

HUMAN RIGHTS COMMITTEE

Fábryová v. The Czech Republic

Communication No 765/1997

30 October 2001

CCPR/C/73/D/765/1997

VIEWS

Submitted by: Ms. Eliska Fábryová, acting on her own behalf

State party concerned: The Czech Republic

Date of communication: 28 May 1997 (initial submission)

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

Meeting on 30 October 2001,

Having concluded its consideration of communication No. 765/1997, submitted to the Human Rights Committee by Eliska Fábryová 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 Eliska Fábryová, née Fischmann, a Czech citizen, born on 6 May 1916. The author claims to be a victim of discrimination by the Czech Republic. The Optional Protocol entered into force for the Czech Republic on 12 June 1991¹.

The facts as submitted by the author

2.1 The author's father Richard Fischmann owned an estate in Puklice in the district of Jihlava,

Czechoslovakia. In 1930, at a national census, he and his family registered as Jews. In 1939, after the occupation by the Nazis, the estate was "aryanised"² and a German sequestrator was appointed. Richard Fischmann died in 1942 in Auschwitz. The author is not represented by counsel.

2.2 The rest of the family was interned in concentration camps and only the author and her brother Viteslav returned. In 1945, the estate of Richard Fischmann was confiscated under Benes decree 12/1945 because the district committee decided that he was German as well as a traitor to the Czech Republic³, the assumption that he was German being based on the assertion that he had lived "in a German way".

2.3 The author's appeal against the confiscation was dismissed. The decision of the district committee was upheld by a judgment of the highest administrative court in Bratislava on 3 December 1951.

2.4 After the end of communist rule in Czechoslovakia, the author lodged a complaint to the General procurator, on 18 December 1990, for denial of justice with regard to her claim for restitution. Her complaint was dismissed on 21 August 1991 for being out of time, having been lodged more than five years after the confiscation. The author states that under Communist rule it was not possible to lodge a complaint within the time limit of five years as prescribed by law.

2.5 The author states that on 17 June 1992 she applied for restitution according to the law No. 243/1992⁴. Her application was dismissed on 14 October 1994 by the Land Office of Jihlava.

The complaint

3. The author claims to be a victim of discrimination as under the law No. 243/1992 she is not entitled to restitution of her father's property.

State party's observations

4.1 By submission of 20 October 1997, the State party stated that the author's application for restitution of her father's property was dismissed by the Jihlava Land Office on 14 October 1994, on grounds of non-compliance with the legal requirements. It explained that the confiscated property of persons who were deprived of Czechoslovak citizenship under the Benes decrees in 1945, may be restituted in cases where the claimant has his citizenship renewed through the procedures set by law. However, the law did not expressly address the situation of persons who never lost their citizenship and whose property was confiscated in violation of the laws operative at that time. Since the author's father never lost his Czechoslovak citizenship, he could not be considered to be an entitled person and the property could not be restored.

4.2 The State party further explained that the author's appeal was dismissed for being filed out of time. The author's lawyer then raised the objection that the Land Office's decision had not been served properly, since it had not been served to the lawyer directly, but to a member of his staff, who was not authorized to receive it. The Land Office accepted the objection, and served the decision again. The author subsequently appealed against the decision. The City Court dismissed the appeal by a ruling dated 6 August 1996, on the ground that the decision had been properly served the first time

and should not have been served a second time. On 11 October 1996, the author filed a constitutional complaint, which was dismissed by the Constitutional Court as inadmissible *ratione temporis*.

4.3 On the basis of the all the reasons given, the State party argued that the author's communication was inadmissible for non-exhaustion of domestic remedies since she missed the deadlines for the appeals.

4.4 The State party further submitted that, since the present communication had been submitted to the Committee, the Constitutional Court had decided, in cases similar to that of the author's father, that applicants who never lost their citizenship were also entitled to restitution under law no. 243/1992. As a consequence, the Central Land Office, which examined the author's file, decided that the Land Office's decision in the author's case should be reviewed, since it was inconsistent with the Constitutional Court's ruling. On 27 August 1997, the Central Land Office initiated administrative proceedings and on 9 October 1997, it quashed the Land Office's decision of 14 October 1994, and decided that the author should restart her application for restitution *ab initio*. Normal appeal possibilities would be open to the author if she was not satisfied with the outcome of the proceedings. Also for this reason, the State party argued that the communication was inadmissible under article 5, paragraph 2(b), of the Optional Protocol.

The author's comments

5.1 By a letter of 21 January 1998, the author rejected the State party's argument that her communication was inadmissible, since she had already appealed up to the Constitutional Court and no further appeal was available. However, the author confirmed that after her communication was registered for consideration by the Human Rights Committee, new proceedings were ordered.

