



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. 2161/2012*, **

<i>Communication submitted by:</i>	N.D.
<i>Alleged victim:</i>	N.D.
<i>State party:</i>	Russian Federation
<i>Date of communication:</i>	28 March 2012 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 18 June 2012 (not issued in document form)
<i>Date of adoption of decision:</i>	14 July 2017
<i>Subject matters:</i>	Freedom to seek and receive information; fair trial
<i>Procedural issues:</i>	Substantiation of claims; incompatibility with the provisions of the Covenant
<i>Substantive issues:</i>	Access to information; fair trial; admissibility — incompatibility
<i>Articles of the Covenant:</i>	14 and 19 (2)
<i>Articles of the Optional Protocol:</i>	1, 2

1. The author of the communication is N.D., a national of the Russian Federation born in 1936. She claims that the Russian Federation violated her rights under articles 14 and 19 (2) of the Covenant. The author is not represented by counsel.

The facts as submitted by the author

2.1 The author was the owner of land plot No. 24, measuring 521 square metres, part of the Rodnichok-2 gardening association in Belgorod. On 26 May 2008, the Belgorod regional government adopted a decision to seize the author's land to build a public road. On 30 June, the government department of public roads and transportation of the Belgorod region, in charge of implementing the decision, notified the author by letter that her plot would be seized and compensation paid to her in accordance with the law. Should she not agree to the compensation offer, the department would apply to a court for forcible seizure

* Adopted by the Committee at its 120th session (3-28 July 2017).

** The following members of the Committee participated in the examination of the present communication: Tania Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Sarah Cleveland, Ahmed Amin Fathalla, Olivier de Frouville, Christof Heyns, Yuji Iwasawa, Bamariam Koita, Duncan Laki Muhumuza, Photini Pazartzis, Mauro Politi, José Manuel Santos Pais and Margo Waterval.



of her land. The author did not accept the offered compensation, claiming that it was lower than the market price for the land.

2.2 On 11 August 2009, the October district court in Belgorod ended the author's property rights to the land and directed the department of public roads and transportation to pay the author compensation of Rub 240,283. The compensation awarded by the court was based on a report dated 5 April 2008 by the Belgorod region chamber of commerce and industry evaluating the market value of the land plots that had to be seized for the construction of the road. The court indicated that the author had not provided any evidence that the compensation offered for her land by the department was underestimated. On unspecified dates, the author appealed under cassation and supervisory proceedings, claiming that the first instance court proceedings had violated procedural and material law. She claimed, among other things, that the representative of the department did not have the proper authorization to represent the case in the court; that the plaintiff had failed to pay the court fees; that the plaintiff had not provided her with information about alternative routes for the road; and that the evaluation report by the chamber of commerce and industry was no longer valid when the plaintiff filed the case with the court. Her cassation appeal was rejected by the Belgorod regional court on 6 October 2009. Her supervisory review appeal was rejected by a judge of the Belgorod regional court on 25 January 2010.

2.3 On 6 November 2010, the author requested the department of public roads and transportation to provide her with information on the price of 1 square metre of land at plot No. 24 of the Rodnichok-2 gardening association that had been allocated for the construction project and for payment of compensation to the owner. On 29 November, the department responded that it did not have the requested information because the construction project only indicated the total amount of compensation due to all the owners whose property rights would be affected by the construction. It also explained that the compensation for the seized land was calculated, according to the law, in accordance with its market price.

2.4 On an unspecified date, the author filed a complaint with the Sverdlovsk district court in Belgorod for lack of action by the department of public roads and transportation, which had refused to provide her with the requested information. Her complaint was rejected as unsubstantiated on 25 January 2011. The court stated that actions/inactions of public authorities could be subject to civil lawsuits if they violated individual rights and freedoms, created restrictions for the enjoyment of such rights and freedoms or unlawfully imposed obligations or liability. The property rights of the author had been ended and the value of the plot in question had been established by a court decision that had become final. Since the author no longer owned the land in question, her rights could not be violated by inaction of the public body. The court observed that the project financial documents presented by the respondent indicated a general sum to be paid as compensation for all the seized land. On that basis, the court came to the conclusion that the respondent did not have the information requested by the author and thus could not provide it to her.

