



**International covenant
on civil and
political rights**

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

VIEWS

Communication No. 1054/2002

Submitted by: Mr. Zdeněk Kříž (not represented by counsel)

Alleged victim: The author

State party: The Czech Republic

Date of communication: 28 September 2001 (initial submission)

Document references: Special Rapporteur's rule 97 decision, transmitted to the State party on 1 March 2002 (not issued in document form)

Date of adoption of Views: 1 November 2005

Substantive issues: Discrimination on grounds of citizenship

Procedural issues: None

Articles of the Covenant: 26

On 1 November 2005, the Human Rights Committee adopted the annexed draft as the Committee's Views, under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 1054/2002. The text of the Views is appended to the present document.

[ANNEX]

* Made public by decision of the Human Rights Committee.

ANNEX

Views of the Human Rights Committee under article 5, paragraph 4, of
the Optional Protocol to the International Covenant on Civil and Political rights

Eighty-fifth session

concerning

Communication No. 1054/2002**

Submitted by: Mr. Zdeněk Kříž (not represented by counsel)
Alleged victim: The author
State party: The Czech Republic
Date of communication: 28 September 2001 (initial submission)

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

Meeting on 1 November 2005,

Having concluded its consideration of communication No. 1054/2002, submitted to the Human Rights Committee on behalf of Mr. Zdeněk Kříž under the Optional Protocol to the International Covenant on Civil and Political Rights,

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

Adopts the following:

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

1. The author of the communication is Zdeněk Kříž, a U.S. and Czech citizen, born in 1916 in Vysoké Mýto, Czech Republic, currently residing in the United States. He claims to be a victim of a violation by the Czech Republic¹ of article 26 of the International Covenant on Civil and Political Rights (the Covenant). He is not represented by counsel.

** 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. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Michael O'Flaherty, Ms. Elisabeth Palm, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Ivan Shearer, Mr. Hipólito Solari-Yrigoyen and Mr. Roman Wieruszewski.

Pursuant to rule 90 of the Committee's rules of procedure, Committee member Ms. Ruth Wedgwood did not participate in the adoption of the present decision.

¹ The Covenant was ratified by Czechoslovakia in December 1975 and the Optional Protocol in March 1991. The Czech and Slovak Federal Republic ceased to exist on 31 December 1992. On 22 February 1993, the Czech Republic notified its succession to the Covenant and the Optional Protocol.

Factual background

2.1 Before 1948, the author lived in Prague where he owned 1/6th of an apartment building and a business. In 1958, he was ordered to close his business and to join a cooperative which took over his equipment, without any compensation paid to him. In the early 1960's, the author, under pressure, "donated" his 1/6th apartment building to the State. In 1968, he left with his wife and two sons for Austria and subsequently emigrated to the United States. In 1974, a Czechoslovak court sentenced the author, his wife and his elder son, *in absentia*, to 18 months imprisonment for leaving the country. On 16 April 1974, the author became a US citizen. By virtue of a Naturalisation Treaty between the USA and Czechoslovakia from 1928, he consequently lost his Czech citizenship.

2.2 On 1 February 1991, Act 87/1991 on Extra-Judicial Rehabilitation was adopted by the Czech Government. It spelled out the conditions for recovery of property for persons whose property had been confiscated under the Communist rule. Under the Act, a person claiming restitution of property had to be, *inter alia*, (a) a Czech-Slovak citizen and (b) a permanent resident in the Czech Republic, to claim entitlement to recover his or her property. These requirements had to be fulfilled during the time period in which restitution claims could be filed, between 1 April and 1 October 1991. A judgment of the Czech Constitutional Court of 12 July 1994 (No.164/1994), however, annulled the condition of permanent residence and established a new time frame for the submission of restitution claims by persons who had thereby become entitled persons, running from 1 November 1994 to 1 May 1995. In 1995, the author applied for Czech citizenship, which he obtained on 28 July 1995, i.e. after the expiry of the deadline for applications for restitution.

2.3 On 14 April 1995, the author lodged a claim for restitution of property to the owner of the apartment building, the State Housing Enterprise in Prague 4, which did not accede to his request, because he did not fulfil the condition of Czech citizenship in the stipulated time period. He brought his case before the District Court of Prague 4, which rejected the restitution claim on 27 April 1998, on the ground that he did not fulfil the citizenship requirement during the period in which the new restitution claims could be made (which ended on 1 May 1995). The Court did not consider whether he met the other conditions necessary for establishing entitlement for recovery of his property. On 3 December 1998, the Municipal Court in Prague confirmed the decision of the District Court, stating that the author would have had to fulfil the citizenship condition at the latest at the end of the initial period open for claims, i.e. on 1 October 1991, to be an "entitled person". On 25 July 2000, the Constitutional Court confirmed the decision on the same grounds. The author thus claims to have exhausted domestic remedies.

The complaint

3. The author claims to be a victim of a violation of article 26 of the Covenant, as the citizenship requirement of Act 87/1991 constitutes unlawful discrimination.

