



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE
Eighty-fourth session
11 – 29 July 2005

VIEWS

Communication No. 945/2000

<u>Submitted by:</u>	Mr. Bohumir Marik (not represented by counsel)
<u>Alleged victim:</u>	The author
<u>State party:</u>	The Czech Republic
<u>Date of initial communication:</u>	8 October 1998 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 97 decision, transmitted to the State party on 27 September 2000 (not issued in document form)
<u>Date of adoption of the views:</u>	26 July 2005

* Made public by decision of the Human Rights Committee.

Subject matter: Non-restitution of confiscated property based on citizenship

Procedural issues: Non-exhaustion of domestic remedies

Substantive issues: Discrimination on grounds of citizenship

Articles of the Covenant: 26

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

On 26 July 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.945/2000. 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-fourth session

concerning

Communication No. 945/2000*

Submitted by: Mr. Bohumir Marik (not represented by counsel)

Alleged victim: The author

State party: The Czech Republic

Date of initial communication: 8 October 1998 (initial submission)

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

Meeting on 26 July 2005,

Having concluded its consideration of communication No.945/2000, submitted to the
Human Rights Committee on behalf of Mr. Bohumir Marik 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, Mr. Alfredo Castillero Hoyos, Ms. Christine Chanet, Mr. Maurice Glèlè Ahanhanzo, Mr. Edwin Johnson, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Michael O'Flaherty, Ms. Elisabeth Palm, Sir Nigel Rodley, Mr. Ivan Shearer, Mr. Hipólito Solari-Yrigoyen, Ms. Ruth Wedgwood and Mr. Roman Wieruszewski.

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

1. The author of the communication is Bohumir Marik, a US and Czech citizen, born in Plzen, Czechoslovakia, currently residing in the United States. The author claims to be a victim of a violation by the Czech Republic¹ of article 26 of the International Covenant on Civil and Political Rights (the Covenant). He is not represented by counsel.

Factual background

2.1 In 1969, the author emigrated from Czechoslovakia to the United States with his family. He later became a US citizen. In 1972, he was convicted of fleeing the country by the Plzen District Court; his property was confiscated, *inter alia* his two houses in Letkov and in Plzen.

2.2 On 23 April 1990, the Czech and Slovak Republic passed Act no. 119/1990 Coll. on Judicial Rehabilitation, which rendered null and void all sentences handed down by Communist courts for political reasons. Persons whose property had been confiscated were, under section 23.2 of the Act, eligible to recover their property, subject to conditions to be spelled out in a separate restitution law.

2.3 On 1 February 1991, Act 87/1991 on Extra-Judicial Rehabilitation was adopted. Under it, a person claiming restitution of property had to (a) be a Czech-Slovak citizen and (b) be a permanent resident in the Czech Republic to claim entitlement to regain his or her property. In addition, according to the Act, (c) the claimant has a burden for proving the unlawfulness of the acquisition by the current owner of the property in question. The first two requirements had to be fulfilled during the time period in which restitution claims could be filed, between 1 April and 1 October 1991. A judgment of the Czech Constitutional Court of 12 July 1994 (No.164/1994), however, annulled the condition of permanent residence and established a new time frame for the submission of restitution claims by persons who had thereby become entitled persons, running from 1 November 1994 to 1 May 1995. According to the author, this judgment established a right to restitution which could be exercised by those who did not have permanent residence in the country and met the citizenship condition in the new time period. However, the Supreme Court and the Constitutional Court supported an interpretation to the effect that the newly entitled persons were persons who, during the original period of time (1 April to 1 October 1991), had met all the other conditions, including the citizenship condition, with the exception of permanent residence. Although the author claims that he never lost Czech citizenship, he formally became Czech citizen again in May 1993.

2.4 In 1994, the author filed two separate restitution claims with regard to his houses in Letkov and Plzen. In the first case (the Letkov property), the Plzen-mesto District Court refused the restitution claim on 13 November 1995, because the author did not fulfil the citizenship requirement during the initial period open for restitution claims, i.e. 1 October 1991 at the latest. It also found that the third requirement for restitution, concerning the unlawfulness of the current

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.

owners acquisition, was not met in the case. This decision was confirmed by the Plzen Regional Court on 25 March 1996. The author's appeal to the Supreme Court was dismissed on 20 August 1997 on the ground that he did not fulfil the precondition of citizenship in 1991. The judgment confirmed that the new established time frame did not change this original requirement but gave non-residents additional time to lodge their restitution claims. It did not consider the other requirements. A further appeal to the Constitutional Court was rejected on 12 May 1998.

