



**International Covenant
on Civil and Political
Rights**

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HUMAN RIGHTS COMMITTEE
Eighty-fifth session
17 October – 3 November 2005

DECISION

Communication Nos. 1034/2001 and 1035/2001

<u>Submitted by:</u>	Mr. Dusan Soltes (not represented by counsel)
<u>Alleged victim:</u>	The author
<u>State parties:</u>	The Czech Republic and the Slovak Republic
<u>Date of communication:</u>	17 July 2000 (initial submission)
<u>Documentation references:</u>	Special Rapporteur's rule 97 decision, transmitted to the State parties on 10 February 2004 (Czech Republic) and 17 September 2002 (Slovak Republic) (not issued in document form)
<u>Date of adoption of decision:</u>	28 October 2005

* Made public by decision of the Human Rights Committee

Subject matter: Attempt of salary recovery from national authorities by former international civil servant.

Procedural issues: Exhaustion of domestic remedies

Substantive issues: Effective remedy; trial before impartial and independent tribunal.

Articles of the Covenant: 2, 14 and 26

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

[ANNEX]

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

Eighty-fifth session

concerning

Communication No. 1034/2001 and 1035/2001**

<u>Submitted by:</u>	Mr. Dusan Soltes (not represented by counsel)
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The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 28 October 2005,

Adopts the following:

DECISION ON ADMISSIBILITY

1.1 The author of the communication, initially dated 17 July 2000, is Mr. Dušan Šoltés, a Slovakian citizen, born in 1943. He claims to be a victim of violations by both the Czech Republic and the Slovak Republic of articles 2, 14, and 26 of the International Covenant on Civil and Political Rights. He is not represented by counsel.¹

** The following members of the Committee participated in the examination of the present communication: Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Alfredo Castillero Hoyos, Mr. Maurice Glèlè Ahanhanzo, Mr. Edwin Johnson, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Mr. Michael O'Flaherty, Ms. Elisabeth Palm, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Ivan Shearer, Mr. Hipólito Solari-Yrigoyen, Ms. Ruth Wedgwood and Mr. Roman Wieruszewski.

¹ The Optional Protocol entered into force for the Czech and Slovak Federal Republic (CSFR) on 12 March 1991. The CSFR ceased to exist on 31 December 1992, dissolving into the Czech Republic and the Slovak Republic, which notified their succession to the Covenant and Optional Protocol on 22 February 1993 and 28 May 1993, respectively.

1.2 On 13 April 2004, the Committee's Special Rapporteur on New Communications decided to separate the consideration of the admissibility and merits of the communication.

1.3 Pursuant to Rule 94 of Rules of Procedure, the Committee has joined consideration of cases 1034/2001 and 1035/2001.

Factual background

2.1 Between 1985 and 1989, the author worked as a United Nations (UN) Expert at the P5 level for the UN Department of Technical Cooperation for Development (UNDTCD) in Burma. Over that period, he claims to have been forced to pay a total of US\$42,000 from his UN earnings to Polytechna Prague, a specialized recruitment agency for international organizations of the Czechoslovak government which allegedly covertly extracted taxes from its citizens' non-taxable UN income, in contravention of the domestic laws and the UN Convention on the Privileges and Immunities of the United Nations ("the UN Convention"), a Convention to which Czechoslovakia was a party since 1955. In order to obtain an exit-visa and be permitted to take up his UN employment, the author allegedly had to sign a secret "pre-contract" with Polytechna on 30 April 1985; he was forbidden from disclosing its contents to third parties, least of all to his UN employers. The Czechoslovak Embassy in Burma monitored the payments he made.

2.2 As a result of political changes in Czechoslovakia since November 1989, in a letter addressed to the author on 2 January 1990, Polytechna allegedly admitted its wrongdoing and offered to negotiate amicable settlements with all former UN personnel affected. However, it did not respond to the author's repeated requests seeking such a settlement.

2.3 On 26 May 1992, the author filed a civil claim for damages in the Prague District Court (*Obvodny sud*) against Polytechna. In a hearing held on 12 May 1993, the Court claimed difficulty understanding the author's Slovak language (though it was one of the two official languages until 31 December 1993) but did not provide the author with an interpreter. It allegedly questioned whether the author was covered by the UN Convention on Privileges and Immunities of the United Nations. The District Court ruled against him, supposedly basing its judgement exclusively on Polytechna's arguments. It concluded that the author's payments to Polytechna were "voluntary contributions" for its mediation services in recruiting him to the UN, although the author had received a direct job offer from the UN.

2.4 On 14 September 1993, the author appealed to the Prague Municipal Court (*Mestsky sud*). Without a hearing or a request for supplementary evidence, the Municipal Court upheld the decision of the District Court on 10 December 1993, stating that no further appeal was available.