The State party's submission on the admissibility and merits of the communication and author's comments

4.1 On 9 January 2003, the State party commented on the admissibility and merits of the communication. It concedes that the author has exhausted all available domestic remedies, and

does not challenge the admissibility of the communication. On a factual issue, the State party indicates that the author only obtained Czech citizenship on 25 September 1997.

4.2 On the merits, the State party refers to its earlier submissions in similar cases, and indicates that its restitution laws, including Act 87/1991, were designed to achieve the purpose of mitigating the consequences of injustices which occurred during the communist regime, while being aware that these injustices can never be remedied in full.

4.3 The State party adopts the position spelled out in judgment No. 185/1997 of the Constitutional Court, according to which:

“the International Covenant on Civil and Political Rights stipulates the principle of equality in its Article 2, para 1 and its Article 26. The right to equality stipulated in Article 2 is of the accessory nature; e.g. it applies only in conjunction with another right enshrined in the Covenant. The Covenant does not contain the right to property. Article 26 stipulates the equality before the law and the prohibition of discrimination. Citizenship is not listed among the demonstrative enumeration of the grounds on which discrimination is prohibited. The Human Rights Committee repeatedly admitted differentiation based on reasonable and objective criteria. The Constitutional Court considers the consequences of Article 11 para 2 of the Charter of Fundamental Rights and Freedoms² as well as the objectives of the restitution legislation and also the legislation concerning the citizenship as being such reasonable and objective criteria.”

The State party confirms that it does not intend to change its position about the condition of citizenship in the legislation: changing the conditions laid down in the restitution law at this stage would influence the economic and political stability, and destabilise the legal environment, of the Czech Republic.

5.1 On 6 May 2004, the author commented on the State party’s submissions. He reiterates his initial claims and states that his case is similar to cases already considered by the Committee, in particular the cases of *Simunek*, *Adam* and *Blazek*³, in which the Committee found a violation by the State party of article 26.

5.2 He further refers to laws which overturned all Communist verdicts of confiscation (Law 119/1990) and to Constitutional Court decisions in other cases, finding that the confiscation verdicts were null and void and that the original ownership had never been lost.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Human Rights Committee

² Article 11 para 2 of the Charter of Fundamental Rights and Freedoms stipulates that “law may determine that certain property may only be owned by the citizens or legal entities having their seat in the Czech Republic”.

³ See Communication No. 516/1992, *Simunek v. Czech Republic*, Views adopted on 19 July 1995, Communication No.586/1994, *Adam v. Czech Republic*, Views adopted on 23 July 1996, and Communication No.857/1999, *Blazek v. Czech Republic*, Views adopted on 12 July 2001.

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 The Committee has noted that the State party concedes to the admissibility of the complaint and decides that the communication is admissible in as far as it appears to raise issues under article 26 of the Covenant.

Consideration of the merits

7.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as provided in article 5, paragraph 1, of the Optional Protocol.

7.2 The issue before the Committee is whether the application to the author of Act 87/1991 amounted to discrimination, in violation of article 26 of the Covenant. 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 objective and reasonable grounds does not amount to prohibited discrimination within the meaning of article 26⁴. Whereas the citizenship criterion is objective, the Committee must determine whether its application to the author was reasonable in the circumstances of his case.

7.3 The Committee recalls its Views in the cases of *Adam, Blazek and Marik*⁵, where it held that article 26 had been violated. Taking into account that the State party is itself responsible for the departure of the author and his family from Czechoslovakia in seeking refuge in another country where he eventually established permanent residence and obtained a new citizenship, the Committee considers that it would be incompatible with the Covenant to require the author to satisfy the condition of Czech citizenship for the restitution of his property or alternatively for compensation.

7.4 The Committee considers that the precedent established in the above cases also applies to the author of the present communication, and that the application by the domestic courts of the citizenship requirement violated his rights under article 26 of the Covenant.

8. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol, is of the view that the facts before it disclose a violation of article 26 of the Covenant.

9. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy, which may be compensation if the property cannot be returned. The Committee reiterates that the State party should review its legislation to ensure that all persons enjoy both equality before the law and equal protection of the law.

10. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has

⁴ See Communication No.182/1984, *Zwaan-de Vries v. The Netherlands*, Views adopted on 9 April 1987, paragraph 13.

⁵ Communication No.586/1994, *Adam v. Czech Republic*, Views adopted on 23 July 1996, paragraph 12.6, Communication No.857/1999, *Blazek v. Czech Republic*, Views adopted on 12 July 2001, paragraph 5.8 and Communication No. 945/2000, *Marik v. Czech Republic*, Views adopted on 26 July 2005, paragraph 6.4

recognised 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 recognised in the Covenant and to provide an effective and enforceable remedy in case a violation has been established, the Committee wishes to receive from the State party, within 90 days, information about the measures taken to give effect to the Committee's views.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]
