



**International covenant
on civil and political
rights**

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HUMAN RIGHTS COMMITTEE
Ninety-third session
7 – 25 July 2008

VIEWS

Communication No. 1497/2006

<u>Submitted by:</u>	Mr. Richard Preiss (not represented by counsel)
<u>Alleged victim:</u>	The author
<u>State party:</u>	Czech Republic
<u>Date of communication:</u>	22 March 2006 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 97 decision, transmitted to the State party on 4 October 2006 (not issued in document form)
<u>Date of adoption of views:</u>	17 July 2008

* Made public by decision of the Human Rights Committee.

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

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

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

Articles of the Covenant: 26

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

On 17 July 2008, the Human Rights Committee adopted the annexed text as the Committee's Views, under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 1497/2006.

[ANNEX]

ANNEX

Views of the Human Rights Committee under article 5, paragraph 4, of
the Optional Protocol to the International Covenant on Civil and Political rights

Ninety-third session

concerning

Communication No. 1497/2006*

<u>Submitted by:</u>	Mr. Richard Preiss (not represented by counsel)
<u>Alleged victim:</u>	The author
<u>State party:</u>	Czech Republic
<u>Date of communication:</u>	22 March 2006 (initial submission)

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

Meeting on 17 July 2008,

Having concluded its consideration of communication No. 1497/2006, submitted to the Human Rights Committee by Mr. Richard Preiss 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:

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

1. The author of the communication is Richard Preiss, a naturalised American citizen residing in Arizona, United States of America, born on 1 April 1935 in Prague, Czechoslovakia. He

* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine Chanet, Mr. Yuji Iwasawa, Mr. Edwin Johnson, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Ms. Zonke Zanele Majodina, Mr. Michael O'Flaherty, Ms. Elisabeth Palm, Mr. José Luis Pérez Sanchez-Cerro, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Ivan Shearer and Ms. Ruth Wedgwood.

claims to be a victim of a violation by the Czech Republic of article 26 of the International Covenant on Civil and Political Rights¹. He is not represented by counsel.

Factual background

2.1 The author states that he fled the communist regime in Czechoslovakia in April 1966. In 1972 he obtained the citizenship of the United States of America and as a result lost his Czechoslovakian citizenship, in accordance with the Bilateral Treaty of Naturalization of 1928. He re-acquired Czech citizenship on 17 December 1999.

2.2 The author owned 1/8 part of a house and a building in Vinohadry, Prague, and under duress transferred his share of these properties to the Czechoslovak State by a deed of gift on 15 September 1961.

2.3 Under Act No. 87/1991, restitution or compensation was provided for certain property injustices committed between 25 February 1948 and 1 January 1990. Section 3 of the Act required that applicants need to have Czech citizenship in order to be eligible for restitution or compensation². Section 5 of the Act established a time limit of six months following 1 April 1991 for the filing of claims by eligible persons. On the basis of an agreement executed pursuant to Act No. 87/1991, the state-owned Prague 3 Housing Enterprise returned the above properties to the original owners or their heirs, by deed of 25 March 1992, acknowledging that the deed of gift of 1961 had been executed under duress. The author was not a party to the agreement and his property therefore remained in State ownership.

2.4 On 15 September 1993 the author brought an action for nullity of the above agreement before the Prague 3 District Court. On 18 May 1994, the District Court rejected the author's case for lack of *locus standi*, on the ground *inter alia* of his lack of Czech citizenship.

2.5 On 8 April 1994, the owners of the properties sold their shares for the price of CZK 8,000,000. The author sought the surrender of 1/8 part of these properties and on 26 October 1995 instituted proceedings before the Prague 2 District Court, which were however discontinued on 4 January 1996.

2.6 On 9 November 1999, the author sought payment of CZK 1,000,000 compensation in a case brought against the Prague 3 Municipal District before the Prague 3 District Court on the grounds of unjust enrichment. On 3 July 2003, the Court rejected his claim, noting that the author's right to the properties had lapsed as he had failed to raise his claim for restitution within the statute of limitation. The author filed an appeal against the District Court's judgement but withdrew his appeal on 17 October 2003, after which the proceedings were discontinued by the Court on 28 November 2003.

2.7 The author states that some of the Court decisions did not reach him so that he was unable to contest them in time and he explains that he was advised by his Czech lawyers that any further appeals to the courts would be ineffective because of his loss of Czech citizenship.

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

² A requirement of permanent residence in the Czech Republic was struck out as unconstitutional by the Supreme Court.