2.5 In the second case (the Plzen property), the Plzen-mesto District Court dismissed the author's restitution claim on 22 September 1995, because he did not fulfil the condition of Czech citizenship in 1991. The Regional Court confirmed this decision on 20 December 1995. The author's appeal to the Supreme Court was declared inadmissible on 26 September 1996, and an appeal to the Constitutional Court was dismissed on procedural grounds on 7 October 1998. The author thus contends to have exhausted all domestic remedies.

The complaint

3. The author claims to be a victim of a violation of article 26 of the Covenant, as the citizenship requirement of Act 87/1991 constitutes unlawful discrimination. He invokes the jurisprudence of the Committee in the cases of *Simunek v. Czech Republic*² and *Adam v. Czech Republic*³, where it found that the requirement of citizenship in Act 87/1991 was unreasonable, and that its effects constituted a violation of article 26 of the Covenant.

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

4.1 On 8 July 2003, the State party commented on the admissibility and merits of the communication. On a factual issue, it points out that the author did not lose his past Czechoslovak citizenship by any decision of the former Czechoslovak Republic, but under a bilateral international treaty, the Treaty of Naturalisation of 16 July 1928 between the Czechoslovak Republic and the United States of America, which remained in force until 1997. Under this treaty, the author automatically lost his Czechoslovak citizenship upon acquiring US citizenship. Despite this treaty, however, since 1990, those who desired to acquire Czech citizenship had an opportunity to do so on the basis of filing the relevant application. The author, who filed his application in 1992, became a Czech citizen on 20 May 1993. However, from the time he acquired US citizenship until 20 May 1993, he was not a Czech citizen.

4.2 The State party underlines that Act No.87/1991, in addition to the citizenship and permanent residence requirements, laid down other conditions that had to be met by claimants in order for them to be successful with their restitution claims. In particular, for protecting the current owners of property that is subject to a restitution claim, the Act stipulated that the current owner had to surrender property only if he/she had obtained said property in breach of the laws then in force or if he/she had obtained it through unlawful preferential treatment. The burden of proof was on the claimant. In the case of the restitution claim of the property in Letkov, the

² See Communication No.516/1992, *Simunek v. Czech Republic*, Views adopted on 19 July 1995, paragraphs 11.6 and 11.8

³ See Communication No.586/1994, *Adam v. Czech Republic*, Views adopted on 23 July 1996, paragraphs 12.5 and 12.8

domestic courts held that the author had not proven that the current owners had acquired his property unlawfully. The author thus failed to fulfil this condition, in addition to not holding Czech citizenship in 1991. The State party argues that in this case, the author would not have been successful in his restitution claim even if the citizenship condition had not existed.

4.3 The State party further argues that the part of the communication which deals with the property in Plzen is inadmissible for failure to exhaust domestic remedies. The purpose of article 5, paragraph 2 (b) of the Optional Protocol is to provide States parties with an opportunity to rule out or remedy alleged violations of the Covenant before such allegations are submitted to the Committee. The complainants must further observe statutory deadlines laid down in the law while availing themselves of domestic remedies. In the case of the property in Plzen, although the author did file a constitutional appeal, he did so after the expiry of the deadline for filing such an appeal.

4.4 The State party did not contest the admissibility of that part of the communication dealing with the property in Letkov.

4.5 On the merits, the State party indicates that its restitutions laws, including Act 87/1991, were designed to achieve two objectives. The first was to mitigate the consequences of injustices which occurred during the communist regime, while being aware that these injustices can never be remedied in full. The other was to enable a rapid implementation of comprehensive economic reform, in the interest of establishing a functioning market economy. The citizenship condition was included in the law to incite owners to take good care of the property after the privatisation process.

4.6 According to the State party, the author had the opportunity to acquire Czech citizenship in 1990 and 1991; he deprived himself of the opportunity to meet the citizenship requirement during the period open for restitution claims, by applying for citizenship only in 1992.

