



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE
Ninety-sixth session
13 to 31 July 2009

VIEWS

Communication No. 1574/2007

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| <u>Submitted by:</u> | Mr. Jaroslav and Ms. Alena SLEZÁK (not represented by counsel) |
| <u>Alleged victim:</u> | The authors |
| <u>State party:</u> | The Czech Republic |
| <u>Date of communication:</u> | 10 April 2006 (initial submission) |
| <u>Document references:</u> | Special Rapporteur's rule 97 decision, transmitted to the State party on 18 July 2007 (not issued in document form) |
| <u>Date of adoption of Views:</u> | 20 July 2009 |

* Made public by decision of the Human Rights Committee.

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

Procedural issue: Abuse of the right of submission

Substantive issues: Equality before the law; equal protection of the law without any discrimination

Article of the Covenant: 26

Articles of the Optional Protocol: 3

On 20 July 2009, 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. 1364/2005.

[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-sixth session

concerning

Communication No. 1574/2007*

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| <u>Submitted by:</u> | Mr. Jaroslav and Ms. Alena SLEZÁK (not represented by counsel) |
| <u>Alleged victim:</u> | The authors |
| <u>State party:</u> | The Czech Republic |
| <u>Date of communication:</u> | 10 April 2006 (initial submission) |

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

Meeting on 20 July 2009,

Having concluded its consideration of communication No. 1574/2005, submitted on behalf of Mr. Jaroslav and Ms. Alena Slezák 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. Prafullachandra Natwarlal Bhagwati, Ms. Christine Chanet, Mr. Ahmad Amin Fathalla, Mr. Yuji Iwasawa, Ms. Helen Keller, Mr. Rajsoomer Lallah, Mr. Lazhari Bouzid, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Mr. Michael O'Flaherty, Mr. José Luis Pérez Sanchez-Cerro, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabian Omar Salvioli and Mr. Krister Thelin.

The text of an individual opinion signed by Committee member Mr. Krister Thelin is appended to the present Views.

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

1. The authors of the communication are Jaroslav and Alena Slezák, naturalised American citizens residing in Massachusetts, United States of America (U.S.A.), born in Czechoslovakia on 28 February 1926 and 20 December 1930 respectively. They claim to be victims of a violation by the Czech Republic of article 26 of the International Covenant on Civil and Political Rights¹. They are not represented.

The facts as submitted by the authors:

2.1 The authors state that they left Czechoslovakia for political reasons in 1969, and have lived in the U.S.A. ever since. In 1980, they both obtained the U.S. citizenship and lost their Czechoslovak citizenship².

2.2 In January 1971, the District Court of Olomouc sentenced them *in absentia* to a jail term, and to the confiscation of their property, including their family home in Sternberk, estimated by the authors to be worth 2.5 million Czech crowns.

2.3 Following the enactment of Act No. 119/1990, the authors were rehabilitated and their sentence, including the property confiscation, was overturned *ex tunc*. They asked their nephew, who had bought the house from the State, to return it to them, but he refused to do so. The authors then filed a court action in 1994. The District Court of Olomouc decided in November 1998 that the authors did not qualify for restitution under Act No. 87/1991 as they had lost their Czech citizenship when they became U.S. citizens. The Regional Court confirmed this decision on appeal on 25 February 1999. The authors then appealed to the Constitutional Court, which rejected it on formal grounds on 15 December 1999. The authors also refer to the Constitutional Court decision of 4 June 1997, which rejected all claims for restitution from persons who were not Czech citizens at the time of filing their claim.

The complaint

3. The authors allege that they are victims of discrimination, and argue that the requirement of citizenship for restitution of their property under Act No. 87/1991 is in violation of article 26 of the Covenant.

The State party's observations on admissibility and merits

4.1 In its submission of 15 January 2008, the State party addresses both the admissibility and the merits of the communication. So far as the facts are concerned, the State party notes that the authors lost Czechoslovak citizenship as a consequence of their acquiring U.S. citizenship, on the basis of the Naturalisation Treaty of 1928 between the two countries. The authors re-acquired Czech citizenship by declaration made on 10 May 2000. The State party reviews the various court proceedings initiated by the authors, until the last decision of the Constitutional Court of 15

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

² On the basis of the USA- Czechoslovakia bilateral "Naturalisation Treaty" of 16 July 1928, article I.

