



**International covenant
on civil and political
rights**

Distr.
RESTRICTED*

CCPR/C/92/D/1484/2006
28 April 2008

Original: ENGLISH

HUMAN RIGHTS COMMITTEE
Ninety-second session
17 March – 4 April 2008

VIEWS

Communication No. 1484/2006

<u>Submitted by:</u>	Mr. Josef LNĚNIČKA (represented by Jan Sammer, Czech Coordinating Office)
<u>Alleged victim:</u>	The author
<u>State Party:</u>	The Czech Republic
<u>Date of communication:</u>	9 February 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>	25 March 2008

* Made public by decision of the Human Rights Committee.

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

Procedural issues: Abuse of the right of submission; non exhaustion of domestic remedies; non substantiation

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

Articles of the Covenant: 2, paragraph 3; 26

Articles of the Optional Protocol: 2; 3

On 25 March 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. 1484/2006.

[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-second session

concerning

Communication No. 1484/2006*

Submitted by: Mr. Josef LNĚNIČKA (represented by Jan
Sammer, Czech Coordinating Office)

Alleged victim: The author

State Party: The Czech Republic

Date of communication: 9 February 2006 (initial submission)

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

Meeting on 25 March 2008,

Having concluded its consideration of communication No. 1484/2006, submitted to the
Human Rights Committee by Mr. Josef LNĚNIČKA, 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:

* 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 Glèlè Ahanhanzo, Mr. Yuji Iwasawa, 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 and Mr. Ivan Shearer.

The text of an individual opinion signed by Committee member Mr. Abdelfattah Amor has
been appended to the present Views.

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

1.1 The author of the communication, dated 9 February 2006, is Josef Lněnička, born on 11 April 1930 in the former Czechoslovakia, and currently a resident of the United States of America. He claims to be a victim of a violation by the Czech Republic of articles 12 and 26 of the International Covenant on Civil and Political Rights (the Covenant). He is represented by Jan Sammer of the Czech Coordinating Office in Toronto, Canada.

1.2 The Optional Protocol to the International Covenant on Civil and Political Rights (Optional Protocol) entered into force for Czech Republic on 22 February 1993.

The facts as presented by the author

2.1 The author was arrested in 1949 in the former Czechoslovakia, released in 1957, and then worked for the next 11 years in a mine. In 1968 he escaped, and returned in 1969. He built a house, left the former Czechoslovakia again in 1981 to escape the Communist regime, and arrived in the United States of America in April 1982. He obtained US citizenship in 1988, upon which he lost his original Czechoslovak citizenship. He was sentenced *in absentia* by the Trutnov District Court to imprisonment and confiscation of all his possessions, including half of his family home in Rtyně, as he had left the country without authorisation. He was fully rehabilitated in 1990 in accordance with Act No. 119/1990 on Judicial Rehabilitation.

2.2 The author's wife remained in the former Czechoslovakia. According to the author, and in order not to be evicted, she was forced to conclude an agreement with the Ministry of Finance for the purchase of half of the family house and half of all possessions. The author sent money to his wife to enable her to pay the sums due.

2.3 In 1999, the author asked for compensation for the half of the family home. On 18 March 1999, the Ministry of Finance refused his request for compensation on the sole ground that the author had obtained citizenship of the United States of America and had lost his original Czech citizenship. The letter of the Ministry of Finance highlighted that the author could "file a request for financial compensation for the confiscated property together with the documentation of your Czech citizenship". In this regard, and regarding domestic remedies, the author states that he did not exhaust all available Czech court remedies as he knows that they are not available to him and he did not want to waste money on lawyers and other futile steps¹. The author also refers to a decision of the Czech Constitutional Court by which the constitutional complaint to strike out the condition of citizenship in the restitution laws was rejected. According to the author, this is definite proof of the non-existence of any further judicial remedies available in the Czech Republic.

¹ The author refers to Communication No. 945/2000, *Marik v. Czech Republic*, Views adopted on 26 July 2005, paragraph 5.3.