Issues and proceedings before the Committee

Consideration of admissibility

5.1 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.

5.2 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.

5.3 With respect to the requirement of exhaustion of domestic remedies, the Committee notes that the State party has challenged the admissibility of the part of the communication relating to the property in Plzen. The Committee recalls that only such remedies have to be exhausted which are both available and effective. The Committee notes that although the author failed to file a constitutional complaint within the sixty days time-limit set by the law in the case of the property in Plzen, the author did file such a complaint for the restitution of the property in Letkov. The

Committee recalls its relevant jurisprudence⁴ and notes that the author's constitutional claim on the property in Letkov was rejected on 12 May 1998; that other claimants in similar situations have unsuccessfully challenged the constitutionality of Act 87/1991; and that earlier Views of the Committee⁵ have remained unimplemented. The Committee considers that, in the absence of legislation enabling the author, who did not hold Czech citizenship in 1991, to claim restitution, a constitutional motion filed within the statutory deadlines in the author's case would not have offered him a reasonable chance of obtaining effective redress and therefore would not have constituted an effective remedy for the purpose of article 5, paragraph 2 (b), of the Optional Protocol.

5.4 The Committee notes that the State party has not contested the admissibility of the part of the communication relating to the restitution of the property in Letkov. It therefore decides that the communication is admissible in relation to both properties, inasmuch as it appears to raise issues under article 26 of the Covenant, and proceeds to its examination on the merits.

Consideration of the merits

6.1 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.

6.2 The issue before the Committee is whether the application to the author of Act 87/1991 amounted to a violation of his right to equality before the law and to equal protection of the law, contrary to article 26 of the Covenant.

6.3 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 26⁶. Whereas the citizenship criterion is objective, the Committee must determine whether its application to the author was reasonable in the circumstances of the case.

6.4 The Committee recalls its Views in the cases of *Simunek*, *Adam*, *Blazek* and *Des Fours Walderode*⁷, where it held that article 26 of the Covenant had been violated: "the authors in that case and many others in analogous situations had left Czechoslovakia because of their political

⁴ See Communication No.586/1994, *Adam v. Czech Republic*, Views adopted on 23 July 1996, paragraph 6.5 and 11.2 and Communication No.857/1999, *Blazek v. Czech Republic*, Views adopted on 12 July 2001, paragraph 5.3

⁵ 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

⁶ See Communication No.182/1984, *Zwaan-de Vries v. The Netherlands*, Views adopted on 9 April 1987, paragraph 13.

⁷ See footnote 8

opinions and had sought refuge from political persecution in other countries, where they eventually established permanent residence and obtained a new citizenship. Taking into account that the State party itself is responsible for the author's ... departure, it would be incompatible with the Covenant to require the author ... to obtain Czech citizenship as a prerequisite for the restitution of [his] property or, alternatively, for the payment of appropriate compensation"⁸. The Committee further recalls its jurisprudence⁹ that the citizenship requirement in these circumstances is unreasonable. In addition, the State party's argument that the citizenship condition was included in the law to incite owners to take good care of the property after the privatisation process has not been substantiated.

6.5 The Committee considers that the precedent established in the above cases also applies to the author of the present communication. The Committee notes that in the case of the Letkov property, the State party argues that the author did not fulfil the third requirement, i.e. proving that the property was acquired unlawfully by the present owners. However, the Committee further notes that although the lower courts took this element into consideration, the Supreme Court based its decision only on the non-fulfilment of the citizenship precondition. In the light of these considerations, the Committee concludes that the application to the author of Act 87/1991, which lays down a citizenship requirement for the restitution of confiscated property, violated his rights under article 26 of the Covenant.

7. 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.

8. 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, which may be compensation, and in the case of the Plzen property, restitution, or, in the alternative compensation. The Committee reiterates that the State party should review its legislation to ensure that all persons enjoy both equality before the law and equal protection of the law.

9. 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.]

⁸ See Communication No.586/1994, *Adam v. Czech Republic*, Views adopted on 23 July 1996, paragraph 12.6 and Communication No.857/1999, *Blazek v. Czech Republic*, Views adopted on 12 July 2001, paragraph 5.8

⁹ See Communication 516/1992, *Simunek v. Czech Republic*, Views adopted on 19 July 1995, paragraph 11.6