2.5 The author nonetheless appealed to the Supreme Court (*Najvyšsi sud*) on 1 March 1994. On 7 March 1996, the Supreme Court rejected his request and confirmed the Municipal Court's decision that its ruling was "final". According to the author, as with the Municipal Court, he was not called to the Supreme Court hearing, nor was he invited to present further evidence.

2.6 The author did not bring his claim before the Constitutional Court of the Czech Republic allegedly because neither he, nor his Slovakian lawyer, were informed about the existence of the

Constitutional Court (which had just been constituted in Brno, Czech Republic), but was not yet fully operational.

2.7 The author submitted his claim to the European Commission of Human Rights (ECHR) on 17 October 1996 (Case No. 34194/96). The ECHR at first questioned the admissibility on the ground that the author had not appealed to the Constitutional Court but then accepted the author's argument that he, as a foreigner, had not been informed of its existence. However, on 8 December 1997, the Commission declared the case inadmissible because its 6-month deadline for an appeal had lapsed.

The complaint

3.1 The author alleges that the Czech Republic violated article 2, paragraph 3(a) and (b), of the Covenant by failing to provide him with an effective remedy for the violation of his rights as an international civil servant under the UN Convention and failing to advise him of the existence of further judicial remedies. He contends that the courts not only concealed the possibility of appeal to the newly established Constitutional Court of the Czech Republic to him, but also misled him by ruling that the decision of the Municipal Court could not be appealed.

3.2 He alleges that he is victim of a violation by the Czech Republic of his rights under article 14 of the Covenant, because the Czech judicial authorities did not grant him a fair and public hearing before an impartial and independent tribunal. With the exception of the court of first instance, he was allegedly "excluded" from all other proceedings. According to the author, the Czech courts' bias toward a former state institution (Polytechna) deprived him of an effective judicial remedy under the Covenant, as well as under domestic legislation and the UN Convention. The proceedings and the judgment of the District Court were allegedly based on Polytechna's submissions alone. He adds that the Czech courts allegedly delayed his case by stating that correspondence had been lost, by withholding information about available remedies, and by failing to provide an interpreter. Finally, by ruling that the obligatory deductions from the author's UN salary were "voluntary" contributions in exchange for Polytechna's assistance in securing the author's UN contract, the District Court is said to have violated the principle of impartiality.

3.3 The author further claims that the facts set out above also amount to a violation of article 26 of the Covenant, because the Czech courts allegedly discriminated against him as a national of the "secessionist" Slovak Republic, which reflected a broader trend to deny payments to Slovak citizens.

3.4 With regard to his claim against the Slovak Republic, since the laws governing the separation of Czechoslovakia required that cases against former federal Czech or Slovak Federal Republic (CSFR) institutions be examined by the courts in the district in which they were based, he pursued his case against the former federal institution Polytechna in the Czech Republic. He adds that after the dissolution of the CSFR, all former federal property with pending liabilities was divided at a ratio of 3 to 1 between the Czech and the Slovak Republics. Accordingly, his

claim against the Slovak Republic should be considered as part of its shared liability with the Czech Republic and determined at the same ratio as between the two states.

Submission of the Slovak Republic on the admissibility of communication No. 1034/2001

4. By note of 18 November 2002, the Slovak Republic declined to comment either on the admissibility or merits of the complaint. First, it considered that only Czech courts were competent to receive the author's claim, because the Polytechna was based in Prague. Second, any civil proceeding initiated before the entry into force of the Agreement on Mutual Legal Assistance between the CSFR successor states (27 August 1993) was to be decided by the court of law to which it had originally been brought. Finally, the State party asserts that it cannot be held responsible for the alleged violation of the UN Convention which had supposedly taken place on the territory of, and had been caused by, the actions of a third state. The Slovak Republic thus sought the case against it to be dismissed *ratione personae*.

Submissions of the Czech Republic on the admissibility of communication No. 1035/2001