The complaint

3. The author claims to be victim of a violation of article 26 of the Covenant, as the citizenship requirement of the Act No. 87/1991 constitutes unlawful discrimination. He invokes the jurisprudence of the Committee in the case of *Marik v. Czech Republic*² and *Kriz v. Czech Republic*³, in which the Committee found a violation of article 26 by the State party. The author subsequently also claims to be victim of a violation of article 12 of the Covenant (see paragraph 5.1).

The State party's observations on the admissibility and merits of the communication

4.1 On 18 January 2007, the State party clarifies that on 11 August 1982, the Trutnov District Court sentenced the author to forfeiture of property, *inter alia* one half of his real estate properties (a garage and a house with garden), as a result of his illegal emigration. Subsequently, the State party entered into an agreement with the author's wife in March 1989, on the settlement of the property held jointly by the spouses. Under this agreement, the author's wife was required to pay the State one half of the total value of the property held jointly, while she became the sole owner of the properties concerned. Upon a request by the author's wife, her payment was partly waived by a decision of the Trutnov District National Committee. She was therefore only required to pay CZK 157,690 instead of CZK 271,075, and settled the full amount on 26 October 1989.

4.2 The State party confirms that the author acquired US citizenship in 1986 and automatically lost his Czechoslovak citizenship under the Treaty of Naturalization entered into by the former Czechoslovak Republic and the United States of America in 1928 (the Treaty of Naturalization). In 1990, on the basis of the Act on Judicial Rehabilitation No. 119/1990, the judgment that had sentenced the author was quashed *ex lege*, including the ruling on forfeiture of property. This Act also provided for the conditions and the modalities for indemnifying judicially rehabilitated persons, with the exception of their claims arising from quashed rulings on the sentence of forfeiture of property. The Act did not provide for these claims, which was addressed by Act No. 87/1991 on Extra-Judicial Rehabilitations, which entered into force on 1 April 1991. The Act No. 87/1991, *inter alia*, stipulated that an eligible person within the meaning of the Act must possess citizenship of the Czech and Slovak Federal Republic and have permanent residence in the country.

4.3 In August 1991, the author requested financial compensation for the property forfeited as a result of his emigration. In this request, he noted that he had never given up his Czechoslovak citizenship and that he was a dual citizen. He filed his request with the Trutnov District Authority and the Ministry of Finance, which subsequently reviewed his request as the competent authority. During its review of the matter, the Ministry of Finance invited the author, on 24 September 1992, to provide evidence that he had reacquired Czechoslovak citizenship, in light of the Treaty of Naturalization, otherwise his request for financial compensation would not be granted. The author's wife responded to this letter in late February 1995. She reiterated her opinion that the author had never given up his citizenship of the Czech and Slovak Federal

² Communication No. 945/2000, *Marik v. Czech Republic*, Views adopted on 26 July 2005.

³ Communication No. 1054/2002, *Kriz v. Czech Republic*, Views adopted on 1 November 2005.

Republic, and that the Treaty of Naturalization was not valid due to its amendments. The Ministry of Finance advised her that the author's request could not be granted without him providing evidence that he had been a citizen of the former Czech and Slovak Federal Republic at the time of submission of his request (1 April 1992 at the latest, when the time period for filing compensation requests expired).

4.4 On 3 October 1995, the author filed a new request for compensation with the Ministry of Finance. The Ministry replied that although a judgment of the Constitutional Court No.164/1994 had revoked the precondition of permanent residence in the Czech and Slovak Federal Republic, in order to be eligible for compensation, the citizenship precondition remained. In March 1999, in light of the Constitutional Court's judgment No.153/1998, the Ministry of Finance advised the author that he "could claim financial compensation for the forfeited property without the need to initiate court proceedings on the surrender of the thing, or without the need to reject a proposal for an agreement on the surrender of the thing"; however the author must provide proof of citizenship. On 21 March 2000, the Ministry of Finance once again invited the author to provide a citizenship certificate. In May 2000, the author provided a certificate dated 10 May 2000 stating that he was a citizen of the Czech Republic under Section 1, subsection 1, of Act No. 193/1999. On 5 February 2001, the Ministry of Finance refused the author's request for compensation, as he had not fulfilled the precondition relating to citizenship on or before 1 April 1992, but had been awarded citizenship on 10 May 2000.

