

**HUMAN RIGHTS COMMITTEE**

**Des Fours v. Czech Republic**

**Communication No 747/1997**

**30 October 2001**

**CCPR/C/73/D/747/1997**

**VIEWS**

*Submitted by: Dr. Karel Des Fours Walderode (deceased in February 2000) and his surviving spouse Dr. Johanna Kammerlander (counsel)*

*Alleged victims: The author and his surviving spouse*

*State Party: The Czech Republic*

*Date of Communication: 21 November 1996*

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

Meeting on 30 October 2001,

Having concluded its consideration of communication No. 747/1997, submitted to the Human Rights Committee by the late Dr. Karel Des Fours Walderode and Dr. Johanna Kammerlander 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 by the State party,

Adopts the following:

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

1. The original author of the communication was Dr. Karel Des Fours Walderode, a citizen of the Czech Republic and Austria, residing in Prague, Czech Republic. He was represented by his spouse, Dr. Johanna Kammerlander, as counsel. He claimed to be a victim of violations of article 14,

paragraph 1, and article 26 of the International Covenant on Civil and Political Rights by the Czech Republic. The Covenant was ratified by Czechoslovakia in December 1975, the Optional Protocol in March 1991. (1) The author passed away on 6 February 2000, and his surviving spouse maintains the communication before the Committee.

### **The facts as submitted**

2.1 Dr. Des Fours Walderode was born a citizen of the Austrian-Hungarian empire on 4 May 1904 in Vienna, of French and German descent. His family had been established in Bohemia since the seventeenth century. At the end of the First World War in 1918, he was a resident of Bohemia, a kingdom in the former empire, and became a citizen of the newly created Czechoslovak State. In 1939, because of his German mother tongue, he automatically became a German citizen by virtue of Hitler's decree of 16 March 1939, establishing the Protectorate of Bohemia and Moravia. On 5 March 1941, the author's father died and he inherited the Hruby Rohozec estate.

2.2 At the end of the Second World War, on 6 August 1945, his estate was confiscated under Benes Decree 12/1945, pursuant to which the landed properties of German and Magyar private persons were confiscated without any compensation. However, on account of his proven loyalty to Czechoslovakia during the period of Nazi occupation, he retained his Czechoslovak citizenship, pursuant to paragraph 2 of Constitutional Decree 33/1945. Subsequently, after a Communist government came to power in 1948, he was forced to leave Czechoslovakia in 1949 for political and economic reasons. In 1991, after the "velvet revolution" of 1989, he again took up permanent residence in Prague. On 16 April 1991 the Czech Ministry of Interior informed him that he was still a Czech citizen. Nevertheless, Czech citizenship was again conferred on him by the Ministry on 20 August 1992, apparently after a document was found showing that he had lost his citizenship in 1949, when he left the country.

2.3 On 15 April 1992, Law 243/1992 came into force. The law provides for restitution of agricultural and forest property confiscated under Decree 12/1945. To be eligible for restitution, a claimant had to have Czech citizenship under Decree 33/1945 (or under Law 245/1948, 194/1949 or 34/1953), permanent residence in the Czech Republic, having been loyal to the Czechoslovak Republic during the period of German occupation, and to have Czech citizenship at the time of submitting a claim for restitution. The author filed a claim for restitution of the Hruby Rohozec estate within the prescribed time limit and on 24 November 1992 concluded a restitution contract with the then owners, which was approved by the Land Office on 10 March 1993 (PU-R 806/93). The appeal by the town of Turnov was rejected by the Central Land Office by decision 1391/93-50 of 30 July 1993. Consequently, on 29 September 1993 the author took possession of his lands.

2.4 The author alleges State interference with the judiciary and consistent pressure on administrative authorities and cites in substantiation from a letter dated 29 April 1993 by the then Czech Prime Minister Vaclav Klaus, addressed to party authorities in Semily and to the relevant Ministries, enclosing a legal opinion according to which the restitution of property confiscated before 25 February 1948 was "legal", but nevertheless "unacceptable". The author states that this political statement was subsequently used in court proceedings. The author further states that, because of increasing political pressure at the end of 1993 the Ministry of Interior reopened the issue of his citizenship. Furthermore, the former owners of the land were persuaded to withdraw their

consent to the restitution to which they had previously agreed.

2.5 On 22 December 1994 the Public Prosecutor's Office in the Semily District filed an application with the District Court under paragraph 42 of Law 283/1993 to declare the Land Office's decision of 10 March 1993 null and void. On 29 December 1994, the District Court rejected this application. On appeal, the matter was referred back to the first instance.

