HUMAN RIGHTS COMMITTEE

Blazek et al v. The Czech Republic

Communication No. 857/1999

12 July 2001

CCPR/C/72/D/857/1999

VIEWS

Submitted by: Messrs. Miroslav Blazek, George A. Hartman and George Krizek

Alleged victim: The authors

State party: The Czech Republic

Date of communication: 16 October 1997 (initial submission)

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

Meeting on 12 July 2001,

Having concluded its consideration of communication No. 857/1999 submitted to the Human Rights Committee by Messrs. Miroslav Blazek, George A. Hartman and George Krizek under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having take into account all written information made available to it by the authors of the communication, and the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1. The authors of the communications (dated 16 October 1997, 13 November 1997, and 29 November 1997 and subsequent correspondence) are Miroslav Blazek, George Hartman and George Krizek, natives of Czechoslovakia who emigrated to the United States after the Communist takeover in 1948, and who subsequently became naturalized United States citizens. They claim to be victims

by the Czech Republic of violations of their Covenant rights, in particular of article 26. They are not represented by counsel.

The facts as submitted

2.1 The authors are naturalized United States citizens, who were born in Czechoslovakia and lost Czechoslovak citizenship by virtue of the 1928 Naturalization Treaty between the United States and Czechoslovakia,. which precludes dual citizenship. They left Czechoslovakia after the Communist takeover in 1948. Their properties in Czechoslovakia were subsequently confiscated pursuant to confiscation regulations of 1948, 1955 and 1959.

2.2 Mr. Miroslav Blazek states that he is precluded from claiming his inheritance, including real property in Prague and agricultural property in Plana-nod-Luznici because he is not a Czech citizen. He submits copy of a letter from his lawyer in the Czech Republic, advising him that he could not file a claim in the present circumstances, since he does not fulfil the conditions of Czech citizenship required by the applicable law. However, his uncle, a French and Czech citizen, submitted a claim on his own behalf and on behalf of the author concerning jointly-owned property in Prague; the Government, however, severed the case and denied the author his share.

2.3 George A. Hartman, an architect by profession, was born in 1925 in the then Czechoslovak Republic and emigrated to the United States on 26 December 1948. He obtained political asylum in the United States and became a naturalized United States citizen on 2 April 1958, thus becoming ineligible for dual citizenship according to the 1928 Naturalization Treaty between the United States and Czechoslovakia. Until December 1948 he and his brother Jan (who subsequently became a French citizen while retaining Czech citizenship) had owned four apartment buildings in Prague and a country home in Zelizy.

2.4 By judgement of 1 July 1955 the Criminal Court in Klatovy found Mr. Hartman to have illegally left Czechoslovakia. He was sentenced in absentia and his property in Czechoslovakia was formally confiscated as a punishment for the illegal act of leaving the Czechoslovak Republic in 1948. Pursuant to law 119/1990, adopted after the demise of the Communist government, the author's criminal conviction for illegally leaving the country was invalidated.

2.5 By application of 17 October 1995 Mr. Hartman sought the restitution of his property, but his application was rejected because he did not fulfil the requirement of Czech citizenship. In order to qualify under the restitution law, Mr. Hartman continued to seek to obtain Czech citizenship for many years. Since 9 November 1999 he has dual Czech and United States citizenship. Notwithstanding his current Czech citizenship, he has not been able to obtain restitution because the statute of limitations for filing claims for restitution expired in 1992.

2.6 George Krizek states that his parents' property, including a wholesale business (bicycles) in Prague, a grain and dairy farm in a Prague suburb, and agricultural land in Sestajovice, was confiscated in 1948 without any compensation. After the death of his parents, he fled Czechoslovakia and emigrated to the United States, becoming a naturalized citizen in 1974. In April 1991 he claimed ownership of his property pursuant to Law No. 403/1990, but his claims were rejected by the Ministry of Agriculture. In 1992 the author again presented his claims under laws

228 and 229/1991. However, he was informed that in order to be eligible for restitution, he would have to apply for Czech citizenship and take up permanent residence in the Czech Republic. Notwithstanding, he again filed a claim through his lawyer in Prague in 1994, without success.

2.7 By virtue of a 1994 judgement of the Czech Supreme Court, the requirement of permanent residence for restitution claims was removed, however the requirement of Czech citizenship remains in force.