2.5 On unspecified dates, the author appealed under cassation and supervisory proceedings. Her cassation appeal was rejected by the Belgorod regional court on 15 March 2011. The author's supervisory review appeal was rejected by a judge of the Supreme Court on 10 October 2011.

The complaint

3.1 The author alleges violation of article 14 of the Covenant due to the material and procedural violations by the courts (see para. 2.2) in the land compensation case.

3.2 She alleges violation of article 19 (2) of the Covenant on the basis of the refusal of the department of public roads and transportation to provide her with the requested information.

State party's observations on the merits

4. In a note verbale dated 28 March 2013, the State party argued that the author's rights under article 19 (2) had not been violated. It refers to paragraph 18 of the Committee's general comment No. 34 (2011) on the freedoms of opinion and expression, according to

which article 19 (2) of the Covenant embraces a right of access to information held by public bodies. As has been established by the first instance court in the decision dated 25 January 2011 and the cassation court decision dated 15 March 2011, the department of public roads and transportation did not possess the information requested by the author. Since the requested information was not available at the public authority, the author cannot claim to have a right of access to it.

Author's comments on the State party's observations on the merits

5.1 On 23 May 2013, the author claimed that the information she had requested from the department of public roads and transportation was of public interest and concerned her right to natural resources as national treasure, and her property rights (just compensation for the property). She claims that, according to decision No. 87 of the Government of the Russian Federation dated 16 February 2008 concerning the structure of project documentation and its content, the department of public roads and transportation should have possessed information on the funds necessary to pay compensation to the owners of seized land.

5.2 The author submitted additional information concerning her communication on 16 July, 23 August and 10 October 2012; 11 April, 15 April and 23 May 2013; 6 October 2014; 4 May and 9 December 2015; and 27 March 2017, in essence repeating her initial allegations.

State party's observations on admissibility

6. In a note verbale dated 3 October 2013, the State party argued that the author's communication was inadmissible. The author's claims relate to her disagreement with the amount of compensation for her land. Referring to article 1 of the Optional Protocol, the State party argues that the subject of the author's communication is not among the rights provided for by the Covenant.

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 93 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

6.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

6.3 The Committee takes note of the author's claim that she has exhausted all effective domestic remedies available to her. In the absence of any objection by the State party in this connection, the Committee considers that the requirements of article 5 (2) (b) of the Optional Protocol have been met.

6.4 The Committee notes the State party's challenge to the admissibility of the communication pursuant to article 1 of the Optional Protocol on the ground that the author's claim is incompatible with the provisions of the Covenant and its claim that the author's claim under article 19 (2) of the Covenant is unsubstantiated.

6.5 The Committee notes that the author's claim concerning procedural irregularities in the proceedings at the first instance court related to the compensation for her land has been considered by the domestic courts. The Committee recalls that it is generally for the courts of a State party to review facts and the 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.¹ In the present case, the Committee

¹ See, inter alia, communications No. 1188/2003, *Riedl-Riedenstein et al. v. Germany*, decision of inadmissibility adopted on 2 November 2004, para. 7.3; and No. 1138/2002, *Arenz et al. v. Germany*,

observes that the author has not specified why the domestic court decisions were arbitrary or amounted to a manifest error or denial of justice. The Committee notes that the material before it does not allow it to conclude that the examination of the evidence or the application of domestic legislation by the courts contains indications of arbitrariness or amounts to a denial of justice. The Committee therefore declares the author's claims under article 14 of the Covenant insufficiently substantiated for purposes of admissibility and inadmissible under article 2 of the Optional Protocol.

6.6 The Committee also notes the author's claim about the failure of the department of public roads and transportation to provide her with information on the price of 1 square metre of her plot of land, as specified in the project documentation. The Committee notes that the department could not provide the requested information because it did not have such information in its possession, and that this was verified by the domestic courts on the basis of the respective project documents. The Committee notes that the author has not provided any evidence to the contrary. In this light, the Committee concludes that the author's complaint under article 19 (2) of the Covenant is insufficiently substantiated for purposes of admissibility and thus inadmissible under article 2 of the Optional Protocol.

7. The Committee therefore decides:

- (a) That the communication is inadmissible under article 2 of the Optional Protocol;
- (b) That the decision shall be communicated to the State party and to the author.

decision of inadmissibility adopted on 24 March 2004, para. 8.6. See also the Committee's general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial.