CONDITIONS OF ADMISSIBILITY: EXISTENCE OF OTHER, ONGOING PROCEDURES - EXERCISE

(1/1 point)

2. The Optional Protocol to the ICCPR states that the Human Rights Committee is not competent to consider a communication if the same matter was "already being examined under another procedure of international investigation or settlement". (Note that most States parties to the European Convention on Human Rights have made a reservation upon acceding to the Optional Protocol to the ICCPR, providing that they do not recognize the competence of the Human Rights Committee to receive an individual communication where the European Court of Human Rights has decided the "same matter", even where the procedure before the European Court of Human Rights has been closed.) Does the fact that Belgium requested the de-listing of the authors from the Sanctions Committee's list in March 2005 and April 2006 (albeit unsuccessfully, as de-listing requires that no other member of the Sanctions Committee objects) imply that the communication should be held inadmissible, since the matter is pending before the Sanctions Committee?

- No, because the procedure has in fact been closed before the Sanctions Committee and cannot be said to be "pending": it is apparent that the "de-listing" requested by Belgium was not agreed to;
- No, because the procedure before the Sanctions Committee does not relate to "the same claim": the Sanctions Committee is established to assess whether certain restrictive measures serve to combat terrorism, not to protect human rights based on the requirements of the ICCPR;
- (•) No, because the "de-listing" procedure before the Sanctions Committee is not a procedure open to the victims of counter-terrorist sanctions, but is exclusively in the hands of the State having transmitted their names in the first place; ✔
- No, because even if the Sanctions Committee agreed to "de-list" the authors, this still would not constitute effective reparation for the prejudice caused as a result of their assets being freezed for years.

EXPLANATION

It is the third of these arguments that the Human Rights Committee relies on to dismiss the argument of Belgium according to which the communication should be held inadmissible because the same matter would already be under examination under another procedure of international investigation or settlement. However, the other arguments listed are all quite plausible, and indeed, they were all formulated by the counsel of the authors of the communication (see paras. 5.1. to 5.4 if you want to learn more). In fact, it seems that each of these different arguments, even taken in isolation from the others, would be sufficient to dismiss the argument put forward by Belgium in favor of the communication being declared inadmissible.

One issue that arises in the interpretation of the requirement according to which the Human Rights Committee (similarly in that respect to other UN human rights treaty bodies) shall not deal with a communication if the "same matter" has already been dealt with under another procedure of international investigation or settlement, is how the concept of "same matter" is to be understood. Is this a reference to a set of facts leading to the alleged violation? Or is it a reference to the legal argument presented by the victim? In the case of Karakurt v. Austria, the author of the communication, a Turkish national, alleged to be a victim of a breach by the Republic of Austria of Article 26 ICCPR: indeed, he was excluded from being able to stand as a candidate for election to the work council in the company where he was employed, because this is only possible for Austrian nationals or nationals of member States of the European Economic Area (EEA). But Mr Karakurt had already denounced this discrimination before the European Court of Human Rights, arguing there that this difference of treatment on grounds of nationality was in violation of Article 14 ECHR. The Court, however, found the application to be manifestly ill founded and accordingly inadmissible. It held that the work council, as an elected body exercising functions of staff participation, could not be considered an 'association' within the meaning of Article 11 ECHR, and that the statutory provisions in question did not interfere with any such rights under this article. There, it reasoned, Article 14 ECHR did not apply, since the alleged discrimination did not relate to the enjoyment of Convention rights.

After failing before the European Court of Human Rights in Strasbourg, Mr Karakurt turned to the Human Rights Committee, invoking Article 26 ICCPR to challenge the same difference in treatment as being discriminatory. The Committee held that it was not precluded from examining the communication: it took the view that "the concept of the 'same matter' within the meaning of article 5(2)(a) of the Optional Protocol must be understood as referring to one and the same claim of the violation of a particular right concerning the same individual. In this case, the author is advancing free-standing claims of discrimination and equality before the law, which were not, and indeed could not have been, made before the European organs. Accordingly, the Committee does not consider itself precluded by the State party's reservation to the Optional Protocol from considering the communication." (Human Rights Committee, Karakurt v. Austria, Communication No. 965/2000 (CCPR/C/74/D/965/2000 (2002)), final views of 4 April 2002). (Like a number of Member States of the Council of Europe who have also ratified the ICCPR, Austria had made a reservation upon entering the Covenant on 10 December 1987, under the terms of which: 'further to the provisions of article 5(2) of the Protocol, the Committee provided for in Article 28 of the Covenant shall not consider any communication from an individual unless it has been ascertained that the same matter has not been examined by the European Commission on Human Rights established by the European Convention for the Protection of Human Rights and Fundamental Freedoms.')

The same reservation made by Austria upon entering the ICCPR was discussed in the case of Kollar v. Austria (Communication No. 989/2001 (CCPR/C/78/DR/989/2001), final views of 30 July 2003). In the views it adopted in that case, the Human Rights Committee made it clear that it would be reluctant to examine a case already considered by the European Court of Human Rights insofar as the provisions of the ICCPR and those of the ECHR invoked by the alleged victim converge, even though certain differences of interpretation may exist between the Human Rights Committee and the European Court of Human Rights respectively: as regards the right to a fair trial invoked by the author of the communication, for instance, the Committee notes that 'despite certain differences in the interpretation of article 6, paragraph 1, of the European Convention and article 14, paragraph 1, of the Covenant by the competent organs, both the content and scope of these provisions largely converge. In the light of the great similarities between the two provisions, and on the basis of the State party's reservation, the Committee considers itself precluded from reviewing a finding of the European Court on the applicability of article 6, paragraph 1, of the European Convention by substituting its jurisprudence under article 14, paragraph 1, of the Covenant' (para. 8.6.). The Committee also confirmed that, although the non-discrimination requirement of Article 26 ICCPR possessed a free-standing quality Article 14 ECHR did not possess, it would not consider admissible communications based on Article 26 ICCPR for that sole reason, at least where Article 14 ECHR could be invoked before the European Court of

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Human Rights in combination with another right of the Convention.

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