4.5 Under Section 10 of Act No.231/1991 on the Competence of the Czech Republic Authorities within Extra-Judicial Rehabilitations, Act No.58/1969 on Liability for Damage Caused by a Decision or Incorrect Official Procedure of an Authority of the State (Act No.82/1998, as amended) should have been used in relation to Section 13 of the Act on Extra-Judicial Rehabilitations. According to the Civil Code, the author, as an eligible person within the meaning of restitution legislation, had the right to raise his claim in a court. The State party is unaware that the author ever made such a claim.

4.6 On the admissibility of the communication, the State party suggests that it is inadmissible for abuse of the right of submission within the meaning of article 3 of the Optional Protocol. The State party is aware that the Optional Protocol does not set forth any fixed time limits for submitting a communication, and that mere delay does not in itself present an abuse of this right. It recalls the jurisprudence of the Committee, which, when such a time lapse occurs, expects a reasonable and objectively understandable explanation⁴. The State party alleges that the same reasoning applies in this instance, where the author addressed the Committee in 2006, i.e. more than 5 years after the Ministry of Finance had finally refused to grant his request for financial compensation, and approximately two years after the three-year time limitation period under the Civil Code for raising a claim in the ordinary courts had expired. In this respect, the State party refers to the six-month time limit for submitting an application to the European Court of Human Rights (article 35, paragraph 1, of the European Convention on Human Rights, article 46, paragraph 1(b), of the American Convention on Human Rights and article 14, paragraph 5, of the

⁴ The State party refers to Communication No. 787/1997, *Gobin v. Mauritius*, inadmissibility decision adopted on 16 July 2001, where the Committee declared a communication inadmissible as it had been submitted 5 years after the alleged violation of the Covenant (paragraph 6.3), holding that the author did not provide a "convincing explanation" in justifying the delay.

International Convention on the Elimination of all Forms of Racial Discrimination). The author does not mention any circumstances that would justify the delay of his submission to the Committee. The author's specific interest in his case cannot be deemed important enough to outweigh the generally accepted interest in maintaining the principle of legal certainty. This is compounded by the fact that the author has already submitted his matter to a different international body.

4.7 As to the requirement of exhaustion of domestic remedies, the State party recalls that in March 1989 part of the disputed real property was transferred to the author's wife. Under Section 13, subsection 1 of the Act on Extra-Judicial Rehabilitations, an eligible person is financially compensated only for real estate property that cannot be surrendered (which is the provision that applies in this instance), or if the person requests financial compensation under Section 7 of the Act. However, as the author was not able to show that he fulfilled the citizenship criteria on 1 April 1992, and therefore was not eligible for financial compensation, the Ministry denied his request. He was nonetheless not prevented from (and is still not prevented from) claiming financial compensation in the ordinary courts. As he has not shown that he has used such procedure, the State party claims that he did not exhaust available domestic remedies.

4.8 On the alleged violation of article 2, paragraph 3, of the Covenant, and the author's claim that no domestic remedies were available to him, the State party notes that the effectiveness of a remedy does not mean a guarantee that the author will be successful in his case. The author had and still has the opportunity to defend himself against the denial of his request by the Ministry of Finance before the courts. While the eventual outcome of such a dispute cannot be anticipated, there are doubts indeed about the chances of success, in light of the consistent case law of the Czech courts, including the Constitutional Court, regarding the precondition of citizenship within restitution proceedings.

4.9 On the alleged violation of article 26 of the Covenant, the State party refers to its observations submitted to the Committee in similar cases⁵, in which it outlined the political circumstances and legal conditions pertaining to the Restitution Act. The State party recalls that it was aware at the time of the passing of the Act that it was not feasible to eliminate all the injustices committed during the Communist regime, and that the Constitutional court has repeatedly considered and dismissed the question of whether the precondition of citizenship violated the Constitution and fundamental rights and freedoms (see for example Judgment No. 185/1997). It clarifies that the restitution laws were adopted as part of a two-fold approach. First, in an effort to mitigate, to a certain degree, some of the injustices committed earlier; and second, in an effort to carry out a speedy and comprehensive economic reform, with a view to introducing a market economy. Restitution laws were among those whose objective was the transformation of the whole society, and it appeared adequate in connection with the economic reforms to prefer the straightening out of ownership relations in favor of the country's citizens. Property restitution can be viewed as a form of property privatization, i.e. the restitution of property to private hands. Another reason for certain restricting preconditions is to ensure that due care for the returned property would be exercised.