December 1999, which dismissed the authors' appeal, as it was not represented by a lawyer, as required. The State party reviews the relevant applicable law, namely, Act No. 119/1990 on Judicial Rehabilitation and Act No. 87/1991 on Extra-judicial Rehabilitation, and refers to the Constitutional Court's decision of 11 March 1997, which established that final court decisions adopted under Act 119/1990 do not constitute a proper instrument for the acquisition of property. In a subsequent decision³, the Constitutional Court ruled that persons claiming the surrender of a property under Act No. 87/1991 had to comply with all the requirements set forth in the law, including the citizenship requirement⁴.

4.2 The State party notes that the authors consider themselves to be victims of a violation of article 26 of the Covenant as a result of the lack of success in the restitution proceedings they had initiated. On admissibility, the State party notes that the last domestic decision in the authors' case was adopted on 15 December 1999. Thus, more than 6 years elapsed before the author approached the Committee. In the absence of new facts since the adoption of the last domestic decision, and in the absence of any reasonable explanation whatsoever⁵, which may justify such delay, the State party invites the Committee to consider the communication inadmissible on the ground that it constitutes an abuse of the right to submit a communication, within the meaning of article 3 of the Optional Protocol. To support its claim, the State party invokes the Committee's decisions in communications No. 1434/2005 *Fillacier v. France*⁶, No. 787/1997 *Gobin v. Mauritius*⁷, and No. 1452/2006 *Chytil v. the Czech Republic*⁸.

4.3 Subsidiarily, the State party argues that the claim is inadmissible *ratione temporis*, as the authors' property was forfeited in 1971, i.e. long before the Covenant and the Optional Protocol entered into force for the Czech Republic.

4.4 On the merits of the case, the State party notes that the right under article 26 of the Covenant, invoked by the authors, is an autonomous right, independent of any other right guaranteed by the Covenant. It recalls that in its jurisprudence, the Committee has reiterated that not all differences of treatment are discriminatory, and that a differentiation based on reasonable and objective criteria does not amount to prohibited discrimination within the meaning of article

³ Decision of 3 May 2005.

⁴ The State party also notes that the requirement of permanent residence, which used to be a mandatory criteria within Act No. 87/1991 (in addition to the citizenship criteria) was abolished by a Constitutional Court decision published under No. 164/1994 in the Official Gazette.

⁵ The State party notes that the authors should have provided a "reasonable explanation that has an objective basis and that is also sustainable", also noting the general principle *ignorantia legis non excusat*, and the fact that the authors' subjective interests cannot outweigh the needs for legal certainty.

⁶ Communication No. 1435/2005, *Claude Fillacier v. France*.

⁷ Communication No. 787/1997, *Gobin v. Mauritius*.

⁸ Communication No. 1452/2006, *Renatus J. Chytil v. the Czech Republic*. *A contrario*, the State party invoked communication No. 1533/2006 *Zdenek Ondracka and Milada Ondrackova v. the Czech Republic*. The State party also notes that the Committee has not been consistent with regard to the time period it considers to be an abuse of the right of submission, and stresses that it shares the dissenting opinion of Committee member Mr. Abdelfattah Amor in the *Zdenek* case.

26⁹. Article 26 does not imply that a State would be obliged to set right injustice of the past, especially considering the fact that the Covenant was not applicable at that time of the former communist Czechoslovakia.

4.5 The State party further notes that it was not feasible to remedy all injustices of the past, and that as part of its legitimate prerogatives, the legislator, using its margin of discretion, had to decide over which factual areas, and in which way it would legislate, so as to mitigate damages, knowing that it would need to take into consideration a number of antagonistic interests. The authors' action was not successful because they did not comply with the citizenship requirement in Act No. 87/1991. The State party invokes other arguments it previously submitted to the Committee. The State party concludes that it did not violate article 26 in the present case.

Authors' comments on the State party's observations

5.1 In their comments dated 18 February 2008, the authors maintain that Act No. 87/1991 is discriminatory, and in violation of the Covenant. They invoke the Committee's concluding observations on the second periodic report of the Czech Republic¹⁰ and Views in similar cases, where there had been a finding of violation. They argue that the domestic rulings invoked by the State party, including the Constitutional Court decisions, cannot take precedence over the Covenant.

5.2 Regarding the issue of delay and the contention that the authors abused their right of submission, the authors reject the State party's argument. They note that the Optional Protocol does not establish any deadline for the submission of complaints, and claim that the delay in submitting the communication was caused by lack of information. They state in this respect that the State party does not publish and translate Committee decisions.

5.3 The authors disagree with the State party's argument that their claim should be considered inadmissible *ratione temporis*, since the relevant Czech restitution laws and court decisions were adopted after the Covenant had entered into force for the Czech Republic.

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.

⁹ The State party refers to Communication No. 182/1984 *F. H. Zwaan-de Vries v. the Netherlands*.

