



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE
Eighty-third session
14 March – 1 April 2005

VIEWS

Communication No. 823/1998

Submitted by: Mr. Rudolf Czernin (deceased on 22 June 2004)
and his son Mr. Karl-Eugen Czernin (not
represented by counsel)

Alleged victim: The authors

State party: The Czech Republic

Date of initial communication: 4 December 1996 (initial submission)

Document references: Special Rapporteur's rule 91 decision, transmitted
to the State party on 3 July 1998 (not issued in
document form)

Date of adoption of the views: 29 March 2005

* Made public by decision of the Human Rights Committee.

Subject matter: Retention of citizenship

Procedural issues: Non-exhaustion of domestic remedies

Substantive issues: Equality before the law, non-discrimination, denial of justice

Articles of the Covenant: 14, paragraph 1; 26 and 2, paragraph 3

Articles of the Optional Protocol: 3 and 5, paragraph 2 (b)

On 29 March 2005, the Human Rights Committee adopted the annexed draft as the Committee's Views, under article 5, paragraph 4, of the Optional Protocol in respect of communication No.823/1998. The text of the Views is appended to the present document.

[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

Eighty-third session

concerning

Communication No. 823/1998**

Submitted by: Mr. Rudolf Czernin (deceased on 22 June 2004) and his son Mr. Karl-Eugen Czernin (not represented by counsel)

Alleged victim: The authors

State party: The Czech Republic

Date of initial communication: 4 December 1996 (initial submission)

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

Meeting on 29 March 2005,

Having concluded its consideration of communication No.823/1998, submitted to the Human Rights Committee on behalf of Rudolf Czernin 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. Nisuke Ando, Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine Chanet, Mr. Maurice Glèlè Ahanhanzo, Mr. Edwin Johnson, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Michael O'Flaherty, Ms. Elisabeth Palm, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Ivan Shearer, Mr. Hipólito Solari-Yrigoyen, Ms. Ruth Wedgwood and Mr. Roman Wieruszewski.

An individual opinion signed by Committee member, Ms. Ruth Wedgwood is appended to the present document.

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

1. The original author of the communication was Rudolf Czernin, a citizen of the Czech Republic born in 1924, permanently residing in Prague, Czech Republic. He was represented by his son, Karl-Eugen Czernin, born in 1956, permanently residing in Austria, and claimed to be a victim of a violation by the Czech Republic¹ of articles 14, paragraph 1 and 26 of the International Covenant on Civil and Political Rights (the Covenant). The author passed away on 22 June 2004. By letter of 16 December 2004, his son (hereafter referred to as second author) maintains the communication before the Committee. He is not represented by counsel.

Factual background

2.1 After the German occupation of the border area of Czechoslovakia in 1939, and the establishment of the “protectorate”, Eugen and Josefa Czernin, the now deceased parents of the author, were automatically given German citizenship, under a German decree of 20 April 1939. After the Second World War, their property was confiscated on the ground that they were German nationals, under the Benes decrees Nos. 12/1945 and 108/1945. Furthermore, Benes decree No. 33/1945 of 2 August 1945 deprived them of their Czechoslovak citizenship, on the same ground. However, this decree allowed persons who satisfied certain requirements of faithfulness to the Czechoslovak Republic² to apply for retention of Czechoslovak citizenship.

2.2 On 13 November 1945, Eugen and Josefa Czernin applied for retention of Czechoslovak citizenship, in accordance with Presidential Decree No. 33/1945, and within the stipulated timeframe. A “Committee of Inquiry” in the District National Committee of Jindřichův Hradec, which examined their application, found that Eugen Czernin had proven his “anti-Nazi attitude”. The Committee then forwarded the application to the Ministry of the Interior for a final decision. In December 1945, after being released from prison where he was subjected to forced labour and interrogated by the Soviet secret services NKVD and GPÚ, he moved to Austria with his wife. The Ministry did not decide on their applications, nor did it reply to a letter sent by Eugen Czernin on 19 March 1946, urging the authorities to rule on his application. A note in each of their files from 1947 states that the application was to be regarded as irrelevant as the applicants had voluntarily left for Austria, and their files were closed.