The complaint

3. The author claims that he is a victim of discrimination, as Act No. 87/1991 makes restitution of his property conditional on having Czech citizenship and the courts rejected his claims on this basis.

The State party's observations on admissibility and merits

4.1 In its submission of 30 April 2007, the State party addresses both admissibility and merits of the communication. As to admissibility, the State party states that the Prague 3 District Court's decision of 18 May 1994 should be seen as the last substantive decision in the author's case and that thus almost twelve years elapsed before the author resorted to the Committee. The author's action on the basis of unjustified enrichment should be regarded as a repetition of the same claim. In the absence of any explanation by the author of the reason for the delay and referring to the Committee's decision in communication No. 787/1997 *Gobin v. Mauritius*³, the State party argues that the communication is inadmissible as an abuse of the right to submit a communication under article 3 of the Optional Protocol.

4.2 The State party further claims that the communication is inadmissible for non-exhaustion of domestic remedies as the author failed to submit a request for restitution of his properties under Act No. 87/1991. The State party states that all the author's motions were rejected by the courts primarily because his rights to the properties had become extinct for failure to exercise them within the time limit laid down in the Act. According to the State party, the author thus failed to use the legal means provided to him by Czech law for exercising his rights. Moreover, the State party notes that the author failed to appeal the judgement of the District Court of 18 May 1994 which rejected his claim for nullity of the agreement of restitution of the properties. As to the action for unjustified enrichment which the author instituted, the State party submits that this cannot be regarded as a domestic remedy within the meaning of the Optional Protocol.

4.3 As to the merits of the case, the State party refers to its observations submitted to the Committee in similar cases⁴ in which it outlined the political circumstances and legal conditions for the Restitution Act. The purpose of the Act was only to eliminate some of the injustices committed by the communist regime as it was not feasible to eliminate all injustices committed at the time. The State party refers to the decisions by the Constitutional Court which repeatedly considered the question of whether the precondition of citizenship complied with the Constitution and the fundamental rights and freedoms and found no reason for abolishing it.

4.4 The State party further explains that the restitution laws were part of the objective to transform society and to carry out economic reform including the restitution of private property. The condition of citizenship was included to ensure that the private owners would take due care of the property and has been considered to be in full conformity with the State party's constitutional order.

³ Communication No. 787/1997, *Gobin v. Mauritius*, inadmissibility decision adopted on 16 July 2001.

⁴ Communication No. 586/1994 *Adam v. the Czech Republic* and Communication No. 1000/2001 *Mráz v. the Czech Republic*.

4.5 The State party explains that the author could have re-acquired Czech citizenship as of 1990 on the basis of an application. This could have been done within the time-limit for submitting a restitution claim under Act No. 87/1991. According to the State party 72 persons thus became Czech citizens during the course of 1991. The State party argues that since the author failed to re-acquire Czech citizenship at the time, he deprived himself of the opportunity to meet the requirement of Act No. 87/1991 in time. In this context, the State party reiterates that citizenship was a legitimate, reasonable and objective criterion that could have been met by the author through the simple submission of a request.

The author's comments on the State party's observations

5.1 In his comments, dated 2 July 2007, on the State party's submission, the author states that Act No. 87/1991 contains discriminatory provisions which violate the Covenant and that he had no *locus standi* before the courts because he failed to meet the citizenship requirement laid down in the law. He further states that there was no need for Act No. 87/1991, as Act No. 119/1990 had already invalidated *ex tunc* the extorted gifts of property like the author's one.

5.2 The author reiterates that the courts in their decisions all made reference to the fact that he had lost his Czech citizenship. He rejects the State party's statement that he could have regained Czech citizenship in 1990 or 1991 since Act No. 88/1990 prevents the acquisition of Czech citizenship in cases where an international treaty would be violated, which according to the author refers to the Treaty on Naturalization.

5.3 The author argues that it has been shown that the citizenship requirement was illegitimate, unreasonable and biased and in violation of international treaties. He further states that the State party knowingly continues to act against the Human Rights Committee's views⁵.

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.

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 of communication because of the long delay between the last 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 thus only in exceptional circumstances that the

⁵ The author refers to the Committee's Views in communications No. 945/2000, *Marik v. the Czech Republic*, Communication No. 516/1992, *Simunek v. the Czech Republic* and Communication No. 1054/2002, *Kríz v. the Czech Republic*.

delay in submitting a communication would lead to inadmissibility of the communication⁶. In the circumstances of the present case, in view of the fact that the author adopted several actions to claim his rights before the courts and that the latest court decision rejecting the author's claim was some time in November 2003, the Committee considers that the delay is not such as to render the communication inadmissible as an abuse under article 3 of the Optional Protocol.