¹⁰ CCPR/C/CZE/CO/2, Human Rights Committee Concluding Observations on the second report of the Czech Republic submitted under the International Covenant on Civil and Political Rights, adopted on 25 July 2007. The Committee *inter alia* "urg[ed] the State party to implement all of its Views, including those under Act No. 87/91 of 1991, in order to restore the property of persons concerned, or otherwise compensate them".

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 of the right of submission because of the long delay between the final judicial decision in the case and the submission of the communication to the Committee. The Committee notes that the Optional Protocol does not establish time limits within which a communication must be submitted. It is only in exceptional circumstances that the delay in submitting a communication can lead to the inadmissibility of a communication¹¹. In the circumstances of the present case, the Committee considers that the delay of nearly six 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 The Committee has also considered whether the violations alleged can be examined *ratione temporis*. It notes that although the confiscations took place before the entry into force of the Covenant and of the Optional Protocol for the Czech Republic, the new legislation that excludes claimants who are not Czech citizens has continuing consequences subsequent to the entry into force of the Optional Protocol for the Czech Republic, which could entail discrimination in violation of article 26 of the Covenant¹².

6.5 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, and proceeds to its consideration on the merits.

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 authors 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 26¹³.

¹¹ See Communication No. 1434/2005, *Fillacier v. France*, para. 4.3, and Communication No. 787/1997, *Gobin v. Mauritius*, para. 6.3.

¹² Communication N° 586/1994, *Adam v. the Czech Republic*, Views of 23 July 1996, para. 6.3.

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

7.3 The Committee recalls its Views in the numerous Czech property restitution cases,¹⁴ where it held that article 26 had been violated, and that it would be incompatible with the Covenant to require the authors to obtain Czech citizenship as a prerequisite for the restitution of their property or, alternatively, for the payment of appropriate compensation. Bearing in mind that the authors' original entitlement to their properties was not predicated on their citizenship, the Committee found that the citizenship requirement was unreasonable. In *Des Fours Walderode*,¹⁵ the Committee observed that a citizenship requirement in the law as a necessary condition for restitution of property previously confiscated by the authorities makes an arbitrary and discriminatory distinction between individuals who are equally victims of prior state confiscations, and constitutes a violation of article 26 of the Covenant. The Committee considers that the principle established in the above cases equally applies to the authors of the present communication. The Committee therefore concludes that the application to the authors of the citizenship requirement laid down in Act No. 87/1991 violated their rights under article 26 of the Covenant.

8.1 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.

8.2 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.

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

¹⁴ Communication 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. 945/2000, *Marik v. Czech Republic*, Views adopted on 26 July 2005, paragraph 6.4; Communication No. 1054/2002, *Kriz v. Czech Republic*, Views adopted on 1 November 2005, paragraph 7.3; Communication No. 1445/2006, *Polackova and Polacek v. Czech Republic*, Views adopted on 24 July 2007, paragraph 7.4; Communication 1463/2006, *Gratzinger v. Czech Republic*, Views adopted on 25 October 2007, paragraph 7.5; and Communication No. 1533/2006, *Ondracka v. Czech Republic*, Views adopted on 2 November 2007, paragraph 7.

¹⁵ Communication 747/1997, *Des Fours Walderode v. Czech Republic*, Views adopted on 30 October 2001, paragraph 8.3-8.4.

[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. Krister Thelin (dissenting)

The majority has found the communication admissible and considered it on the merits.

I respectfully disagree.

Delay in submitting a communication does not in itself constitute an abuse of the right of submission under article 3 of the Optional Protocol. However, from the jurisprudence of the Committee, as it could be understood, it follows that undue delay, absent exceptional circumstances, should lead to inadmissibility of a communication. In a number of cases the Committee has found a period of over five years to constitute undue delay¹⁶.

In the present case, the author has let almost six and a half years elapse before submitting the communication. The author's explanation for the delay, a mere reference to lack of information, does not constitute an exceptional circumstance, which could justify the delay. The late communication should therefore be considered an abuse of the right of submission and, consequently, inadmissible under article 3 of the Optional Protocol.

[signed] Mr. Krister Thelin

[Done in French, English 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.]

¹⁶ Communications No. 1434/2005, *Fillacier v. France* and No. 787/1997, and *Gobin v. Mauritius*; Cf. Communications N° 1452/2006, *Chytil v. Czech Republic*; N° 1484/2006, *Lnenicka v. Czech Republic*; N°1485/2006, *Vlcek v. Czech Republic*; and N° 1582/2007, *Kudrna v. Czech Republic*.