5.1 By Note verbale of 8 April 2004, the State party disputed the facts, and the admissibility and merits of the case. On the facts, it contends that the author had voluntarily entered into a contract with the "Czechoslovak UN Technical Assistance Recruitment Agency" (*Polytechna*) on 30 April 1985, pursuant to which he had agreed to pay contributions from his UN income. According to the State party, the Constitutional Court enjoyed "the power to quash a final decision of an authority of public power if it is at variance with the constitutional order and/or the promulgated international treaties on human rights and fundamental freedoms, binding on the Czech Republic, including the Covenant" on Civil and Political Rights. With the collapse of the former regime in 1989, he requested Polytechna to reimburse him for those deductions, as they allegedly contravened the UN Convention on the Privileges and Immunities of the United Nations. The Prague District Court concluded, on 12 May 1993, that the author had signed an "innominate contract" with Polytechna for its mediation services with a foreign employer and had voluntarily agreed to pay contributions which could not be considered to have been the equivalent of income-tax; the text of the UN Convention, published in the official Collection of Laws (No. 52/1956), was not concealed from the author in the CSFR; thus, the Polytechna contract was not inconsistent with the UN Convention in this respect. On appeal, the author and counsel had, according to the State party, excused themselves from the 10 December 1993 hearing in the Municipal Court, which upheld the District Court's judgement in the plaintiff's absence. The Municipal Court concluded that the court of first instance had prematurely examined the merits of the case, because it had not established that the author had an "urgent legal interest" in determining the non-existence of a legal relationship under the Code of Civil Procedure. According to the Municipal Court, since an "urgent legal interest" necessarily involved the provision of legal protection *before* a plaintiff's rights were violated, the author could not have possibly had any legal interest in such a case but was "only interested in removing the consequences of the violation of his right." The author then appealed to the High Court in Prague for an extraordinary remedy, arguing that his contributions to Polytechna should have been considered a violation of the UN Convention. As the High Court failed to examine the appeal by 31 December 1995, jurisdiction automatically passed to the Supreme Court under

Act No. 238/1995 which had established two High Courts in the Czech Republic. On 7 March 1996, the Supreme Court declared the appeal inadmissible because, under Czech legislation, appeals on points of law against an appellate court's final judgement were admissible only if substantial procedural error had been committed and only if the appellate court had expressly allowed for such a review because of the fundamental legal importance of the case. Neither proviso applied to the author's proceedings, in which the Municipal Court had proscribed further appeal.

5.2 In view of the above, the State party considers that the case should be declared inadmissible for non-exhaustion of domestic remedies. The author should have appealed to the Constitutional Court of the Czech Republic, which was established by the Czech Constitution of 16 December 1992. Under the procedural provisions governing the submission of individual complaints, effective as of 1 July 1993, an individual could file a complaint within 60 days of having exhausted all other venues of legal protection. Since such complaints were "neither a regular nor an extraordinary remedy" and the relevant rules were clearly set out in the Constitution and the Act on the Constitutional Court, lower courts were not required to provide such information. Therefore, the author was not deprived of his right to appeal by not having been informed about the option of submitting a constitutional complaint. Finally, the Constitutional Court of the CSFR was still in existence in 1992 and analogous courts were established in both successor states. Accordingly, the author, who was represented by counsel at the time, failed to exhaust domestic remedies, as required by article 5(2)(b) of the Optional Protocol.

5.3 The State party further asks that the author's claim under article 2 of the Covenant be declared inadmissible *ratione materiae*. It notes that the author argued that the Czech Republic had breached article 2(3)(a) of the Covenant by denying him judicial protection against a violation of his rights under the UN Convention and article 2(3)(b) by not informing him about the existence of the Constitutional Court; however, the domestic proceedings concerned an alleged breach of the UN Convention by his Polytechna contract. It argues that the Covenant is a "self-standing international treaty" which does not extend to the observance of other international instruments; thus, article 2 applies exclusively to the rights and freedoms guaranteed in the Covenant, not the ones arising from the UN Convention. Accordingly, the author's assertion that the rejection of his argument about a violation of the UN Convention also breached his Covenant rights is invalid.

5.4 Finally, the State party submits that the author's claims under articles 14 and 26 are unsubstantiated, as he failed to demonstrate how an alleged anti-Slovak attitude in the Czech Republic specifically affected his case, how the courts had been biased, and how he had been discriminated against as a foreigner or as a UN staff-member. The State party argues that the author's Slovak language was not a handicap in dealing with the Czech courts and dismisses his Slovak citizenship as irrelevant since no discrimination against Slovaks had been shown. The State party argues that the author never pleaded bias to challenge the impartiality of any individual judge and that he had allowed undue time to elapse after the end of the Czech and the ECHR proceedings before approaching the UN Human Rights Committee. Given the long lapse

of time and the absence of evidence as to procedural fault, the State party objects to what it describes as an arbitrary challenge of the domestic courts' decision.

Author's comments on the submissions of the Czech Republic

6.1 Despite that the observations submitted by the Slovak Republic (as reflected in paragraph 4 above) were transmitted to the author, he did not present any comment.

6.2 In relation to the observations of the Czech Republic, the author has submitted his comments on 7 June 2004. He argues that the State party has factually misrepresented his case: there was nothing "voluntary" about his payments to Polytechna or his obligation not to disclose the secret contract; after all, Polytechna itself had admitted in 1990 that its actions, which were improper and unlawful, were based on directives of the former regime.