2.6 On 7 August 1995, a "citizens' initiative" petitioned revision of the Semily Land Office's decision of 10 March 1993. On 17 October 1995, the Central Land Office examined the legality of the decision and rejected the request for revision. Nevertheless, on 2 November 1995 the author was informed by the Central Land Office that it would, after all, begin to revise the decision. On 23 November 1995, the Minister of Agriculture annulled the Semily Land Office decision of 10 March 1993, purportedly because of doubts as to whether the author fulfilled the requirement of permanent residence, and referred the matter back. On 22 January 1996, the author applied to the High Court in Prague against the Minister's decision.

2.7 On 9 February 1996, Law 243/1992 was amended. The condition of permanent residence was removed (following the judgement of the Constitutional Court of 12 December 1995, holding the residence requirement to be unconstitutional), but a new condition was added, of uninterrupted Czechoslovak/Czech citizenship from the end of the war until 1 January 1990. The author claims that this law specifically targeted him and submits evidence of the use of the term "Lex Walderode" by the Czech media and public authorities. On 3 March 1996 the Semily Land Office applied the amended Law to his case to invalidate the restitution agreement of 24 November 1992, since Dr. Des Fours did not fulfil the new eligibility requirement of continuous citizenship. On 4 April 1996, the author lodged an appeal with the Prague City Court against the Land Office's decision.

2.8 As regards the exhaustion of domestic remedies, the late author contended that the proceedings were being deliberately drawn out because of his age and, moreover, that the negative outcome was predictable. He therefore requested the Committee to consider his communication admissible, because of the delay in the proceedings and the unlikelihood of the effectiveness of domestic remedies.

### **The complaint**

3.1 The late author and his surviving spouse claim that the restitution of the property in question was annulled for political and economic reasons and the legislation was amended to exclude him from the possibility of obtaining redress for the confiscation of his property. It is claimed that this constitutes a violation of article 26 of the Covenant, as well as of article 14, paragraph 1, because of political interference with the legal process (such as the Minister's decision of 23 November 1995). In this context, the author also refers to the long delays in the hearing of his case.

3.2 Further, he claims that the requirement of continuous citizenship for the restitution of property is in violation of article 26 of the Covenant and refers to the Committee's jurisprudence on this point. The author also claims that the restitution conditions applying to him are discriminatory in comparison with those applying to post-1948 confiscations.

## **The State party's observations**

4.1 By submission of 13 June 1997, the State party noted that the author appealed to the Prague City Court from the decision of the District Land Office in Semily of 8 March 1996. As of June 1997, the proceedings were not completed, since the Land Office could not send the files concerning the case to the City Court, since these were still with the High Court.

4.2 Considering that the author commenced proceedings in the High Court in January 1996 against the decision of the Minister of Agriculture to annul the restitution, and that by December 1996, the preparatory stage of obtaining all necessary documentary evidence was completed, the State party argued that no undue prolongation had occurred.

4.3 The State party indicated that remedies exist when the author feels that the proceedings are being intentionally delayed. The author could have complained to the Chairman of the court, from where a possibility of review with the Ministry of Justice exists. Another remedy available to the author is a constitutional complaint, which may be accepted even if he has not exhausted domestic remedies if the application of remedies is unduly delayed and he has suffered serious harm as a result.

4.4 According to the State party, the rights invoked by the author are rights that can be asserted through a constitutional complaint, since international treaties regarding human rights are directly applicable and superior to law.

4.5 The State party rejects the author's suggestion that any attempts to assert his rights through the courts is useless because of the political interference with the judicial process. As regards the Prime Minister's letter concerning the interpretation of Law No. 243/1992, the State party denies that this letter was a political instruction for the courts. It notes that the letter was not addressed to a court and that it was merely a reply to an information request from the chairman of the local branch of his party and the contents were general in nature. If the author nevertheless fears that the letter may affect the impartiality of the court, he may ask the Constitutional Court to order that the letter should be removed from the court file on the ground of interference by a public authority with the exercise of his right to a fair hearing.

4.6 The State party submits that difference in treatment between the Restitution Law No. 243/1992 and the laws applying to the post-1948 confiscations does not constitute discrimination, as the two sets of laws serve different purposes and cannot be compared.

4.7 The State party concluded that the author has failed to exhaust domestic remedies and that the communication is thus inadmissible under article 5, paragraph 2 (b), of the Optional Protocol. The State party also submits that since the author's allegations are not substantiated and/or do not disclose an appearance of a violation of any of the rights set forth in the Covenant, the communication is inadmissible *ratione materiae*.