6.4 The State party has argued that the communication is inadmissible for failure to exhaust domestic remedies. In support of its argument, the State party has noted that the author failed to file an application for restitution of his properties within the time limit established by Act No. 87/1991. Moreover, although the author filed different claims before the courts in an attempt to receive compensation for his loss of property, the State party has noted that he failed to appeal any of the first instance court judgements, or when he did, he abandoned the appeal. The author himself has claimed that he was informed by his lawyers that appeals against the Court decisions would have been ineffective because of his lack of Czech citizenship at the time.

6.5 The Committee refers to its established jurisprudence that, for purposes of the Optional Protocol, the author of a communication need not exhaust domestic remedies when these remedies are known to be ineffective. The Committee notes that because of the preconditions of law No. 87/1991, the author could not claim restitution at the time because he no longer had Czech citizenship⁷. In this context, the Committee notes that other claimants have unsuccessfully challenged the constitutionality of the law in question; that earlier views of the Committee in similar cases⁸ remain unimplemented; and that even despite those complaints, the Constitutional Court has upheld the constitutionality of the Restitution Law. The Committee therefore concludes that no effective remedies were available to the author.

6.6 Further, with regard to time limits, whereas a statute of limitations may be objective and even reasonable in abstracto, the Committee cannot accept such a deadline for submitting restitution claims in the case of the author, since under the explicit terms of the law he was excluded from the restitution scheme from the outset.⁹

6.7 In the circumstances, the Committee finds that article 5, paragraph 2 (b), of the Optional Protocol does not preclude the Committee's consideration of the present communication.

⁶ See Communication No. 1223/2003, *Tsarjov v. Estonia*, Views adopted on 26 October 2007, para. 6.3; Communication No. 1434/2005, *Fillacier v. France*, inadmissibility decision adopted on 28 April 2006, para. 4.3; and Communication No. 787/1997, *Gobin v. Mauritius*, inadmissibility decision adopted on 16 July 2001, para. 6.3.

⁷ See also Communication No.857/1999, *Blazek v. Czech Republic*, Views adopted on 12 July 2001, paragraph 5.3.

⁸ See Communication No.516/1992, *Simunek v. Czech Republic*, Views adopted on 19 July 1995, Communication No.586/1994, *Adam v. Czech Republic*, Views adopted on 23 July 1996, Communication No.857/1999, *Blazek v. Czech Republic*, Views adopted on 12 July 2001 and Communication No.747/1997, *Des Fours Walderode v. Czech Republic*, Views adopted on 30 October 2001, Communication No. 945/2000, *Marik v. Czech Republic*, Views adopted on 26 July 2005, and Communication No. 1054/2002, *Kriz v. Czech Republic*.

⁹ See also Communication No. 857/1999, *Blazek v. Czech Republic*, Views adopted on 12 July 2001, paragraph 5.9 .

6.8 For the above reasons, the Committee declares the communication admissible in so far as it may raise issues under article 26 of the Covenant.

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 With regard to the author's claim that he is a victim of discrimination, since Act No. 87/1991 makes restitution of his property conditional on having Czech citizenship, the Committee reiterates its jurisprudence that not all differentiations in treatment can be deemed to be discriminatory under article 26. A differentiation which is compatible with the provisions of the Covenant and is based on objective and reasonable grounds does not amount to prohibited discrimination within the meaning of article 26.¹⁰

7.3 The Committee further recalls its Views in the cases of *Simunek, Adam, Blazek, Des Fours Walderode* and *Gratzinger*¹¹, where it held that article 26 of the Covenant had been violated and that it would be incompatible with the Covenant to require the authors to meet the condition of Czech citizenship for the restitution of their property or alternatively for its compensation. The Committee considers that the principle established in the above cases equally applies to the author of the present communication and that the application to the author of the citizenship requirement laid down in Act No. 87/1991 violated his rights under article 26 of the Covenant.

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 26 of the International Covenant on Civil and Political Rights.

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 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.

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

¹⁰ See *inter alia* Communication No.182/1984, *Zwaan-de Vries v. The Netherlands*, Views adopted on 9 April 1987, paragraph 13.

¹¹ Communication No. 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. 747/1997, *Des Fours Walderode v. Czech Republic*, Views adopted on 30 October 2001, paragraph 8.3; and Communication No. 1463/2006, *Gratzinger v. the Czech Republic*, Views adopted on 25 October 2007, paragraph 7.4.

violation has been established, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's views.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]