2.3 After the regime change in Czechoslovakia in late 1989, the author, only son and heir of Eugen and Josefa Czernin, lodged a claim for restitution of their property under Act No. 87/1991 and Act No. 243/1992. According to him, the principal precondition for the restitution of his property is the Czechoslovak citizenship of his parents after the war.

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 the Optional Protocol.

² Decree 33/1945, paragraph 2(1) stipulates that persons “who can prove that they remained true to the Republic of Czechoslovakia, never committed any acts against the Czech and Slovak peoples and were actively involved in the struggle for its liberation or suffered under the National Socialist or Fascist terror shall retain Czechoslovak citizenship.”

2.4 On 19 January and 9 May 1995 respectively, the author applied for the resumption of proceedings relating to his father's and his mother's application for retention of Czechoslovak citizenship. In the case of Eugen Czernin, a reply dated 27 January 1995 from the Jindřichův Hradec District Office informed the author that the proceedings could not be resumed because the case had been definitely settled by Act 34/1953, conferring Czechoslovak citizenship on German nationals who had lost their Czechoslovak citizenship under Decree 33/1945 but who were domiciled in the Czechoslovak Republic³. In a letter dated 13 February 1995, the author insisted that a determination on his application for resumption of proceedings be made. In a communication dated 22 February 1995, he was notified that it was not possible to proceed with the citizenship case of a deceased person and that the case was regarded as closed. On 3 March 1995, the author applied to the Ministry of Interior for a decision to be taken on his case. After the Ministry informed him that his letter had not arrived, he sent the same application again on 13 October 1995. On 24 and 31 January 1996, the author again wrote to the Minister of Interior. Meanwhile, in a meeting between the second author and the Minister of Interior, the latter indicated that there were not only legal but also political and personal reasons for not deciding on the case, and that "in any other case but [his], such an application for determination of nationality would have been decided favourably within two days". The Minister also promised that he would convene an ad hoc committee composed of independent lawyers, which would consult with the author's lawyers, but this committee never met.

2.5 On 22 February 1996, the Minister of Interior wrote to the author stating that "the decision on [his] application was not favourable to [him]". On 8 March 1996, the author appealed the Minister's letter to the Ministry of Interior. In a reply from the Ministry dated 24 April 1996, the author was informed that the Minister's letter was not a decision within the meaning of section 47 of Act No. 71/1967 on administrative proceedings and that it was not possible to appeal against a non-existent decision. On the same day, the author appealed the letter of the Minister to the Supreme Court which on 16 July 1996 ruled that the letter was not a decision by an administrative body, that the absence of such a decision was an insurmountable procedural obstacle, and that domestic administrative law did not give the courts any power to intervene against any failure to act by an official body.

2.6 After yet another unsuccessful appeal to the Ministry of Interior, the author filed a complaint for denial of justice in the Constitutional Court which, by judgment of 25 September 1997, ordered the Ministry of Interior to cease its continuing inaction which violated the complainant's rights. Further to this decision, the author withdrew his communication before the Human Rights Committee.

2.7 According to the author, the Jindřichův Hradec District Office (District Office), by decision of 6 March 1998, re-interpreted the essence of the author's application and, arbitrarily characterised it as an application for *confirmation of citizenship*. The District Office denied the application on the ground that Eugen Czernin had not retained Czech citizenship after being

³ Act 34/1953 of 24 April 1953 "Whereby certain persons acquire Czech citizenship rights", paragraph 1 (1) stipulates that "Persons of German nationality, who lost Czechoslovak citizenship rights under Decree 33/1945 and have on the day on which this law comes into effect domicile in the territory of the Czechoslovak Republic shall become Czech citizens, unless they have already acquired Czech citizenship rights".

deprived of it, in accordance with the Citizenship Act of 1993, which stipulates that a decision in favour of the plaintiff requires, as a prerequisite, the favourable conclusion of a citizenship procedure. The District Office did not process the author's initial application for resumption of proceedings on retention of citizenship. Further to this decision, the author resubmitted and updated his communication to the Committee in March 1998.

