



**International covenant
on civil and political
rights**

Distr.
RESTRICTED*

CCPR/C/91/D/1463/2006
13 November 2007

Original: ENGLISH

HUMAN RIGHTS COMMITTEE
Ninety-first session
15 October – 2 November 2007

VIEWS

Communication No. 1463/2006

| | |
|-----------------------------------|---|
| <u>Submitted by:</u> | Peter and Eva Gratzinger (not represented) |
| <u>Alleged victim:</u> | The authors |
| <u>State Party:</u> | The Czech Republic |
| <u>Date of communication:</u> | 12 February 2006 (initial submission) |
| <u>Document references:</u> | Special Rapporteur's rule 97 decision, transmitted to the State party on 7 March 2006 (not issued in document form) |
| <u>Date of adoption of Views:</u> | 25 October 2007 |

* 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: Another international instance of investigation, abuse of the right of submission

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

Articles of the Covenant: 26

Article of the Optional Protocol: 3, and 5, 2(a)

On 25 October 2007, 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. 1463/2006.

[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-first session

concerning

Communication No. 1463/2006*

| | |
|-------------------------------|---|
| <u>Submitted by:</u> | Peter and Eva Gratzinger (not represented by counsel) |
| <u>Alleged victim:</u> | The authors |
| <u>State Party:</u> | The Czech Republic |
| <u>Date of communication:</u> | 12 February 2006 (initial submission) |

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

Meeting on 25 October 2007,

Having concluded its consideration of communication No. 1463/2006, submitted to the Human Rights Committee by Peter and Eva Gratzinger 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 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 communication are Mr. Peter Gratzinger and Mrs. Eva Gratzinger, both dual U.S. and Czech citizens of Czech origin and both born in 1949 in the former Czechoslovakia. They claim to be victims of violations by the Czech Republic of their rights

* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine Chanet, Mr. Maurice Glélé Ahanhanzo, Mr. Yuji Iwasawa, Mr. Edwin Johnson, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Ms. Zonke Zanele Majodina, Mr. Michael O'Flaherty, Mr. José Luis Pérez Sánchez-Cerro, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Ivan Shearer and Ms. Ruth Wedgwood.

under article 26 of the International Covenant on Civil and Political Rights.¹ They are not represented.

Factual background

2.1 In 1978, the authors bought a house in Liberec, Czechoslovakia. They lived there until 1982, when they fled from Czechoslovakia. In 1983 they were granted refugee status in the United States on the basis of their persecution on political grounds. The same year, a Czechoslovakian court convicted them *in absentia* for the offence of illegally emigrating from the country and sentenced them to forfeiture of property and imprisonment. Their property was transferred to the State and sold to a couple in 1983. In 1989 the authors became U.S. citizens, thereby losing their Czech citizenship pursuant to a bi-lateral treaty, the 1928 Naturalization Treaty. On several occasions since the fall of the communist regime in 1989, they allegedly attempted to reclaim Czech citizenship, which was repeatedly denied by Czech authorities. The authors reacquired Czech citizenship in 2000.

2.2 On the basis of Act No. 119/1990 Coll. on Judicial Rehabilitation, which rendered null and void all sentences handed down by Communist courts for political reasons, the judgment that had sentenced the authors to forfeiture of property was quashed *ex lege*. Persons whose property had been confiscated were eligible to recover their property, subject to conditions spelled out in a separate restitution law, Act No. 87/1991 on Extra-Judicial Rehabilitation, which entered into force on 1 April 1991.

2.3 Under Act No. 87/1991, a person claiming restitution of property had to: be a Czech-Slovak citizen; be a permanent resident in the Czech Republic; and to prove the unlawfulness of the acquisition by the current owner of the property in question. The first two requirements had to be fulfilled during the time period in which restitution claims could be filed, between 1 April and 1 October 1991.

2.4 On 12 July 1994, a judgment of the Constitutional Court (No.164/1994), annulled the condition of permanent residence and established a new time frame of six months for the submission of restitution claims, beginning on 1 November 1994. The newly entitled persons were persons who, during the original period of time (1 April to 1 October 1991), met all the other conditions, including the citizenship condition, with the exception of permanent residence.

2.5 The authors requested the current owners of their property to return it, which they refused to do. In January 1995, they applied for the restitution of their property to the Court in Liberec under restitution Act 87/1991. On 30 September 1996, the court denied their application on the ground that they were not Czech citizens. The Court noted that the authors had failed to demonstrate that the owners had acquired their property on the basis of an unlawful advantage. On 13 February 1997, the District Court of Ustí dismissed their appeal on the same ground. Both in the original petition and in the appeal the authors argued that the condition of citizenship was unreasonable under the Covenant and invoked the Committee's Views in the case of *Simunek et*

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 Optional Protocol.