5.2 In a further submission, the author forwarded a copy of a letter by the Ministry for Agriculture, dated 25 May 1998, in which she was informed that the decision of the Central Land Office of 9 October 1997 to quash the decision of the Land Office of 14 October 1994 had been served to other interested parties after the expiration term of three years of the latter decision, and that it therefore did not attain legal force.

5.3 The author claimed that the pattern of arbitrariness in her case constitutes a flagrant violation of human rights in denying her a remedy for the abuses committed against her and her family in the past.

Additional comments by the State party on the admissibility

6. No further observations were received from the State party, although the author's comments had been transmitted to it.

Decision on admissibility

7. At its sixty-sixth session, on 9 July 1999, the Committee considered the admissibility of the

communication. Having ascertained, pursuant to article 5, paragraph 2 of the Optional Protocol, that the author had exhausted all available domestic remedies and that the same matter was not being examined under another procedure of international investigation or settlement, the Committee also noted that the State party reopened the author's case by a decision of the Central Land Office of 9 October 1997 and that, as a result of errors apparently committed by the State party's authorities, the decision to quash the original decision of the Land Office had never come into effect. In the circumstances, the Committee declared the communication admissible.

Observations by the parties on the merits

8.1 Despite having been invited to do so by the decision of the Committee of 9 July 1999 and by a reminder of 19 September 2000, the State party has not submitted any observations or comments on the merits of the case.

8.2 By letters of 25 January 2000, 29 August 2000 and 25 June 2001, the author brought to the attention of the Committee that despite the adoption by the State party's Parliament of new legislative measures governing the restitution of property confiscated as a result of the Holocaust (Act No. 212/2000), the authorities had not been willing to apply such a legislation and have never compensated her.

8.3 Despite having been transmitted the above information by a letter of 24 July 2001, the State party has not made any additional comments.

Issues and proceeding before the Committee

9.1 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. Moreover, in the absence of any submission from the State party following the Committee's decision on admissibility, the Committee relies on the detailed submissions made by the author so far as they raise issues concerning Law nr. 243/1992 as amended. The Committee recalls in this respect 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. The complaint of the author raises issues under article 26 of the Covenant.

9.2 The Committee notes that the State Party concedes that under Law nr 243/1992 individuals in a similar situation as that of the author qualify for restitution as a result of the subsequent interpretation given by the Constitutional Court (para. 4.4). The State Party further concedes that the decision of the Jihlava Land Office of 14 October 1994 was wrong and that the author should have had the opportunity to enter a fresh application before the Jihlava Land Office. The author's renewed attempt to obtain redress has, however, been frustrated by the State party itself which, through a letter of the Ministry of Agriculture of 25 May 1998, informed the author that the decision of the Jihlava Land Office of 14 October 1994 had become final on the ground that the decision of the Central Land Office reversing the decision of the Jihlava Land Office had been served out of time.

9.3 Given the above facts, the Committee concludes that, if the service of the decision of the Central Land Office reversing the decision of the Jihlava Land Office was made out of time, this was attributable to the administrative fault of the authorities. The result is that the author was deprived of treatment equal to that of persons having similar entitlement to the restitution of their previously confiscated property, in violation of her rights under article 26 of the Covenant.

10. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is therefore of the view that the facts before it disclose a violation of article 26 of the Covenant.

11. 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 an opportunity to file a new claim for restitution or compensation. The State party should review its legislation and administrative practices to ensure that all persons enjoy both equality before the law as well as the equal protection of the law.

12. The Committee recalls 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.

13. 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 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, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Martin Scheinin, Mr. Hipólito Solari Yrigoyen, Mr. Ivan Shearer and Mr. Maxwell Yalden.

** The text of a dissenting individual opinion signed by Committee member Ms. Christine Chanet is appended to the present document.

Notes

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

² i. e. that the property was taken away from Jews as "non-Aryans" and transferred to the German State or German natural or juridical persons.

³ The author states that according to the edict Nr. A 4600 9/11 45 VI/2 of the Ministry of the Interior of 13 November 1945 the district committees had the competence to examine the reliability of those persons who in 1930 had registered as Jews.

⁴ Law no. 243/1992 provides for the restitution of property which was confiscated as a result of Benes decrees Nos. 12/1945 and 108/1945. One of the conditions to be eligible for restitution is that the claimant must have been granted Czech citizenship by decree 33/1945, Act no. 245/1948, 194/1949 or 34/1953.

Appendix

Individual opinion of Committee member Ms. Christine Chanet

The State party did not consider it necessary to provide any explanation as to the substance of the case since, in its view, domestic remedies had not been exhausted.

In paragraphs 10.2 and 10.3 of its decision the Committee finds a violation of the Covenant in administrative decisions but fails to take into account the State party's observations, in which the State party maintained that those decisions could be contested through the remedy of the courts and that the author of the communication had sought to avail herself of that remedy but had done so out of time.

Accordingly, this communication ought, in my opinion, to have been considered inadmissible.