2.8 On 28 July 1998, the author informed the Committee that on 17 June 1998, the Ministry of Interior had confirmed the decision of the District Office of 6 March 1998. In August 1998, the author filed a motion for judicial review in the Prague High Court, as well as a complaint in the Constitutional Court. The latter was dismissed on 18 November 1998 for failure to exhaust available remedies, as the action was still pending in the Prague High Court.

2.9 On 29 September 1998, the author informed the Committee that on the same date, the District Office of Prague 1 had issued a negative decision on Josefa Czernin's application for retention of citizenship.

2.10 With regard to the requirement of exhaustion of domestic remedies, the author recalls that the application for retention of citizenship was filed in November 1945, and that efforts to have the proceedings completed were resumed in January 1995. He thus considers that they have been unreasonably prolonged. In the 1998 update of his communication, the author contends that the decision of the District Office is not a "decision on his application". He argues that remaining remedies are futile, as the District Office decided against the spirit of the decision of the Constitutional Court, and that a judgment by the Supreme Court could only overturn a decision from the District Office, without making a final determination. Thus, available remedies would only cause the author repeatedly to appeal decisions to fulfil only formal requirements, without ever obtaining a decision on the merits of his case.

2.11 The author states that the same matter is not being examined under another procedure of international investigation or settlement.

The complaint

3.1 The author alleges a violation of his right to equal protection of the law without discrimination and of his right to due process of law.

3.2 The author claims to be a victim of a violation of article 26 of the Covenant. He recalls that his parents and he himself were victims of a violation of their right to equal protection of the law without discrimination, through unequal application of the law and inequality inherent in the law itself, which does not allow him to bring an action for negligence against the authorities. Discrimination arises from the authorities' failure to issue a decision on their case, although their application fulfilled the formal and substantial requirements of Decree No. 33/1945. The author further argues that domestic law does not afford him a remedy against the inaction of the authorities, and that he is being deprived of an opportunity to enforce his rights. He claims that those who had their case decided have a remedy available, whereas he has no such remedy; this is said to amount to discrimination contrary to article 26.

3.3 The author claims to be a victim of a violation of article 14, paragraph 1, as the inaction of the authorities on his application for resumption of citizenship proceedings amounts to a failure to give him a “fair hearing by a competent, independent and impartial tribunal established by law”, and that he is a victim of undue delay in the administrative proceedings.

The State party’s submission on the admissibility and merits of the communication

4.1 On 3 February 1999, the State party commented on the admissibility of the communication and on 10 August 1999, it filed observations on the merits. It argues that the authors have not exhausted domestic remedies, and considers that their claims under articles 14, paragraph 1, and 26 are manifestly ill-founded.

4.2 The State party underlines that after the decision of the Constitutional Court of 25 September 1997 which upheld the author’s claim and ordered the authorities to cease their continued inaction, the District Office in Jindřichův Hradec considered his case and issued a decision on 6 March 1998. The Ministry of Interior decided on his appeal on 17 June 1998. On 5 August 1998, the author appealed the decision of the Ministry to the Prague High Court. At the time of the State party’s submission, these proceedings remained pending, and thus domestic remedies had not been exhausted. The State party argues that the exception to the rule of exhaustion of domestic remedies, i.e. unreasonable prolongation of remedies does not apply in the present case, since, given the dates of the above-mentioned decisions, and considering the complexity of the case and the necessary research, the application of domestic remedies has not been unreasonably prolonged. In addition, with regard to the effectiveness of these remedies, the State party argues that the author cannot forecast the outcome of his action, and that in practice, if a court concludes that the legal opinion of an administrative authority is incorrect, the impugned decision of the Ministry of Interior will be quashed. It underlines that under Section 250j, paragraph 3, of the Czech Code of Civil Procedure, an administrative authority is bound by the legal opinion of the court.

4.3 The State party contends that the claim under article 26 of the Covenant is manifestly ill-founded, as the author did not substantiate his claim nor has presented any specific evidence or facts illustrating discriminatory treatment covered by any of the grounds enumerated in article 26. It further argues that the author did not invoke the prohibition of discrimination and equality of rights in the domestic courts, and therefore did not exhaust domestic remedies in this respect.

