



**International covenant
on civil and political
rights**

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HUMAN RIGHTS COMMITTEE
Ninety-third session
7 - 25 July 2008

VIEWS

Communication No. 1485/2006

<u>Submitted by:</u>	Mr. Zdenek Vlček (not represented by counsel)
<u>Alleged victim:</u>	The author
<u>State party:</u>	Czech Republic
<u>Date of communication:</u>	21 March 2006 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 97 decision, transmitted to the State party on 19 July 2006 (not issued in document form)
<u>Date of adoption of views:</u>	10 July 2008

* Made public by decision of the Human Rights Committee.

Subject matter: Discrimination on the basis of citizenship with respect to restitution of property

Procedural issues: Abuse of the right of submission

Substantive issues: Equality before the law and equal protection of the law

Articles of the Covenant: 26

Articles of the Optional Protocol: 3

On 10 July 2008 the Human Rights Committee adopted the annexed text as the Committee's Views, under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 1485/2006.

[ANNEX]

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

Ninety-third session

concerning

Communication No. 1485/2006*

Submitted by: Mr. Zdenek Vlček (not represented by counsel)
Alleged victim: The author
State party: Czech Republic
Date of communication: 21 March 2006 (initial submission)

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

Meeting on 10 July 2008,

Having concluded its consideration of communication No. 1485/2006, submitted to the Human Rights Committee by Zdenek Vlček 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 Zdenek Vlček, a naturalised American citizen residing in Illinois, born on 12 August 1925 in Kresin, Czechoslovakia. He claims to be a victim of a violation by the Czech Republic of article 26 of the International Covenant on Civil and Political Rights¹. He is not represented by counsel.

* The following members of the Committee participated in the examination of the present communication: Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine Chanet, Mr. Yuji Iwasawa, Mr. Edwin Johnson, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Ms. Elisabeth Palm, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Ivan Shearer and Ms. Ruth Wedgwood.

¹ The Optional Protocol entered into force for the State party on 22 February 1993.

Factual background

2.1 The author states that he fled the communist regime in Czechoslovakia in September 1951. On 15 March 1960 he obtained the citizenship of the United States of America and lost his Czechoslovakian citizenship, in accordance with the Bilateral Treaty of Naturalisation of 1928. He regained Czech citizenship on 10 June 2000.

2.2 By a resolution of the People's Court of Law in Pacov of 28 April 1953, the author's property passed to the State. By Government Order No. 15/1959 and a decision of the Pelhrimov District National Committee of 13 July 1961, the property until then owned by the author's mother also passed to the State.

2.3 Following the enactment of Act No. 229/1991, which allowed for the restitution of agricultural property confiscated by the communist regime, on 26 January 1993 and again on 25 September 1995, the author and his brother filed an application for the restitution of both his and his family's property, which consisted of a flour mill, fields, meadows and woods of about 36 hectares in Kresin (district Pelhrimov). On 23 April 1996, the Pelhrimov District Authority rejected the application on the ground that the petitioners were not citizens of the Czech Republic and thus did not meet the condition laid down in section 4 of the Act.

2.4 Upon appeal filed by the author and his brother, the Supreme Court, by decision of 19 August 1996, referred the case to the Ceske Budejovice Regional Court. On 18 September 1996, the Regional Court quashed the challenged decision and referred the case back to the District Authority for decision. On 4 June 1997, the District Authority again rejected the author's claim on the ground that he and his brother did not meet the condition of citizenship.

2.5 After the author regained Czech citizenship, he and his brother again requested, by application of 26 September 2000, restitution of the family property. On 16 October 2000, the District Authority rejected the application for having been filed after 31 January 1993, the deadline for applications fixed in the law.

2.6 The author states that he is the only heir to the family property since his brother's death in 2001.

The complaint

3. The author claims that he is a victim of discrimination, because the requirement of citizenship for restitution of his family's property is in violation of article 26 of the Covenant.

The State party's observations on admissibility and merits

4.1 In its submission of 8 November 2006, the State party addresses both admissibility and merits of the communication. As to admissibility, the State party notes that the last official decision in the author's case became final on 29 July 1997. Thus, nine years and eight months elapsed before the author turned to the Committee (or five and a half years if the District Authority's decision of 16 October 2000 is taken as last relevant decision). In the absence of any explanation by the author of the reason for the delay and in reference to the Committee's

decision in communication No. 787/1997 *Gobin v. Mauritius*², the State party invites the Committee to consider the communication inadmissible as an abuse of the right to submit a communication, under article 3 of the Optional Protocol.

4.2 As to the merits of the case, the State party refers to its observations submitted to the Committee in similar cases³ in which it outlined the political circumstances and legal conditions for the Restitution Act. The purpose of the Act was only to eliminate some of the injustices committed by the communist regime as it was not feasible to eliminate all injustices committed at the time. The State party refers to the decisions by the Constitutional Court which repeatedly considered the question of whether the precondition of citizenship complied with the Constitution and the fundamental rights and freedoms and found no reason for abolishing it.

4.3 The State party further explains that the restitution laws were part of the objective to transform society and to carry out economic reform including the restitution of private property. The condition of citizenship was included to ensure that the private owners would take due care of the property. The pre-condition of citizenship has been considered to be in full conformity with the State party's constitutional order.

