of administrative proceedings should be taken into account when assessing the requirement for reasonable length of proceedings under article 14 of the Covenant.

6.13 In this respect, the Committee notes the authors' allegations that the proceedings lasted from 1991 or 1992 to 2013. First, the Committee notes that it is not clear from the authors' allegations whether the property at issue was claimed in 1991 or in 1992 and whether it was obtained in 1992 or in 1996 respectively. The Committee also notes that the Tallinn City Commission annulled its previous decision in 1999. The authors submit that the Commission has not returned the property in the period since 1999, but they provide no details as to whether they have filed a new application in that respect. They mention only that in 2010, the Commission refused to return or compensate for the property, following which proceedings lasted until 2013. In the absence of any substantiation or evidence, therefore, the Committee considers that the relevant periods are the administrative proceedings between 1991 and 1992 – or between 1992 and 1996 – and the court proceedings between 2010 and 2013.

6.14 The Committee recalls that the reasonableness of the delay in a trial has to be assessed in the circumstances of each case, taking into account the complexity of the case, the conduct of the accused and the manner in which the matter was dealt with by the administrative and judicial authorities.[25] In the present case, the Committee notes that the authors have not clarified the period of time during which the administrative proceedings took place and have not provided any details as to the conduct of domestic proceedings, in order to permit the Committee to assess the conduct of both the authors and the State party's authorities. The Committee therefore is not in a position, on the basis of the material at its disposal, to conclude that the State party's authorities unreasonably prolonged the domestic proceedings. Accordingly, the Committee considers that the claim in respect of the length of proceedings is insufficiently substantiated for the purposes of admissibility and declares it inadmissible under article 2 of the Optional Protocol.

[24] *Lemercier v. France* (CCPR/C/86/D/1228/2003), para. 6.4.

[25] General comment no. 32, para. 35. See also *Cedeño v. Bolivarian Republic of Venezuela* (CCPR/C/106/D/1940/2010), para. 7.7.

7. 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 shall be communicated to the State party and to the authors.