4.4 As to the alleged violation of article 14, paragraph 1, the State party admits that the allegation of breach of the right to a fair trial was meritorious at the time of the initial submission of the author. However, it argues that after the decision of the Constitutional Court of 25 September 1997, an administrative decision was issued by the District Office on 6 March 1998, which was in conformity with the judgment of the Constitutional Court, and that the author’s right to a fair trial was fully protected through this decision. Referring to the dates of the above-mentioned decisions, the State party further asserts that there was no undue delay. The State party therefore considers that the claim under article 14, paragraph 1, of the communication is manifestly ill-founded. It lists a number of remedies available to the authors if undue delay is argued. The author could have filed a complaint with the Ministry of Interior, or with the President of the High Court. Another remedy available to him would have been a constitutional complaint. The State party indicates that a complaint must be replied to within two months

following the date it is served on the government department competent to handle it. The State party recalls that the author did not avail himself of these remedies, and thus did not exhaust domestic remedies.

Further comments by the authors

5.1 On 19 November 1999, 25 June 2002, 29 January, 25 February, 16 and 22 December 2004, the authors commented on the State party's submissions and informed the Committee of the status of proceedings before the Czech courts. The author reiterates that the decision of the District Office of 6 March 1998 was taken to formally satisfy the requirements laid down by the Constitutional Court in its judgment of 25 September 1997. He argues that the authorities arbitrarily, and against his express will, re-interpreted his application for resumption of proceedings on retention of citizenship into an application for verification of citizenship, and treated it under the State party's current citizenship laws, rather than under Decree No. 33/1945 which should have been applied. The author claims that this decision was sustained by the appellate bodies without any further examination or reasoned decision. In his opinion, that an administrative agency arbitrarily and on its own initiative, and without giving prior notice to the applicant, re-interpreted his application and failed to decide on the initial application, constitutes a violation of his right to due process and his right to proceedings and to a decision, protected by article 14.

5.2 In the case of the author's mother, the Prague Municipal Authority decided, on 6 January 1999, that "at the time of her death, Josefa Czernin was a citizen of the Czechoslovak Republic". The author points out that the authorities granted the application without problems in his mother's case, as opposed to his father's, and on substantially scarcer evidence. The author suggests that this inequality of treatment between his parents may be explained by the fact that his father owned considerably more property than his mother, and that most of his father's property is state- owned today.

5.3 On 19 October 2000, the Prague High Court overturned the decision of the Ministry of Interior of 17 June 1998 and determined that the case should be decided by reference to Decree 33/1945, that the impugned decision was illegal, that it defied the legally binding judgment of the Constitutional Court, and had violated essential procedural rules.

5.4 The case was then returned to the Ministry of Interior for a second hearing. On 31 May 2002, the Ministry held that Eugen Czernin, member of the German ethnic group, had failed to furnish sufficient "exculpatory grounds" in accordance with Decree 33/1945 and that "therefore, he lost Czechoslovak citizenship". The author appealed against this decision, which was confirmed by the Minister of Interior on 1 January 2003. He then filed an appeal in the Prague Town Court, which quashed this decision on 5 May 2004. It ruled that the Minister, in his decision of 1 January 2003, as well as the Ministry, in its decision of 31 May 2002, had issued these decisions "without the necessary argumentation", arbitrarily, and had ignored evidence provided by the author's father. The case, which was then returned for a third hearing by the Ministry of Interior, is currently pending before this organ.

5.5 In each of his further submissions, the author confirms that the authorities, which oblige him to go through the same stages of appeal again and again, theoretically *ad infinitum*, are

unwilling to process his case and purposively drag out proceedings. He invokes the “undue prolongation” qualifier in article 5, paragraph 2 (b), of the Optional Protocol.

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 has challenged the admissibility of the communication in general terms. It also notes that the case of the author is currently pending before the Ministry of Interior, and that since the judgment of the Constitutional Court of September 1997 ordering the Ministry to cease its continuing inaction, the Ministry has heard the case of the author twice over a four year period. The two decisions issued by the Ministry of Interior in this case were quashed by the Prague High Court and the Prague Town Court, respectively, and referred back to the same Ministry for a rehearing. In the opinion of the Committee, and having regard to the absence of compliance of the Ministry of the Interior with the relevant decisions of the judiciary, the hearing of the author’s case by the same organ for the third time would not offer him a reasonable chance of obtaining effective redress and therefore would not constitute an effective remedy which the author would have to exhaust for the purposes of article 5, paragraph 2 (b), of the Optional Protocol.

