



**International covenant
on civil and
political rights**

Distr.
RESTRICTED*

CCPR/C/96/D/1614/2007
7 September 2009

Original: ENGLISH

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

DECISION

Communication No. 1614/2007

<u>Submitted by:</u>	Ms. Dagmar Dvorak (not represented by counsel)
<u>Alleged victim:</u>	The author
<u>State party:</u>	Czech Republic
<u>Date of communication:</u>	24 November 2006 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 97 decision, transmitted to the State party on 13 November 2007 (not issued in document form)
<u>Date of adoption of decision:</u>	28 July 2009

* Made public by decision of the Human Rights Committee.

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

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

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

Articles of the Covenant: 14, paragraph 7; and 26

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

[Annex]

ANNEX

DECISION OF THE HUMAN RIGHTS COMMITTEE UNDER
THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT
ON CIVIL AND POLITICAL RIGHTS

Ninety-sixth session

concerning

Communication No. 1614/2007*

Submitted by: Ms. Dagmar Dvorak (not represented by counsel)
Alleged victim: The author
State party: Czech Republic
Date of communication: 24 November 2006 (initial submission)

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

Meeting on 28 July 2009,

Adopts the following:

DECISION ON ADMISSIBILITY

1. The author of the communication is Dagmar Dvorak, a citizen of the United States and the Czech Republic, currently residing in the United States of America. The author was born on 23 January 1921 in Prague. She claims to be a victim of violations by the Czech Republic of article 14, paragraph 7, and article 26 of the International Covenant on Civil and Political Rights. The Optional Protocol entered into force for the State party on 22 February 1993. The author is not represented.

* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Mohammed Ayat, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Ahmad Amin Fathalla, Mr. Yuji Iwasawa, Ms. Helen Keller, Mr. Rajsoomer Lallah, 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, Mr. Krister Thelin and Ms. Ruth Wedgwood.

Facts as presented by the author

2.1 The author is the only child and heir of her mother, who owned an apartment building in downtown Prague. In this building she had a large apartment and during the German occupation she accepted a married couple as subtenants. As the subtenants were very untidy, the author's mother complained to the office in charge of dwellings to request another subtenant.

2.2 After the war, the subtenants went to the Prague National Committee to denounce the author's mother for having gone to the German authorities with her complaint.¹ As a result, the author's mother was fined. In a later amnesty of 20 December 1948 her mother was pardoned.

2.3 After the communist coup in February 1948, the Regional National Committee reopened the case and decided to confiscate the apartment building pursuant to Decree No. 108/45. The author's mother was evicted. She died in 1956.

2.4 The author re-acquired Czech citizenship on 30 September 1991. After the overthrow of the former communist government, she tried to recover the confiscated property in Prague. The Regional Court of Prague rejected her restitution claim under Act No. 87/1991 on 31 January 1994, on the grounds that she was not a resident of the Czech Republic. The author appealed to the City Court of Prague which, on 29 June 1994, confirmed the previous decision. An appeal to the Constitutional Court was rejected on 21 November 1994.

The complaint

3. The author claims a violation of article 14, paragraph 7, and article 26 of the Covenant by the Czech Republic.

The State party's observations on admissibility and merits

4.1 In its submission of 13 May 2008, the State party addresses both admissibility and merits of the communication. As to admissibility, it maintains that the author failed to exhaust all available domestic remedies. It recalls that Section 3 of Act No. 87/1991 on Extra-judicial Rehabilitations defines who is an "entitled person" for the purpose of seeking property restitution. According to the original wording of that provision, one of the requirements was permanent residence in the Czech or Slovak Republics. This provision was declared unconstitutional by the Constitutional Court in July 1994 and, consequently, it was repealed.

4.2 In the light of the decision of the Constitutional Court, all persons who did not meet the residence requirement were granted a new opportunity to seek property restitution. However, the author of this communication did not seek property restitution under Act No. 87/1991 again. Under the circumstances, the State party considers that the communication should be declared inadmissible for non-exhaustion of domestic remedies.