## **The author's comments**

5.1 In his comments, the author refers to his original communication and submits that the State

party has basically failed to contradict any of his claims.

5.2 He emphasizes that he retained his Czech citizenship under Benes Decree No. 33/1945, and that thus all the requirements of the original Law 243/1992 had been fulfilled when the Land Office approved the return of his property. The author notes that the State party remains silent about amendment 30/1996, introducing a further condition of continuous Czech citizenship, which did not apply when his restitution contract was approved in 1993. According to the author, this amendment made it possible to expropriate him again.

5.3 According to the author, the application of further domestic remedies would be futile because of the political interests in his case. He moreover points to the delays in the handling of the case, whether intentional or not.

5.4 The author dismisses the State party's attempt to explain away the Minister's letter as a simple expression of opinion and maintains that the opinion of the Prime Minister was equated with an interpretation of the law, and submits that the political dimension of his restitution procedure is evident from the interaction of several components.

5.5 With regard to the petition received by the Ministry of Agriculture from local residents, the author points out that the decision of the Semily Land Office was handed down on 10 March 1993 and the petition against it was submitted on 7 August 1995, two years and five months later. The Minister of Agriculture's order quashing the Semily Land Office's earlier decision followed on 23 November 1995, three and half months after the petition. It becomes evident that the 30-day time limit stipulated in Law 85/1990 concerning the right of petition was not observed.

5.6 In a further submission, the author states that his complaint against the Minister's decision of 23 November 1995 was rejected by the High Court on 25 August 1997. The author claims that the reasons given by the court again illustrate the political nature of the process.

5.7 On 25 March 1998, the Prague City Court rejected the author's appeal against the refusal of the restitution of his property by the Land Office in 1996, since he no longer fulfilled the requirements added to the law in amendment 30/1996. On 24 July 1998, the author filed a complaint against this decision with the Czech Constitutional Court.

5.8 The author further submits that even if the Constitutional Court would find in his favour, the decision would again be referred to the first instance (the Land Office), thus entailing considerable further delay and opening the door for more political intervention. According to the author, the whole procedure could easily take another five years. He considers this to be unjustifiably long, also in view of his age.

5.9 In this context, the author recalls the salient aspects of his case. The restitution contract which he concluded was approved by the Land Office on 10 March 1993, and the appeal against the approval was rejected by the Central Land Office on 30 July 1993, after which the restitution was effected in accordance with Law 243/1992. Only on 25 November 1995, that is more than two years after he had taken possession of his lands, did the Minister of Agriculture quash the Land Office's decision, on the ground that the Office had not sufficiently verified whether the author complied

with the requirement of permanent residence. It appears from the Court judgements in the case, that at the time of the Minister's decision, it was expected that the Constitutional Court would declare this residence requirement unconstitutional (it subsequently did so, on 12 December 1995, less than a month after the Minister's decision). After a requirement of continued citizenship was added to Law 243/1992 by law 30/1996 of 9 February 1996, the Land Office then reviewed the legality of the restitution agreement in the author's case, and applying the new law declared the agreement invalid on 3 March 1996. The two court proceedings which the author then initiated, were delayed, as acknowledged by the State party, in one case because the Ministry was not in a position to furnish the papers needed by the Court, and in the other because of a backlog at the court in handling cases.

### **Admissibility considerations**

6.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with article 87 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

6.2 During its sixty-fifth session in March 1999, the Committee considered the admissibility of the communication. It noted the State party's objection to the admissibility of the communication on the ground that the author had failed to exhaust all domestic remedies available to him. The Committee noted, however, that in August 1997, the High Court rejected the author's complaint against the Minister's decision, and on 25 March 1998, the City Court in Prague rejected his appeal against the Land Office's decision of 1996. The text of these decisions shows that no further appeal is possible. The effect is to preclude any further attempt by the author to validate and seek approval of the restitution agreement of 1992.

6.3 The author has since filed a constitutional complaint against the Prague City Court decision that the requirement of continued citizenship is legitimate. The Committee noted that in the instant case, the Constitutional Court had already examined the constitutionality of Law 243/1992. In the opinion of the Committee and having regard to the history of this case, a constitutional motion in the author's case 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 purposes of article 5, paragraph 2 (b), of the Optional Protocol.