6.4 The Committee further considers that the proceedings instituted by the second author and his late father have been considerably protracted, spanning a period of ten years, and thus may be considered to be “unreasonably prolonged” within the meaning of article 5, paragraph 2 (b), of the Optional Protocol. The Committee does not consider that the delays encountered are attributable to the second author or his late father.

6.5 As to the State party’s claim that the authors failed to exhaust domestic remedies in relation to his claim of prohibited discrimination, the Committee recalls that the authors did not invoke the specific issue of discrimination before the Czech courts; accordingly, they have not exhausted domestic remedies in this respect. The Committee concludes that this part of the claim is inadmissible under article 5, paragraph 2 (b), of the Optional Protocol.

6.6 With regard to the claim that the author was a victim of unequal application of the law in violation of article 26, the Committee considers that this claim may raise issues on the merits.

6.7 Regarding the authors’ claim that they are victims of a violation of their right to a fair hearing under article 14, paragraph 1, the Committee notes that the authors do not contest the proceedings before the courts, but the non-implementation of the courts’ decisions by administrative authorities. The Committee recalls that the notion of “rights and obligations in a

suit at law” in article 14, paragraph 1, applies to disputes related to the right to property. It considers that the author has sufficiently substantiated his claim, for the purposes of admissibility, that the way in which the Czech administrative authorities re-interpreted his application and the laws to be applied to it, the delay in reaching a final decision, and the authorities’ failure to implement the judicial decisions may raise issues under article 14, paragraph 1, in conjunction with article 2, paragraph 3. The Committee decides that this claim should be examined on its 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 main issue before the Committee is whether the administrative authorities (the District Office in Jindřichův Hradec and the Ministry of Interior) acted in a way that violated the authors’ right, under article 14, paragraph 1, to a fair hearing by a competent, independent and impartial tribunal, in conjunction with the right to effective remedy as provided under article 2, paragraph 3.

7.3 The Committee notes the statement of the authors that the District Office and Ministry of Interior, in their decisions of 6 March and 17 June 1998, arbitrarily re-interpreted his application on resumption of proceedings on retention of citizenship and applied the State party’s current citizenship laws rather than Decree No. 33/1945, on which the initial application had been based. The Committee further notes that the latter decision was quashed by the Prague High Court and yet referred back for a rehearing. In its second assessment of the case, the Ministry of Interior applied Decree No. 33/1945, and denied the application.

7.4 The Committee recalls its jurisprudence that the interpretation and application of domestic law is essentially a matter for the courts and authorities of the State party concerned. However, in the pursuit of a claim under domestic law, the individual must have access to effective remedies, which implies that the administrative authorities must act in conformity with the binding decisions of national courts, as admitted by the State party itself. The Committee notes that the decision of the Ministry of Interior of 31 May 2002, as well as its confirmation by the Minister on 1 January 2003, were both quashed by the Prague Town Court on 5 May 2004. According to the authors, the Town Court ruled that the authorities had taken these decisions without the required reasoning and arbitrarily, and that they had ignored substantive evidence provided by the applicants, including the author’s father, Eugen Czernin. The Committee notes that the State party has not contested this part of the authors’ account.

7.5 The Committee further notes that since the authors’ application for resumption of proceedings in 1995, they have repeatedly been confronted with the frustration arising from the administrative authorities’ refusal to implement the relevant decisions of the courts. The Committee considers that the inaction of the administrative authorities and the excessive delays in implementing the relevant courts’ decisions are in violation of article 14, paragraph 1, in conjunction with article 2, paragraph 3, which provides for the right to an effective remedy.

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 14, paragraph 1, of the Covenant. With regard to the above finding, the Committee considers that it not necessary to examine the claim under article 26 of the Covenant.

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 the requirement that its administrative authorities act in conformity with the decisions of the courts.

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 90 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 in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

APPENDIX

Individual Opinion by Committee member, Ms. Ruth Wedgwood

Eastern Europe has enjoyed democracy for more than a decade. Over that period, the Human Rights Committee has been presented with a number of cases, asking whether refugees from a former communist regime are entitled to the restoration of their confiscated properties, and if so, under what conditions.