*al v. Czech Republic*². On 2 September 1997 the Constitutional Court dismissed their constitutional appeal, based on the right to protection of property, as being manifestly ill-founded.

2.6 The authors applied to the European Commission on Human Rights, alleging *inter alia* violations of article 1 of Protocol No. 1 (right to property) and article 14 (non-discrimination) of the European Convention. On 10 July 2002, the European Court of Human Rights declared the author's complaint inadmissible³. The court held that the authors did not have the status of owners, but were merely claimants, and declared their claim under article 1 of Protocol 1 of the European Convention inadmissible *ratione materiae*. It concluded that article 14 of the European Convention, which has no independent existence since it has effect solely in relation to the enjoyment of the rights and freedoms safeguarded by the Convention, was not applicable to the authors' case.

The complaint

3. The authors claim a violation of article 26 of the Covenant, because they were discriminated against on the basis of their citizenship. They invoke the Committee's case law on the subject of discrimination in property restitution claims against the Czech Republic.

The State party's submission on admissibility and merits

4.1 On 4 September 2006, the State party commented on the admissibility and merits of the communication. On the facts, the State party submits that despite the Naturalisation Treaty, those who wished to acquire Czech citizenship (for the purpose of obtaining restitution of property) could have done so between 1990 and the time limit for raising restitution claims (1 October 1991). In fact, all applications for citizenship submitted between 1990 and 1992 were granted by the Minister of the Interior. There is no indication that the authors ever submitted such an application.

4.2 On admissibility, the State party submits that the case is inadmissible for abuse of the right of submission, due to the delay of three years and seven months the authors waited after the decision of the European Court of Human Rights of 10 July 2002 before submitting their case to the Committee on 12 February 2006. While acknowledging that there is no explicit time limit for the submission of communications to the Committee, the State party refers to the Committee's jurisprudence⁴ according to which a reasonable and objectively understandable explanation should be provided to justify such a delay.

4.3 On the merits, the State party refers to its observations made in earlier property restitution cases considered by the Committee⁵, in which it outlined the political circumstances and legal

² Communication No. 516/1992, *Simunek et al. v. Czech Republic*, Views adopted on 19 July 1995.

³ European Court of Human Rights, application No. 39794/98, *Peter Gratzinger and Eva Gratzinger vs. the Czech Republic*, decision of 10 July 2002.

⁴ Communication No. 787/1997, *Gobin v. Mauritius*, Decision on admissibility of 16 July 2001, para. 6.3

⁵ Communication No. 586/1994, *Adam .v the Czech Republic*, Views adopted on 23 July 1996.

conditions pertaining to the proposal for, and passing of, the restitution law. The purpose of the law was twofold: to mitigate, to the extent possible, injustices committed by the former Communist regime; and to allow for comprehensive economic reform with a view to introducing a well-functioning market economy. The restitution laws were among those laws which sought to transform the whole society. The citizenship requirement was envisaged to ensure that returned property would be looked after.

4.4 The State party invokes the judgments of the Constitutional Court, which upheld the constitutionality of the restitution law, specifically the precondition for citizenship. It argues that the authors were themselves responsible for the failure to obtain restitution of their property, as they failed to apply for citizenship within the deadline. Even if they had satisfied the citizenship condition, it is not clear whether they would have been successful in obtaining restitution of their property, given that the District Court had rejected their claims not only on such ground, but also on the ground that the authors had failed to prove that the new owners had acquired the property in question on the basis of an unlawful advantage⁶.

The authors' comments to the State Party's observations

5.1 On 2 November 2006, the authors commented on the State party's submission. They highlight that they fled the country in 1983 because of strong political oppression, due to their refusal to join the Communist Party, the fact that they had acquaintances living in the West, and their Jewish origins. Confiscations during this period were not related to the collectivization of the economy, as the confiscated property was transferred from one private owner to another. It was taken from enemies of the state, such as the authors, and given (or sold at advantageous rates) to collaborators and friends of the Communist regime, such as the current occupants of their home.

5.2 On the admissibility, the authors argue that they have been diligently pursuing the restitution of their home through the Czech and European systems for 15 years. They are unaware of any deadline for submitting their communication to the Committee and submit that it was presented in a timely manner.