6.3 On his alleged failure to exhaust domestic remedies, the author submits that national courts "need not adjudicate his case at all because a violation of international law is involved", and the immunities protected by the UN Convention are best left to the competence of an international tribunal. He adds that Czech courts have been selective about the civil claims in which they ordered compensation for offences of the former regime and that past injustices against UN personnel whose rights and immunities had been violated equally warrant a legal remedy.

6.4 The author again claims that the Prague District Court was both unwilling and unqualified to consider a case concerning a violation of the UN Convention. He asserts that the publication of the text of the UN Convention in an official CSFR law gazette referred to by the State party was no more than that a document published but never physically distributed, not even to the courts. According to him, the District Court judge, who had never heard of the UN Convention or seen a UN Laissez-Passer, questioned his credentials, complained that the pass and the document setting out the immunities were not in the Czech language, and hence declined to accept a copy of the Convention. The national courts ruled that his *Polytechna* contract had been "voluntary" only because they allegedly did not understand the provisions of the UN Convention.

6.5 The author asserts that he could not possibly have excused himself from the Municipal Court hearing of 10 December 1993 since he had never received a notice while residing abroad; if this was done by his counsel, it was without his knowledge or approval. The court proceedings allegedly violated his rights under the Covenant because all higher courts based their judgments on the District Court's findings, without understanding the State party's obligations derived from the UN Convention and without allowing him to be present at hearings.

Issues and proceedings before the Committee

7.1 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 complaint is admissible under the Optional Protocol to the Covenant.

7.2 The Committee has noted that the author submitted his case to the former European Commission on Human Rights (case 34194/96) which, on 8 December 1997, declared it inadmissible as having been submitted outside the six month deadline. In accordance with its jurisprudence, the Committee considers that the former European Commission did not “examine” the author’s case within the meaning of article 5, paragraph 2(a), and that it is therefore not precluded from considering the case under this provision.²

7.3 As to the claim of a violation of article 26 because of alleged bias and discriminatory attitude of the Czech Courts, the Committee considers that the author has failed to substantiate this claim sufficiently, for purposes of admissibility. Accordingly, this claim is inadmissible under article 2 of the Optional Protocol.

7.4 On the issue of exhaustion of domestic remedies in relation to the article 14 claim, the Committee has noted the arguments advanced by the State party and the explanation given by the author that he had brought his claim before all instances of the Czech legal system, except to the Constitutional Court of whose existence he allegedly was unaware, and exhausted all domestic remedies available to him in the Czech Republic. The Committee notes that the Constitutional Court existed at the time the Supreme Court ruled against the author, and was in fact accepting constitutional complaints. The Committee recalls its jurisprudence³ that the fact of being unaware, as a foreigner or otherwise, of the existence of a constitutional court does not exempt an individual from the duty to exhaust available domestic remedies, save in cases where the specific circumstances would have made it impossible to obtain the necessary information or assistance. Given that the author had legal representation throughout the Czech legal proceedings and that the Constitutional Court had jurisdiction over the fair trial issues raised, the Committee considers that neither exception applies to the author’s case. Accordingly, the Committee considers that the author has not shown why he could not have reasonably been expected to challenge the Supreme Court’s decision in the Constitutional Court. The Committee thus concludes that as far as the communication might give rise to a claim under the Covenant, domestic remedies have not been exhausted for the purposes of 5, paragraph 2(b) of the Optional Protocol.⁴

7.5 The Committee notes that the author’s claim against the Slovak Republic is based on the reasoning that, since all former federal property with pending liabilities was divided at a ratio of 3 to 1 between the Czech Republic and the Slovak Republic, the latter should be held responsible in relation to the author’s claims before the Committee at the same ratio. As the Committee has considered the communication inadmissible in relation to the Czech Republic because of non-exhaustion of domestic remedies, the author has no separately subsisting claim in relation to the

² See, e.g., *Nikolov v. Bulgaria* (No. 824/1998), inadmissibility decision adopted on 24 March 2000, para. 8.2; and *Luis Bertelli Gálvez v. Spain*, (No. 1389/2005), inadmissibility decision adopted on 25 July 2005, para 4.3.

³ See *Jarmila Mazurkiewiczova v. the Czech Republic* (No. 724/1996), Inadmissibility Decision of 26 July 1999; *Gerhard Malik v. the Czech Republic* (No. 669/1995), Inadmissibility Decision 21 October 1998.

⁴ *Ibrahim Mahmoud v. Slovakia* (935/2000), inadmissibility decision of 23 July 2001.

Slovak Republic and this part of the communication is inadmissible under article 2 of the Optional Protocol.

8. The Committee therefore decides:

(a) that the communications are inadmissible under article 2 and article 5, paragraph 2 b), of the Optional Protocol;

(b) that this decision shall be communicated to the author and to the authorities of the Czech Republic and the Republic of Slovakia.

[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.]