4.4 Finally, the State party acknowledges that the general principle *pacta sunt servanda* entails an obligation to comply with the provisions of the Covenant. However, in the context of the implementation of the Committee's views the State party notes that the views lack the attributes of a judicial decision and the State party's obligation implies thus little more than a duty to take the views into consideration in the authorities' activities, if possible. The State party believes that in the present case, as in other similar cases, exceptionally serious reasons exist that allow the State party to diverge from the Committee's views without prejudice of the principle *pacta sunt servanda*.

The author's comments on the State party's observations

5.1 In his comments, dated 28 February 2007, on the State party's submission, the author claims that the Czech Republic has misused the Naturalization Treaty with the USA to deny restitutions to anybody who obtained USA citizenship and thus lost the Czech one. He refers to the Committee's concluding observations on the initial report of the Czech Republic⁴ and its views in similar cases where the Czech Republic was told to change its law and concludes that the State party has never paid much attention to the Committee's decisions⁵, thus violating its Constitution which states that international treaties have preference before domestic laws.

² Communication No. 787/1997, *Gobin v. Mauritius*, inadmissibility decision adopted on 16 July 2001.

³ Communication No. 586/1994 *Adam v. the Czech Republic* and Communication No. 1000/2001 *Mráz v. the Czech Republic*.

⁴ CCPR/CO/72/CZE, Human Rights Committee Concluding Observations on the initial report of the Czech Republic submitted under the International Covenant on Civil and Political Rights, adopted on 24 July 2001.

⁵ Communication No. 945/2000, *Marik v. the Czech Republic*, Views adopted on 26 July 2005 and Communication No. 1054/2002 *Kríz v. the Czech Republic*, Views adopted on 1 November 2005.

5.2 The author rejects the State party's argument that his communication is inadmissible for abuse. He explains that the delay in submitting the communication was caused by lack of information and states in this respect that the State party does not publish and translate the decisions of the Committee or the concluding observations.

Issues and proceedings before the Committee

Consideration of admissibility

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

6.2 The Committee has ascertained, as required under article 5, paragraph 2 (a), of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

6.3 The Committee has noted the State party's argument that the communication should be declared inadmissible as an abuse because of the long delay between the last decision in the case and the submission of the communication to the Committee. The author has argued that the delay was caused by the lack of information available. The Committee notes that the Optional Protocol does not establish time limits within which a communication needs to be submitted. It is thus only in exceptional circumstances that the delay in submitting a communication can lead to the inadmissibility of a communication⁶. In this regard, the Committee notes that the author, having been denied restitution of the family property by the Regional Court in September 1996 on the ground that he and his brother did not meet the citizenship condition, regained Czech citizenship in 2000. The author and his brother subsequently applied, once again, for restitution of the family property, which was denied by the District Authority in October 2000. In the circumstances of the present case, the Committee considers that the delay of five and a half years between the last decision of the relevant authority and the submission of the communication to the Committee does not render the communication inadmissible as an abuse under article 3 of the Optional Protocol.

6.4 In the absence of any further objections to the admissibility of the communication, the Committee declares the communication admissible in so far as it may 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.

⁶ See Communication No. 1223/2003, *Tsarjov v. Estonia*, Views adopted on 26 October 2007, para. 6.3; Communication No. 1434/2005, *Fillacier v. France*, inadmissibility decision adopted on 27 March 2006, para. 4.3; and Communication No. 787/1997, *Gobin v. Mauritius*, inadmissibility decision adopted on 16 July 2001, para. 6.3.

7.2 The issue before the Committee is whether the denial of the author's request for restitution of his family's property on the ground that he did not fulfill the citizenship requirement contained in section 4 of Act 229/1991 constitutes a violation of the Covenant.

7.3 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 26.⁷

7.4 The Committee further recalls its Views in the cases of *Simunek, Adam, Blazek, Des Fours Walderode* and *Gratzinger*⁸, where it held that article 26 of the Covenant had been violated by the State party's requirement of citizenship for restitution: "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 the author's ... departure, it would be incompatible with the Covenant to require the author ... to obtain Czech citizenship as a prerequisite for the restitution of [his] property or, alternatively, for the payment of appropriate compensation". The Committee further recalls its jurisprudence⁹ that the citizenship requirement in these circumstances is unreasonable.

7.5 The Committee considers that the principle established in the above cases also applies to the author of the present communication. Thus, the Committee concludes that the application to the author of the citizenship requirement laid down in Act No. 229/1991 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 International Covenant on Civil and Political Rights.

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, including compensation if the property in question cannot be returned. The Committee reiterates that the State party should review its legislation and practice to ensure that all persons enjoy both equality before the law and equal protection of the law.

⁷ See *inter alia* Communication No.182/1984, *Zwaan-de Vries v. The Netherlands*, Views adopted on 9 April 1987, paragraph 13.

⁸ Communication No. 516/1992, *Simunek v. Czech Republic*, Views adopted on 19 July 1995, paragraph 11.6; 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; Communication No. 747/1997, *Des Fours Walderode v. Czech Republic*, Views adopted on 30 October 2001, paragraph 8.3; and Communication No. 1463/2006, *Gratzinger v. the Czech Republic*, Views adopted on 25 October 2007, paragraph 7.4.

⁹ See Communication 516/1992, *Simunek v. Czech Republic*, Views adopted on 19 July 1995, paragraph 11.6.

10. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has 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 180 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 also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]