5.3 On the merits, with respect to the State party's argument that they could have acquired Czech citizenship in 1991, the authors argue that the fact that a person can change or acquire citizenship does not justify discrimination based on citizenship. Furthermore, the opportunity to obtain restitution was illusory. One of the eligibility requirements during the original restitution period from April to October 1991 was permanent residence. The authors, who resided in the U.S., could not have obtained restitution even if they had acquired citizenship by October 1991. The residence requirement was abolished by the Constitutional Court in 1994, and another six-month period was opened for restitution claims. However, only persons who had become citizens by October 1991 could take advantage of the second restitution period. This had the effect of excluding from the applicability of the law political dissidents who had temporarily lost their citizenship as a result of emigration.

5.4 The authors claim that it was impossible for American citizens to reclaim their Czech citizenship until 1999, long after the first and second restitution periods in 1991 and 1994 had

⁶ According to Section 4, subsection 2 of Act No. 87/1991.

expired. When they wished to regain their Czech citizenship between 1990 and 1993, they were told that they could not do so without renouncing their U.S. citizenship, on the basis of the 1928 Naturalisation Treaty between the U.S and the former Czechoslovakia. The Czech citizenship law, Act No. 88/1990 of 28 March 1990, states, in its article II, § 3b) that:

“State citizenship cannot be granted in case it would be in contradiction to international obligations, which have been assumed by Czechoslovakia”.

This treaty was terminated in August 1997, and in 1999, the government again allowed applications for restoration of citizenship. The authors became citizens in 2000.

Issues and proceedings before the Committee

Consideration of admissibility

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

6.2 The Committee notes that a similar claim filed by the authors was declared inadmissible by the European Court of Human Rights on 10 July 2002. However, article 5, paragraph 2 (a), of the Optional Protocol does not constitute an obstacle to the admissibility of the instant communication, since the matter was no longer pending before another procedure of international investigation or settlement, and the Czech Republic has not entered a reservation to article 5, paragraph 2 (a), of the Optional Protocol.

6.3 As to the State party's argument that the submission of the communication to the Committee amounts to an abuse of the right of submission under article 3 of the Optional Protocol, the Committee notes that the authors diligently pursued their claim through the domestic courts until the decision of the Constitutional Court in 1994, whereupon they filed a claim to the ECHR. It notes that this Court adopted its decision on 10 July 2002 and that the authors submitted their case to the Committee on 12 February 2006. Thus, a period of three years and seven months passed prior to addressing the Committee. The Committee notes that there are no fixed time limits for the submission of communications under the Optional Protocol, and that delay in submission does not of itself necessarily constitute an abuse of the right to submit a communication.⁷ The Committee does not regard the delay to have been so unreasonable as to amount to an abuse of the right of submission in the instant case, and declares the communication admissible.

⁷ See Communication No. 787/1997, *Gobin v. Mauritius*, para. 6.3; Communication No. 1434/2005, *Claude Fillacier v. France*, Inadmissibility decision of 27 March 2006, para. 4.3; and Communication No. 1101/2002, *José María Alba Cabriada v. Spain*, Views adopted on 1 November 2004, para. 6.3.

Consideration of 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 authors of Act No. 87/1991 amounted to a violation of their rights to equality before the law and to equal protection of the law, contrary to article 26 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 26.⁸

7.4 The Committee recalls its Views in the cases of *Simunek*, *Adam*, *Blazek* and *Des Fours Walderode*,⁹ where it held that article 26 of the Covenant 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 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".¹⁰ The Committee further recalls its jurisprudence¹¹ 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 authors of the present communication. It notes the State party's confirmation that the lack of fulfilment of the citizenship criterion was central in dismissing the authors' request for restitution. Thus, the Committee concludes that the application to the authors of Act No. 87/1991, which lays down a citizenship requirement for the restitution of confiscated property, violated their 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.

⁸ See Communication No.182/1984, *Zwaan-de Vries v. The Netherlands*, Views adopted on 9 April 1987, paragraph 13.

⁹ See Communication No.586/1994, *Adam v. Czech Republic*, paragraph 12.6; Communication No.857/1999, *Blazek v. Czech Republic*, Views adopted on 12 July 2001, paragraph 5.8, and Communication No. 747/1997, *Des Fours Walderode v. Czech Republic*, Views adopted on 30 October 2001, paragraph 8.3.

¹⁰ See *Adam v. Czech Republic*, paragraph 12.6.

¹¹ See Communication 516/1992, *Simunek v. Czech Republic*, Views adopted on 19 July 1995, paragraph 11.6.

9. 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 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.

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.]