4.3 In addition, the State party notes that the last domestic decision was delivered on 21 November 1994. Thus, more than twelve years had passed when the author approached the

¹ The author alleges that during the German occupation there were no other than German authorities in charge of the office of dwellings.

Committee on 24 November 2006. In the States party's opinion, this delay is entirely unreasonable. The State party is aware that the Optional Protocol does not establish any time limits for submitting a communication, but points to jurisprudence of the Committee² which stated that when the delay is clearly unreasonable and unjustified it may constitute an abuse of the right of submission. The State party refers to other international complaint mechanisms, such as the European Court of Human Rights or the Inter-American Commission on Human Rights, where a six-month time limit for the filing of complaints exists.

4.4 In the absence of any explanation by the author of the reason for the delay, the State party invites the Committee to consider the communication inadmissible as an abuse of the right to submit a communication, under article 3 of the Optional Protocol.

4.5 On the merits of the case, the State party distinguishes this case from previous cases on property restitution dealt with by the Committee. In the present case, the issue is not the requirement of citizenship as a precondition for property restitution under the relevant laws.

4.6 The State party indicates that the author acquired Czech citizenship as early as September 1991, four days after she requested it. The State party explains that there were two reasons for the court of first instance to reject the author's action. Firstly, the passage of the ownership title to the property in question from the author's mother to the State took place outside the relevant period covered by the restitution laws, i.e. before 25 February 1948. Secondly, the author failed to meet the requirement of permanent residence.

4.7 The appellate court disagreed with the court of first instance that Act No. 87/1991 was inapplicable *ratione temporis*, but considered that a transfer of property pursuant to Decree No. 108/1945 did not meet the requirements of article 2 of Act No. 87/1991. The appellate court considered that the author's mother was found guilty of sympathizing with Nazism after due and properly held administrative proceedings, in accordance with Decree No. 138/1945, which has not been repealed. Since the preconditions under article 2 for the passage of the property to the State were not met, the appellate court did not consider it necessary to deal with the requirements to be met by "entitled persons", i.e. permanent residence. The Constitutional Court upheld the decision of the court of first instance that the passage of the title to the property had taken place outside the relevant period, and therefore did not deal with the requirement of permanent residence either.

4.8 In view of the domestic courts' decisions, the State party notes that the failure to meet the requirement of permanent residence was only a collateral reason for the rejection of the author's claim at first instance. In addition, the Constitutional Court later declared this requirement unconstitutional. The State party highlights that the author does not comment on the other reasons for rejection and does not specify how these reasons discriminated against her.

4.9 The State party recalls that the property was *de iure* confiscated under Decree No. 108/1945 before the relevant period of Act No. 87/1991, although the *de facto* dispossession

² *Inter alia*, Communication No. 787/1997, *Gobin v. Mauritius*, inadmissibility decision adopted on 16 July 2001; Communication No. 1434/2005, *Fillacier v. France*, inadmissibility decision adopted on 27 March 2006.

took place in 1953. The State party refer to the decision of the Committee in *Drobek v. Slovakia*³ where it was held that legislation adopted to compensate the victims of the communist regime did not appear to be *prima facie* discriminatory because it did not compensate the victims of injustices committed by earlier regimes.

4.10 The State party adds that, even if Act No. 87/1991 was applicable, the requirements of Section 2 of the law were not met. It argues that the property confiscation was the result of the author's mother being found guilty of approving of Nazism, which constituted an administrative infraction under Decree No. 138/1945, and that the instant case does not involve any injustice committed by the Communist regime.

4.11 As regards the alleged violation of article 14, paragraph 7, of the Covenant because of the conviction under Decree No. 138/1945 and the ensuing confiscation, the State party notes that these events took place before the Covenant and its Optional Protocol entered into force for the State party.

