



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE
Ninety-fifth session
16 March to 3 April 2009

VIEWS

Communication No. 1508/2006

<u>Submitted by:</u>	Ms. Olga Amundson (not represented by counsel)
<u>Alleged victim:</u>	The author
<u>State party:</u>	The Czech Republic
<u>Date of communication:</u>	13 March 2006 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 97 decision, transmitted to the State party on 20 November 2006 (not issued in document form)
<u>Date of adoption of Views:</u>	17 March 2009

* Made public by decision of the Human Rights Committee.

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

Procedural issue: Abuse of the right of submission

Substantive issues: Equality before the law; equal protection of the law without any discrimination

Article of the Covenant: 26

Articles of the Optional Protocol: 3

On 17 March 2009, 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. 1508/2006.

[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-fifth session

concerning

Communication No. 1508/2006*

<u>Submitted by:</u>	Ms. Olga Amundson (not represented by counsel)
<u>Alleged victim:</u>	The author
<u>State party:</u>	The Czech Republic
<u>Date of communication:</u>	13 March 2006 (initial submission)

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

Meeting on 17 March 2009,

Having concluded its consideration of communication No. 1508/2006, submitted to the Human Rights Committee by Ms. Olga Amundson 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, originally dated 13 March 2006 and supplemented by a further submission on 24 April 2007, is Ms. Olga Amundson, an American and Czech citizen, born in 1947 in the former Czechoslovakia and currently residing in the United States. She

* 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. Ahmad Amin Fathalla, Mr. Yuji Iwasawa, Ms. Helen Keller, Mr. Lazhari Bouzid, 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.

claims to be a victim of a violation by the Czech Republic of her rights under article 26 of the International Covenant on Civil and Political Rights¹. She is unrepresented.

Facts as presented by the author

2.1 The author was born in the former Czechoslovakia and lived there until December 1972 when she left for the USA to visit her relatives. In 1973, she married a US citizen and in 1977 acquired US citizenship and lost her Czechoslovak citizenship by virtue of the 1928 Naturalisation Treaty between the USA and Czechoslovakia. Also in 1973, the Czech authorities refused to allow the author to stay in the United States and in 1979 she was sentenced *in absentia* to 14 months imprisonment for illegally leaving the country. In 1990, in accordance with Act No. 119/1990 on Judicial Rehabilitation, the author's conviction was retroactively annulled.

2.2 In 1970, the author and her brother inherited a 39-unit apartment building in Prague – 4 Nusle cp. 1330. In 1973, the property was confiscated by the State and is currently held by the city of Prague and administered by the municipal office of Prague 4.

2.3 In 1991, Act No. 87/1991 on Extra-judicial Rehabilitation was adopted by the Czech Government, spelling out the conditions for recovery of property for persons whose property had been confiscated under the Communist rule. Under the Act, in order to claim entitlement to recover property, a person claiming restitution of the property had to be, *inter alia*, (a) a Czech citizen, and (b) a permanent resident in the Czech Republic. These requirements had to be fulfilled during the time period in which restitution claims could be filed, namely between 1 April and 1 October 1991. A judgment by the Czech Constitutional Court of 12 July 1994 (No. 164/1994) 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.

2.4 On 27 May 1991, on the basis of Act No. 87/1991, the author claimed the recovery of her property, which was refused by the property administration Prague 4 Housing Association on the ground that she did not meet the citizenship requirements. In April 1995, the author was granted Czech citizenship and re-applied for the restitution of her property, which was rejected because the author did not have Czech citizenship during the first restitution period in 1991. On 22 October 1998, the Prague 4 District Court upheld this decision. On 18 October 1999, the author's appeal to the Prague Municipal Court was rejected on the same grounds. On 27 July 1999, the Czech Supreme Court made the same finding. On 18 October 1999, the Constitutional Court rejected the author's appeal for not satisfying the Czechoslovak citizenship requirement. On 1 October 2002, the European Court for Human Rights dismissed the author's complaint².

2.5 On 15 December 2005, the Prague 4 District Court rejected a new lawsuit by the author based on the Civil Code in which she requested determination of the ownership of the building cp. 1330 in Prague 4 – Nusle, ruling that given the absence of the author's Czech citizenship in 1991, she was not entitled to determination of ownership under the Civil Code or any other law. On 14 February 2007, the Supreme Court rejected an extraordinary appeal by the author stating

¹ The Optional Protocol to the International Covenant on Civil and Political Rights entered into force for Czech Republic on 22 February 1993.

² The application number was 60537/00.

that if the author was not entitled to property restitution under the relevant laws, she was neither entitled to claim ownership according to the Civil Code. The author claims that there are other properties owned by her family, however she claims that any attempt to request for their restitution would be futile without having had Czech citizenship in 1991.

The complaint

3. The author claims that Act No. 87/1991 on Extra-judicial Rehabilitation is discriminatory and violates article 26 of the Covenant.

The State party's submission on admissibility and merits

4.1 On 30 April 2007, the State party commented on the admissibility and merits of the communication. It challenged the admissibility of the communication on the ground that it constitutes an abuse of the right of submission of communications within the meaning of article 3 of the Optional Protocol. It invokes the Committee's jurisprudence, in particular communication no. 787/1997 *Gobin v. Mauritius*³, in which the Committee declared inadmissible a communication which had been submitted five years after the alleged violation of the Covenant. In the present case, the State party argues that the author petitioned the Committee on 13 March 2006, six years and five months after the Constitutional Court ruling of 18 October 1999, without offering any explanation for this time lapse.