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

4.10 The State party notes that despite the Treaty of Naturalization, it became possible for persons to reacquire Czech citizenship from 1990, before the expiry of the time limit for submitting restitution claims. All applications for citizenship submitted between 1990 and 1992 by persons who had acquired US citizenship were granted. The State party adds that the author did not submit an application for citizenship during that period, although he had filed his request for financial compensation as early as August 1991. He thus deprived himself of the opportunity to comply with the requirements of the Act on Extra-Judicial Rehabilitations. He only acquired citizenship on the basis of a later Act, No.193/1999, on the Citizenship of Some Former Czechoslovak Citizens.

4.11 The State party also notes that after the author's departure, his wife continued to use the forfeited property. Subsequently, the State party made it possible for her to become the sole owner of the forfeited real properties, which therefore remained in the family.

Author's comments on the State party's observations

5.1 On 20 February 2007, counsel alleges that article 12 of the Covenant was also violated in 1981, when the author left the former Czechoslovakia, and highlights that the State party signed the Covenant in 1975. Counsel notes that the State party itself admits the discriminatory nature of Act No.87/1991. As to its contention that the author should have reacquired citizenship within the deadline for restitution, counsel claims that this was made impossible by Act No.88/1990, which states that "citizenship cannot be granted in case it is in contradiction to international obligations, which have been assumed by Czechoslovakia" (Art II, paragraph 3 b)). According to counsel, this is a reference to the Treaty of Naturalization.

5.2 As to the State party's contention that the author could have raised his claim in the courts, counsel claims that the Constitutional Court had put an end to this possibility by Judgment No. 117/1996: there, the Court found that although the rehabilitated person kept his right to property, Section 23 of Act No. 119/1990 did not allow the rehabilitated person to acquire the property through "reivindication" (Civil Code). Counsel also rejects the allegation of abuse of the right of submission and the State party's request that the communication be deemed inadmissible under article 2 of the Optional Protocol. He considers that the European Convention does not come into play, nor do the State party's arguments based on legal certainty. On the issue of domestic remedies, he recalls that there are no available domestic remedies for persons who did not have Czech citizenship during the reference period in question, as confirmed by the Constitutional Court decision 33/96 of 4 June 1997.

5.3 As to the State party's justifications for the discriminatory nature of the restitution laws, counsel argues that the impossibility of redressing all injustices may apply to persons executed, shot at the border while escaping, jailed for many years and dismissed from universities and jobs, but never to property, where the redress of all those injustices is possible and would be easiest.

5.4 Concerning the State party's argument that the author could have obtained Czech citizenship before April 1991, counsel argues that this was only possible for those who became US citizens by mistake, fraud or bribery, in light of Act No.88/1990.

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 the communication is admissible under the Optional Protocol to the Covenant.

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

6.3 With respect to the requirement of exhaustion of domestic remedies, the Committee notes that the State party contends that the author was not prevented, and is still not prevented, from claiming financial compensation before ordinary courts in relation to the Ministry of Finance's refusal to grant him compensation. The Committee also notes that the State party concedes that there are doubts about the chances of success in such proceedings, in light of the consistent case law of the domestic courts, including the Constitutional Court, as regards the citizenship requirement in restitution cases (see paragraph 4.8). In this context, the Committee recalls that only remedies which are both available and effective must be exhausted. The applicable law on confiscated property does not allow restitution or compensation to the author. After the decision of the Ministry of Justice of 5 February 2001, which rejected the author's compensation claim, there was no effective or reasonably available remedy for the author to pursue within the Czech legal system. By decision No. 185/1997, the Constitutional Court of the Czech Republic confirmed that it considers the requirement of citizenship for restitution to be reasonable⁶. In this regard, the Committee reiterates that when the highest domestic court has ruled on the matter in dispute, thereby eliminating any prospect that a remedy before the domestic court may succeed, the author is not obliged to exhaust domestic remedies for the purposes of the Optional Protocol⁷. Therefore, the Committee considers that the author has sufficiently substantiated that it would have been futile for him to challenge the decision in his case.