6.4 In this context, the Committee also took note of the author's arguments that even if he were to win a constitutional appeal, the case would then be referred back, and the proceedings could take another five years to become finalized. In the circumstances, taking into account the delays which had already been incurred in the proceedings and which were attributable to the State party, the delays which would likely occur in future and the author's advanced age, the Committee also found that the application of domestic remedies had been unreasonably prolonged.

7. On 19 March 1999, the Committee held that the communication was admissible insofar as it might raise issues under articles 14, paragraph 1, and 26 of the Covenant.

### **Consideration of the merits**

8.1 Pursuant to article 5, paragraph 1, of the Optional Protocol, the Committee proceeds to an examination of the merits, in the light of the information submitted by the parties. It notes that it has received sufficient information from the late author and his surviving spouse, and that no further information on the merits has been received from the State party subsequent to the transmittal of the Committee's admissibility decision, notwithstanding two reminders. The Committee recalls that a State party has an obligation under article 4, paragraph 2, of the Optional Protocol to cooperate with the Committee and to submit written explanations or statements clarifying the matter and the remedy, if any, that may have been granted.

8.2 The Committee has noted the author's claims that the State party has violated article 14, paragraph 1, of the Covenant because of alleged interference by the executive and legislative branches of government in the judicial process, in particular through the letter of the Prime Minister dated 29 April 1993, and because of the adoption of retroactive legislation aimed at depriving the author of rights already acquired by virtue of prior Czech legislation and decisions of the Semily Land Office. With regard to the adoption of retroactive legislation, the Committee observes that, whereas an allegation of arbitrariness and a consequent violation of article 26 is made in this respect, it is not clear how the enactment of law 30/1996 raises an issue under article 14, paragraph 1. As to the Prime Minister's letter, the Committee notes that it was part of the administrative file in respect of the author's property which was produced in Court, and that there is no indication whether and how this letter was actually used in the court proceedings. In the absence of any further information, the Committee takes the view that the mere existence of the letter in the case file is not sufficient to sustain a finding of a violation of article 14, paragraph 1, of the Covenant.

8.3 With regard to the author's allegation of a violation of article 26 of the Covenant, the Committee begins by noting that Law No. 243/1992 already contained a requirement of citizenship as one of the conditions for restitution of property and that the amending Law No. 30/1996 retroactively added a more stringent requirement of continued citizenship. The Committee notes further that the amending Law disqualified the author and any others in this situation, who might otherwise have qualified for restitution. This raises an issue of arbitrariness and, consequently, of a breach of the right to equality before the law, equal protection of the law and non-discrimination under article 26 of the Covenant.

8.4 The Committee recalls its Views in cases No. 516/1993 (Simunek et al.), 586/1994 (Joseph Adam) and 857/1999 (Blazek et al.) that a requirement in the law for citizenship as a necessary condition for restitution of property previously confiscated by the authorities makes an arbitrary, and, consequently a discriminatory distinction between individuals who are equally victims of prior state confiscations, and constitutes a violation of article 26 of the Covenant. This violation is further exacerbated by the retroactive operation of the impugned Law.

9.1 The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol, is of the view that article 26, in conjunction with article 2 of the Covenant, has been violated by the State party.

9.2 In accordance with article 2, paragraph 3 (a) of the Covenant, the State party is under an obligation to provide the late author's surviving spouse, Dr. Johanna Kammerlander, with an effective remedy, entailing in this case prompt restitution of the property in question or

compensation therefor, and, in addition, appropriate compensation in respect of the fact that the author and his surviving spouse have been deprived of the enjoyment of their property since its restitution was revoked in 1995. The State party should review its legislation and administrative practices to ensure that all persons enjoy both equality before the law as well as the equal protection of the law.

9.3 The Committee recalls that the Czech Republic, by becoming a State party to the Optional Protocol, recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy in case a violation has been established. Furthermore, the Committee urges the State party to put in place procedures to deal with Views under the Optional Protocol.

9.4 In this connection, the Committee wishes to receive from the State party, within 90 days following the transmittal of these Views to the State party, information about the measures taken to give effect to these Views. The State party is also requested to publish the Committee's Views.

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\* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine Chanet, Mr. Maurice Glèlè Ahanhanzo, Mr. Louis Henkin, Mr. Ahmed Tawfik Khalil, Mr. Eckart Klein, Mr. David Kretzmer, Mr. Rajsoomer Lallah, Ms. Cecilia Medina Quiroga, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Martin Scheinin, Mr. Ivan Shearer, Mr. Hipólito Solari Yrigoyen and Mr. Maxwell Yalden.

[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.]

#### Notes

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