4.2 The State party recalls that the author only obtained Czech citizenship on 28 April 1995. It argues that the author was not subjected to differential treatment, but that she was treated in the same way as all other persons who failed to meet the citizenship requirement by 1 October 1991, as provided for in the Act No. 87/1991. According to the State party, this is the established interpretation of this Act, followed also by the Supreme Court.

4.3 The State party further refers to its earlier submissions in similar cases⁴, and indicates that its restitution laws, including Act No. 87/1991, were part of a two-fold effort: to mitigate the consequences of injustices committed during the Communist rule, on the one hand, and to carry out comprehensive economic reform with the objective of introducing a well-functioning market economy, on the other. Since it was not possible to redress all injustices committed during the Communist regime, restrictive preconditions were put in place, including the citizenship requirement, its main objective being to ensure due care for property as part of the process of privatisation. According to the State party, the citizenship requirement has always been considered by both the Parliament and the Constitutional Court to be in conformity with the Czech Republic's constitutional order and in compliance with fundamental rights and freedoms.

4.4 The State party underlines that Act No. 87/1991, in addition to the citizenship requirement, set out other conditions that had to be met by claimants for them to be successful with their restitution claims. In particular, one of the conditions laid down in the section 5, subsection 2, of

³ Communication No. 787/1997, *Gobin v. Mauritius*, inadmissibility decision adopted on 16 July 2001, para. 6.3.

⁴ See for example, State party observations on Communication no. 586/1994, *J. F. Adam v. the Czech Republic*, views adopted on 23 July 1996; Communication no. 1000/2001, *George Mráz v. the Czech Republic*.

this Act was that the person entitled had to call upon the liable person to return the property within six months of the entry into force of the Act, i.e. until 1 October 1991, otherwise the claim would expire. The State party argues that the author did not prove that she met this condition.

4.5 Finally, the State party claims that the author did not substantiate her assertion of a violation of article 26 of the Covenant.

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

5. On 25 November 2007 and on 20 December 2007, the author commented on the State party's submission. Regarding the argument that the submission of her communication amounts to an abuse of the right of submission, the author asserts that she made a claim before the European Court of Human Rights, which was rejected in October 2002 for being manifestly ill-founded. She argues that as the State party does not publish or translate the Committee's decisions⁵, any delay by the author is justified by the State party's intentional efforts to conceal the Committee's work. The author quotes from the communication no. 586/1994, *J.F. Adams v. the Czech Republic*⁶ and states that the case does not contain any precedent that could be unfavourable to her case. She argues that she did indeed meet the requirement set forth in Act No. 87/1991 when she requested the surrendering of her property from the Housing Association – Prague 4 on 27 May 1991.

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 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 a communication because of the long delay between the last decision in the case and the author's submission to the Committee. The Committee notes that the Optional Protocol does not establish time limits within which a communication should be submitted. It is thus only in exceptional circumstances that the delay in submitting a communication would lead to inadmissibility of the communication⁷. In the

⁵ See for example Communication No. 516/1992, *Simunek et al. v. the Czech Republic* Views adopted 19 July 1997 and Communication No. 1054/2002, *Kriz v. the Czech Republic*, Views adopted on 1 November 2005.

⁶ Communication no. 586/1994, *J. F. Adam v. the Czech Republic*, views adopted on 23 July 1996.

⁷ See for example Communication No. 1223/2003, *Tsarjov v. Estonia*, Views adopted on 26 October 2007, para. 6.3; Communication No. 1434/2005, *Fillacier v. France*, inadmissibility

circumstances of the present case, in view of the fact that following the exhaustion of domestic remedies the author filed a complaint with the European Court of Human Rights, which was rejected in October 2002 (three and a half years prior to the submission of the communication to the Committee), as well as in view of the civil law suit the author undertook in May 2005 before the Prague 4 District Court, 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. It therefore decides that the communication is admissible in as far as it appears to 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 The issue before the Committee is whether the application to the author of Act No. 87/1991 amounted to discrimination, in violation of article 26 of the Covenant. 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 26⁸.

7.3 The Committee recalls its Views in the cases of *Simunek, Adam, Blazek, Marik, Kriz, Gratzinger* and *Ondracka*⁹ where it held that article 26 had been violated, and that it would be incompatible with the Covenant to require the authors to obtain Czech citizenship as a prerequisite for the restitution of their property or, alternatively, for the payment of appropriate compensation. Bearing in mind that the authors' original entitlement to their properties had not been predicated on citizenship, it found that the citizenship requirement was unreasonable. In the case *Des Fours Walderode*,¹⁰ the Committee observed further 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

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.

⁸ See Communication No. 182/1984, *Zwaan-de Vries v. The Netherlands*, Views adopted on 9 April 1987, paragraph 13.

⁹ 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. 945/2000, *Marik v. Czech Republic*, Views adopted on 26 July 2005, paragraph 6.4; Communication No. 1054/2002, *Kriz v. Czech Republic*, Views adopted on 1 November 2005, paragraph 7.3; Communication 1463/2006, *Gratzinger v. Czech Republic*, Views adopted on 25 October 2007, paragraph 7.5; and Communication No. 1533/2006, *Ondracka v. Czech Republic*, Views adopted on 2 November 2007, paragraph 7.3.

¹⁰ Communication No. 747/1997, *Des Fours Walderode v. Czech Republic*, Views adopted on 30 October 2001, paragraphs 8.3 - 8.4.

individuals who are equally victims of prior state confiscations, and constitutes a violation of article 26 of the Covenant. The Committee considers that the principle established in the above cases equally applies to the author of the present communication.

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 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 compensation if the properties cannot be returned. 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.

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 that a 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.]