The Complaint

3.1 The authors claim to be victims of violations of their Covenant rights by the Czech Republic in connection with the confiscation of their properties by the Communist authorities and the discriminatory failure of the democratic Governments of Czechoslovakia and of the Czech Republic to make restitution. They contend that the combined effect of Czech laws 119/1990 (of 23 April 1990) on Judicial Rehabilitation, 403/1990 (of 2 October 1990) on restitution of property, 87/1991 (of 21 February 1991, subsequently amended) on Extra-Judicial Rehabilitation, 229/1991 (of 21 May 1991) on Agricultural Land and 182/1993 (of 16 June 1993) on the creation of the Constitutional Court together with the position taken by the Czech Government on Czech citizenship discriminates against Czech émigrés who lost Czech citizenship and are now precluded from recovering their property.

3.2 The authors refer to the Committee's decision concerning communication No. 516/1992 (Simunek v. The Czech Republic) in which the Committee held that the denial of restitution or compensation to the authors of that communication because they were no longer Czech citizens constituted a violation of article 26 of the Covenant, bearing in mind that the State party itself had been responsible for the departure of its citizens, and that it would be incompatible with the Covenant to require them again to obtain Czech citizenship and permanently to return to the country as a prerequisite for the restitution of their property or for the payment of appropriate compensation.

3.3 The authors contend that, in order to frustrate the restitution claims of Czech émigrés to the United States, the Czech authorities used to invoke the 1928 United States Treaty with Czechoslovakia which required that anyone applying for the return of Czech citizenship. First renounce United States citizenship. Although the Treaty was abrogated in 1997, the subsequent acquisition of Czech citizenship does not, in the view of Czech authorities, entitle the authors to reapply for restitution, because the date for submission of claims has expired.

3.4 Reference is made to the case of two other American citizens who applied to the Czech courts for a ruling aimed at the deletion of the citizenship requirement from law 87/1991. The Czech Supreme Court, however, confirmed in its Judgement US 33/96 that the citizenship requirement was constitutional.

3.5 The authors further complain that the State party is deliberately denying them a remedy and that there has been a pattern of delay and inaction aimed at defeating their claims, in contravention of article 2 of the Covenant.

3.6 One of the authors, George A. Hartman, illustrates the alleged discrimination by referring to the

case of his brother Jan Hartman, who is a Czech and French citizen, and who was able to obtain restitution for his half of the property in Prague confiscated in 1948 pursuant to judgement of 25 June 1991, whereas the author was denied compensation because at the time of filing his claim he was not a Czech citizen.

Exhaustion of domestic remedies

4.1 The authors claim that in their cases domestic remedies are non-existent, because they do not qualify under the restitution law. Moreover, the constitutionality of this law has already been tested by other claimants and affirmed by the Czech Constitutional Court. They refer, in particular, to the finding of the Constitutional Court in case US 33/96 (Jan Dlouhy v. Czech Republic, decision of 4 June 1997), confirming the constitutionality of the citizenship requirement in order to be an "eligible person" under the Rehabilitation Law No. 87/1991.

4.2 They complain that since 1989 they have devoted considerable amount of time and money in futile attempts to obtain restitution, both by engaging formal judicial procedures and by addressing petitions to government ministries and officials, including judges at the Constitutional Court, invoking inter alia the Czech Charter on Basic Rights and Freedoms.

Consideration of admissibility and examination of the merits

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

5.2 The Committee has ascertained that the same matter is not and has not been submitted to any other instance of international investigation or settlement.

5.3 With regard to the requirement laid down in article 5, paragraph 2 (b), of the Optional Protocol that authors exhaust domestic remedies, the Committee notes that the State party has not contested the authors' argument that in their cases there are no available and effective domestic remedies, and in particular, that because of the preconditions of law 87/1991, they cannot claim restitution. In this context, the Committee notes that other claimants have unsuccessfully challenged the constitutionality of the law in question; that earlier views of the Committee in the cases of Simunek and Adam remain unimplemented; and that even following those complaints, the Constitutional Court has upheld the constitutionality of the Restitution Law. In the circumstances, the Committee finds that article 5, paragraph 2 (b), of the Optional Protocol does not preclude the Committee's consideration of the communications of Messrs. Blazek, Hartman and Krizek.

5.4 With regard to the author's claim that they have suffered unequal treatment by the State party in connection with the scheme of restitution and compensation put into effect after the Optional Protocol entered into force for the State party the Committee declares the communication admissible, insofar as it may raise issues under articles 2 and 26 of the Covenant.