Author's comments on the State party's observations

5.1 In comments dated 26 June 2008, the author reiterates that, pursuant to an amnesty issued in 1948, the sentence against her mother was quashed. She considered that confiscating her mother's property, after five years, was in violation of article 14, paragraph 7, of the Covenant. The author states that her mother was never pronounced a Nazi criminal or traitor.

5.2 As regards exhaustion of domestic remedies, the author states that no domestic remedies were available to her.

5.3 The author rejects the State party's argument that her communication is inadmissible as an abuse of the right of submission. She explains that the delay in submitting the communication was because neither her nor her lawyer in the Czech Republic were aware of the existence of the Committee and its decisions. She contends that the State party does not publish the Committee's decisions.

Additional comments by the parties

6.1 On 11 December 2008, the State party submitted additional observations in reply to the author's comments. It argues that the 1948 amnesty only stated that certain minor administrative penalties under Decree No. 138/1945 would not be served, and not that they would be quashed or erased.

6.2 As regards the alleged lack of information on the work of the Committee, the State party considered the explanation given by the author unreasonable, especially in relation to her Czech lawyer. The State party maintains that both the Covenant and the Optional Protocol were duly published in its Official Gazette.

³ Communication No. 643/1995, *Drobek v. Slovakia*, admissibility decision of 14 July 1997, para. 6.5.

7. On 6 January 2009, the author informed the Committee of two new suits of law initiated by her: On 4 June 2004, the District Court of Prague rejected her ownership claim arguing that it was not competent to examine the factual correctness of the confiscation, which was decided according to valid administrative rules. On 25 October 2007, the City Court of Prague confirmed the decision of the District Court. The appellate court added that the author's mother did not own the property at the time of her death and thus, the author could not become an owner through inheritance.

8. On 3 June 2009, the State party submitted additional observations on the claim on article 14, paragraph 7, made by the author. It states that the claim is inadmissible *ratione personae*, as the author is not the victim of the alleged violation, and *ratione temporis*, as the confiscation of property took place before the entry into force of the Optional Protocol for the State party. The State party adds that the claim is manifestly ill-founded, as the author's mother was not tried or punished again for an offence for which she had already been finally convicted or acquitted. The confiscation was a consequence of having committed an administrative offence under decree No. 138/1945.

Issues and proceedings before the Committee

Consideration of admissibility

9.1 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.

9.2 The Committee notes that the author considers the requirement of permanent residence in Act No. 87/1991 to be in violation of article 26 of the Covenant. In this regard, the Committee has already had occasion to hold that laws relating to property rights may violate article 26 of the Covenant if they are discriminatory in character. The question the Committee must therefore resolve in the instant case is whether Act No. 87/1991, as applied to the author, was indeed discriminatory.

9.3 The Committee observes that permanent residence was not the only reason invoked by the court of first instance in its rejection of the author's restitution claim under Act No. 87/1991, which was also dismissed *ratione temporis*. The appellate court and the Constitutional Court, in turn, rejected the restitution claim under articles 2 and 1 of the law, respectively, without making reference to the requirement of permanent residence.⁴

9.4 The Committee notes that the instant case differs from those property restitution cases previously dealt with by it, in that the requirement of permanent residence was not crucial for the rejection of the author's claim. The Committee further notes that the author has not argued how, apart from the issue of permanent residence, the application of Act No. 87/1991 to her case amounts to prohibited discrimination within the meaning of article 26. In view of the above, the Committee considers that this claim has been insufficiently substantiated, for purposes of admissibility.

⁴ See above paras. 4.6 and 4.7.

9.5 The author has also alleged that the State party violated article 14, paragraph 7, of the Covenant. The author does not advance any meaningful arguments in substantiation of her claim, which accordingly is deemed inadmissible.

10. The Human Rights Committee therefore decides:

- (a) that the communication is inadmissible under article 2 of the Optional Protocol;
- (b) that this decision shall be communicated to the State party and to the author.

[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.]