In four Views concerning the Czech Republic, the Committee has concluded that the right to private property, as such, is not protected under the Covenant on Civil and Political Rights, but that conditions for the restoration of property cannot be unfairly discriminatory.

In the first case of this series, *Simunek v. Czech Republic*, No. 516/1992, the Committee invoked the norm of “equal protection of the law” as recognized under article 26 of the Covenant. The Committee held that a state cannot impose arbitrary conditions for the restitution of confiscated property. In particular, the Committee held that restoration of private property must be available even to persons who no longer enjoy national citizenship and are no longer permanent residents – at least when the state party, under its prior communist regime, was “responsible for the departure” of the claimants. See Views of the Committee, No. 516/1992, paragraph 11.6.

The Committee has followed these views in subsequent cases, including *Adam v. Czech Republic*, No. 586/1994; *Blazek et al. v. Czech Republic*, No. 857/1999; and *Des Fours Walderode v. Czech Republic*, No. 747/1997.

Committee member Nisuke Ando, writing individually in *Adam v. Czech Republic*, No. 586/1994, properly pointed out that traditionally, private international law has permitted states to restrict the ownership of immovable properties to citizens. But a totalitarian regime that forces its political opponents to flee, presents special circumstances. And there is no showing that the Czech Republic has, in regard to new purchasers of real property, required either citizenship or permanent residence.

It is against this background that the Committee is brought to consider the case of *Czernin v. Czech Republic*, No. 823/1998. Here, the Committee has challenged the state party not on the grounds of denial of equal treatment, but on a question of process – finding that the administrative authorities of the state party had “refuse[d] to carry out the relevant decisions of the courts” of the state party concerning property restoration.

The author’s father, accompanied by his wife, left for Austria in December 1945, after interrogation in prison by the Soviet secret services NKVD and GPU. In 1989, after the fall of the communist regime in former Czechoslovakia, the author, as sole heir, sought restitution of his father’s property, and in 1995, sought to renew his parents’ applications for restoration of Czech citizenship. Since that time, the Czech Constitutional Court, the Prague High Court, and the Prague Town Court have, respectively, chastised the Czech Interior Ministry for failure to act upon the author’s application, erroneous reliance on a 1993 citizenship law, and the absence of “necessary argumentation” concerning his father’s asserted anti-Nazi posture (required for

retention of Czech citizenship, under the post-war decree no. 33/1945 of Czech president Eduard Benes, in the case of ethnic Germans).

In one sense, this case is simpler than the previous cases, since the issue is process, rather than the limits of permissible substantive grounds. Nonetheless, one should note that the courts of the Czech Republic have, ultimately, sought to provide an effective remedy to the authors, in the consideration of their claims. Many democracies have seen administrative agencies that are reluctant to reach certain results, and the question is whether there is a remedy within the system for a subordinate agency's failure to impartially handle a claim. One could not adopt any *per se* rule that three rounds of appellate litigation amounts to proof that an applicant has been deprived of a right to a fair hearing by a competent, independent and impartial tribunal, especially since here the appellate courts have acted to restrain the administrative agency in question on its various grounds of denial of the author's claims. The Committee has not held that administrative proceedings fall within the full compass of Article 14.

Equally, this case does not touch upon the post-war circumstances of the mandatory transfer of the Sudeten German population, a policy undertaken after the National Socialists' catastrophic misuse of the idea of German self-determination. Though population transfers, even as part of a peace settlement, would not be easily accepted under modern human rights law, the wreckage of post-war Europe brought a different conclusion. Nor has the author challenged, and the Committee does not question, the authority of the 1945 presidential decree, which required that ethnic Germans from the Sudetenland who wished to remain in Czechoslovakia, had to demonstrate their wartime opposition to Germany's fascist regime. A new democracy, with an emerging economy, may also face some practical difficulties in unraveling the violations of private ownership of property that lasted for fifty years. In all of these respects, the state party is bound to act with fidelity to the Covenant, yet the Committee must also act with a sense of its limits.

[Signed] Ruth Wedgwood