5.5 Accordingly, the Committee proceeds to an examination of the merits of the case, in the light of the information before it, as required by article 5, paragraph 1, of the Optional Protocol. It notes

that it has received sufficient information from the authors, but no submission whatever from the State party. In this connection, the Committee recalls that a State party has an obligation under article 4, paragraph 2, of the Optional Protocol to cooperate with the Committee and to submit written explanations or statements clarifying the matter and the remedy, if any, that may have been granted.

5.6 In the absence of any submission from the State party, the Committee must give due weight to the submissions made by the authors. The Committee has also reviewed its earlier Views in cases No. 516/1993, Mrs. Alina Simunek et al. and No. 586/1994, Mr. Joseph Adam. In determining whether the conditions for restitution or compensation are compatible with the Covenant, the Committee must consider all relevant factors, including the original entitlement of the authors to the properties in question. In the instant cases the authors have been affected by the exclusionary effect of the requirement in Act 87/1991 that claimants be Czech citizens. The question before the Committee is therefore whether the precondition of citizenship is compatible with article 26. In this context, the Committee reiterates its jurisprudence that not all differentiations in treatment can be deemed to be discriminatory under article 26. A differentiation which is compatible with the provisions of the Covenant and is based on reasonable grounds does not amount to prohibited discrimination within the meaning of article 26.

5.7 Whereas the criterion of citizenship is objective, the Committee must determine whether in the circumstances of these cases the application of the criterion to the authors would be reasonable.

5.8 The Committee recalls its Views in Alina Simunek v. The Czech Republic and Joseph Adam v. The Czech Republic, where it held that article 26 had been violated: "the authors in that case and many others in analogous situations had left Czechoslovakia because of their political opinions and had sought refuge from political persecution in other countries, where they eventually established permanent residence and obtained a new citizenship. Taking into account that the State party itself is responsible for [their] … departure, it would be incompatible with the Covenant to require [them] … to obtain Czech citizenship as a prerequisite for the restitution of their property, or, alternatively, for the payment of compensation" (CCPR/C/57/D/586/1994, para. 12.6). The Committee finds that the precedent established in the Adam case applies to the authors of this communication. The Committee would add that it cannot conceive that the distinction on grounds of citizenship can be considered reasonable in the light of the fact that the loss of Czech citizenship was a function of their presence in a State in which they were able to obtain refuge.

5.9 Further, with regard to time limits, whereas a statute of limitations may be objective and even reasonable *in abstracto*, the Committee cannot accept such a deadline for submitting restitution claims in the case of the authors, since under the explicit terms of the law they were excluded from the restitution scheme from the outset.

The Committee's Views

6. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it disclose a violation or article 26, in relation to Messrs. Blazek, Hartman, and Krizek.

7. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the authors with an effective remedy, including an opportunity to file a new claim for restitution or compensation. The Committee further encourages the State party to review its relevant legislation and administrative practices to ensure that neither the law nor its application entails discrimination in contravention of article 26 of the Covenant.

8. The Committee recalls, as it did in connection with its prior Views concerning the cases of Alina Simunek and Joseph Adam, that the Czech Republic, by becoming a State party to the Optional Protocol, recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy in case a violation has been established.

9. In this connection, the Committee wishes to receive from the State party, within 90 days following the transmittal of these Views to the State party, information about the measures taken to give effect to the Views. The State party is also requested to translate into the Czech language and to publish the Committee's Views.

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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 Natwarlal Bhagwati, Ms. Christine Chanet, Mr. Maurice Glèlè Ahanhanzo, Mr. Louis Henkin, Mr. Ahmed Tawfik Khalil, Mr. Eckart Klein, Mr. David Kretzmer, Mr. Rajsoomer Lallah, Ms. Cecilia Medina Quiroga, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Martin Scheinin, Mr. Ivan Shearer, Mr. Hipólito Solari Yrigoyen, Mr. Patrick Vella and Mr. Maxwell Yalden.

** The text of an individual opinion by Committee member Nisuke Ando is appended to the present document.

[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 General Assembly.]

Individual opinion of Committee member Nisuke Ando

Reference is made to my individual opinion appended to the Human Rights Committee's Views on case No. 586/1994: Adam v. the Czech Republic.

[Signed] Nisuke Ando