



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE
Eighty-eight session
16 October – 3 November 2006

DECISION

Communication No. 1446/2006

<u>Submitted by:</u>	Mrs. Barbara Wdowiak (not represented by counsel)
<u>Alleged victim:</u>	The author
<u>State party:</u>	Poland
<u>Date of communication:</u>	8 December 2005 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 97 decision, transmitted to the State party on 23 January 2006 (not issued in document form).
<u>Date of adoption of decision:</u>	31 October 2006

Subject matter: Access to justice, requirement that appeal be prepared by counsel

Procedural issues: Same matter examined under another international procedure; State party's reservation; exhaustion of domestic remedies

Articles of the Covenant: 14 (1)

Articles of the Optional Protocol: 5(2)(a), (b)

[ANNEX]

* Made public by decision of the Human Rights Committee.

GE.06-45707

ANNEX

**DECISION OF THE HUMAN RIGHTS COMMITTEE UNDER
THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT
ON CIVIL AND POLITICAL RIGHTS**

Eighty-eighth session

concerning

Communication No. 1446/2006*

Submitted by: Mrs. Barbara Wdowiak (not represented by
counsel)

Alleged victim: The author

State party: Poland

Date of communication: 8 December 2005 (initial submission)

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

Meeting on 31 October 2006

Adopts the following:

DECISION ON ADMISSIBILITY

1.1 The author of the communication is Mrs Barbara Wdowiak, a Polish national, born 1946. She claims to be a victim of violation by Poland of her rights under article 14, paragraph 1, of the Covenant.

1.2 On 25 March 2006, the Special Rapporteur on New Communications and Interim measures decided to separate the examination of the admissibility of the communication separately to the merits.

* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Alfredo Castillero Hoyos, Ms. Christine Chanet, Mr. Edwin Johnson, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Ms. Elisabeth Palm, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Ivan Shearer and Mr. Hipólito Solari-Yrigoyen.

Pursuant to rule 90 of the Committee's rules of procedure, Committee member Mr. Roman Wieruszewski did not participate in adoption of the Committee's decision.

1.3 The Optional Protocol entered into force for the State party on 7 February 1992.

The facts as submitted by the author

2.1 In 1995, the author filed an application in the District Court in Kozhienicach seeking restitution of part of a small property to which she claimed to be entitled. On 28 June 1995, the court rejected her application, for lack of evidence. In March 1998, new facts were discovered, and the author filed a cassation appeal with the Regional Court in Radom on 9 August 1999, seeking to have the case reopened under the relevant provisions of the Civil Code.¹

2.2 On 13 August 1999, the Radom Regional Court dismissed her appeal on the basis that the appeal failed to comply with section 393 (1) of the Civil Code, which provides that an appeal must be prepared and filed only by a qualified lawyer or legal consultant. The Court thus did not examine the merits of her appeal.

2.3 The author appealed the decision of the Radom Regional Court to the Supreme Court, which, on 20 January 2000, dismissed her appeal on the basis that it had not been prepared by a qualified lawyer.

2.4 The author explains that she was not represented by a lawyer because she had been refused a court appointed lawyer, and had no financial means to retain one herself. She states that she presented evidence to the Supreme Court of her poor financial situation.

2.5 On 26 April 2000, the author submitted an application to the European Court of Human Rights, in which she set out the above facts. On 11 October 2001, the European Court declared her complaint inadmissible, on the grounds that she had not exhausted domestic remedies.

The complaint

3. The author claims that she was deprived of her right to a fair hearing of her rights in a suit of law, in violation of article 14, paragraph 1, and that this occurred merely because she could not afford to pay a lawyer to represent her.

State party's observations on admissibility

4.1 In its submission dated 23 March 2006, the State party challenges the admissibility of the communication.

4.2 It submits that the issue raised by the author was examined and dismissed by the European Court of Human Rights, which noted that the author had failed to appeal in accordance with relevant formalities and that therefore domestic remedies had not been exhausted.²

¹ Section 403(2) allows for the re-examination of cases where new facts or evidence is later discovered.