6.4 The Committee has also noted the State party's argument that the communication should be considered inadmissible as constituting an abuse of the right to submit communications under article 3 of the Optional Protocol, in view of the excessive delay in submitting the

⁶ "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 Freedoms as well as the objectives of the restitution legislation and also the legislation concerning the citizenship as being such reasonable and objective criteria."

⁷ Communication No. 1095/2002, *Bernardino Gomariz Valera v. Spain*, Views of 22 July 2005, paragraph 6.4.

communication to the Committee. The State party asserts that the author waited for five years after the date of the final decision of the Ministry of Finance before submitting his complaint to the Committee. The Committee reiterates that the Optional Protocol does not establish any deadline for the submission of communications, and that the period of time elapsing before doing so, other than in exceptional cases, does not in itself constitute an abuse of the right to submit a communication. In the instant case, where counsel for the author indicates that the author contacted him after being apprised of the Committee's Views in Communication No. 945/2000 (*Marik v. Czech Republic*, Views adopted on 26 July 2005) and Communication No. 1054/2002 (*Kriz v. Czech Republic*, Views adopted on 1 November 2005), both adopted in 2005, the Committee does not consider a five-year delay to amount to an abuse of the right of submission⁸. It therefore decides that the communication is admissible in as far as it appears to raise issues under article 26 of the Covenant.

6.5 The Committee notes that, in his response to the State party's observations, the author's counsel alleges that article 12 of the Covenant was also violated in 1981, when the author left the former Czechoslovakia. In the absence of further information on such substantiation of this claim, the Committee considers that this allegation is not sufficiently substantiated and accordingly declares it inadmissible under article 2 of the Optional Protocol.

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 No. 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 26.⁹

7.3 The Committee recalls its Views in the cases of *Adam*, *Blazek*, *Marik*, *Kriz*, *Gratzinger* and *Ondracka*¹⁰, where it held that article 26 had been violated. Taking into account that the State

⁸ Communications No. 1305/2004, *Victor Villamon Ventura v. Spain*, Views adopted on 31 October 2006, paragraph 6.4; No. 1101/2002, *Alba Cabriada v. Spain*, Views adopted on 1 November 2004, paragraph 6.3; No. 1533/2006, *Zdenek and Ondracka v. Czech Republic*, Views adopted on 31 October 2007, paragraph 7.3.

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

¹⁰ Communications No. 586/1994, *Adam v. Czech Republic*, Views adopted on 23 July 1996, paragraph 12.6; No. 857/1999, *Blazek v. Czech Republic*, Views adopted on 12 July 2001, paragraph 5.8; No. 945/2000, *Marik v. Czech Republic*, Views adopted on 26 July 2005, paragraph 6.4; No. 1054/2002, *Kriz v. Czech Republic*, Views adopted on 1 November 2005, paragraph 7.3; No. 1463/2006, *Gratzinger v. Czech Republic*, Views adopted on 25 October

party itself is responsible for the departure of the author from the former Czechoslovakia in seeking refuge in another country, where he eventually established permanent residence and obtained that country's citizenship, the Committee considers that it would be incompatible with the Covenant to require the author to meet the condition of Czech citizenship for the restitution of his property or alternatively for its compensation.

7.4 The Committee considers that the principle established in the above cases also applies in the case of 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.

7.5 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.

8. 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. 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.

9. 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 that 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.]

APPENDIX

Individual opinion of Committee member, Mr. Abdelfattah Amor

In light of the jurisprudence in the *Gobin* case (Communication No. 787/1997, *Gobin v. Mauritius*, inadmissibility decision of 16 July 2001), I believe that this communication is inadmissible as it was submitted late, after a five-year interval. In this connection, I would like to refer to my dissenting opinion on the *Ondracka* case (Communication 1533/2006, *Zdenek and Ondracka v. Czech Republic*, Views adopted on 31 October 2007) in which the time lapse was more than eight years. I am convinced that the Committee urgently needs to have coherent and perfectly clear jurisprudence on the issue of the submission deadline for communications.

[Signed] Mr. Abdelfattah Amor

[Done in English, French and Spanish, the French 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.]