² Poland acceded to the Protocol with the following reservation: 'Poland accedes to the Protocol while making a reservation that would exclude the procedure set out in article 5(2)(a), in cases where the matter has already been examined under another procedure of international

4.3 Secondly, the State party submits that the European Court was correct in its finding that domestic remedies have not been exhausted. The Supreme Court's decision noted that inability to pay for the cost of legal assistance was not an exception to the requirement that appeals be filed by qualified lawyers. However, the Court also noted that this fact can make a person eligible for free legal assistance. The State party submits that it transpires from the case file that the author did not lodge a motion in the Regional Court seeking the appointment of a lawyer *ex officio*.

4.4 In addition, on the merits, the State party submits that the requirement that a cassation appeal be filed by a qualified lawyer is designed to guarantee a high quality of appeals, and to protect the Supreme Court from a backlog of vexatious appeals. It is not a restriction on access to courts, as a person may be granted free legal assistance. This is provided for in article 117 of the Civil Code.

Author's comments on the State party submissions

5. In her comments dated 17 May 2006, the author emphasizes that when filing her appeals to the court, she described her situation and explained that she did not have any financial means to retain a private lawyer. The Supreme Court understood her position but did not appoint a lawyer to assist her, and did not explain to her how she could have her matter substantively examined by the court.

Issues and proceedings before the Committee:

6.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not the communication is admissible under the Optional Protocol to the Covenant.

6.2 Pursuant to article 5, paragraph 2 (a), of the Optional Protocol, the Committee must establish whether the same matter *is not being* examined under another procedure of international investigation or settlement. It notes that on 26 April 2001, the author submitted a similar complaint to the European Court of Human Rights, which was declared inadmissible on 11 October 2001, for non-exhaustion of domestic remedies. It recalls that when acceding to the Optional Protocol, the State party entered a reservation which 'excludes the procedure set out in article 5, paragraph 2(a), in cases where the matter *has already been examined* under another procedure of international investigation or settlement' (emphasis added). Whilst the State party has not explicitly invoked this reservation, its reliance on the decision of the European Court of Human Rights which dismissed the author's earlier complaint may be understood as a reference to its reservation. The Committee must therefore decide whether the decision of the European Court constitutes an "examination" of the "same matter" as that which is before the Committee. It recalls its jurisprudence that an inadmissibility decision which entailed an at least implicit consideration of the merits of a complaint amounts to an "examination" for the purpose of article 5, paragraph 2(a) of the Optional Protocol. On the other hand, the Committee has also previously held that a finding of inadmissibility for purely procedural reasons, without addressing the merits

investigation or settlement.' The State Party does not specifically refer to this reservation in its submission in the present case.

of a case, does not amount to “examination”, for purposes of admissibility.³ In this instance, the decision of the European Court was procedural in nature, finding that the author had not exhausted domestic remedies. Accordingly, in the present case, the Committee considers that the same matter has not been “examined” by another procedure of international investigation or settlement.

6.3 In relation to the question of exhaustion of domestic remedies, the Committee notes the undisputed fact that the author has not complied with the formal requirements for filing an appeal, namely that the appeal be prepared and filed by a qualified lawyer or legal consultant. In the present case, the substantive issue that the author seeks to have the Committee examine is inextricably linked with these formal requirements. The author claims that the formal requirements amounted to a denial of access to justice; the corollary of this submission is that there are no “available” or “effective” remedies for a person in her financial state. However, the Committee notes the State party’s submission that the author did not lodge with the Regional Court a motion exempting her from court fees and for the appointment of a lawyer *ex officio*. While the author has presented evidence to the Supreme Court, why her financial situation did not allow her to retain a lawyer, she has not substantiated that she was unable to file such a motion with the Regional Court without the assistance of legal counsel. In the absence of such further information, the Committee cannot conclude that the author has exhausted available domestic remedies, and declares the communication inadmissible under article 5, paragraph 2(b) of the Optional Protocol.

7. The Human Rights Committee therefore decides:

- (a) that the communication is inadmissible, under article 5, paragraph 2 (b), of the Optional Protocol;
- (b) that the present communication will be transmitted to the parties, for information.

[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.]

³ See Communication No. 1389/2005, Luis Bertelli Gálvez v. Spain, Inadmissibility decision adopted on 25 July 2005, paragraph 4.3.