



**International covenant  
on civil and  
political rights**

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HUMAN RIGHTS COMMITTEE  
Ninety-seventh session  
12 to 30 October 2009

**DECISION**

**Communication No. 1573/2007**

<u>Submitted by:</u>	Mr. Vaclav Šroub (not represented by counsel)
<u>Alleged victim:</u>	The author
<u>State party:</u>	The Czech Republic
<u>Date of communication:</u>	3 December 2006 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 97 decision, transmitted to the State party on 16 July 2007 (not issued in document form)
<u>Date of adoption of decision:</u>	27 October 2009

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\* Made public by decision of the Human Rights Committee.

*Subject matter:* Irregularities with respect to restitution of property

*Procedural issues:* Inadmissibility *ratione materiae*; non-exhaustion of domestic remedies; same matter examined under another procedure of international investigation or settlement; abuse of right of submission

*Substantive issues:* Arbitrary interference into the home; equality before the law

*Articles of the Covenant:* 1, paragraph 2; 17; 26; 47

*Articles of the Optional Protocol:* 1, 3, 5, paragraph 2(a) and (b)

[Annex]

**ANNEX**

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

Ninety-seventh session

concerning

**Communication No. 1573/2007\*\***

<u>Submitted by:</u>	Mr. Vaclav Šroub (not represented by counsel)
<u>Alleged victim:</u>	The author
<u>State party:</u>	The Czech Republic
<u>Date of communication:</u>	3 December 2006 (initial submission)

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

Meeting on 27 October 2009,

Adopts the following:

**DECISION ON ADMISSIBILITY**

1. The author of the communication dated 3 December 2006 is Vaclav Šroub, a Canadian and Czech citizen residing in Canada and born in 1939 in Příbram, Czechoslovakia. He claims to be a victim of a violation by the Czech Republic of articles 1, paragraph 2; 17, paragraphs 1 and 2; 26 and 47 of the International Covenant on Civil and Political Rights. He is not represented.

**Factual background**

2.1 Between 1959-1960, the author and his fiancée purchased two parcels of land, 2008/1 and 2008/2, in Příbram, Czechoslovakia. In 1961, they got married and built a house and shop on those plots. The author inherited from his father the neighbouring parcel 2008/3. In 1978, the author's wife died and the authorities prohibited the author's professional activities, which consisted of repairing churches. In 1980, the local court designated the National Committee of the district of Příbram as the trustee of the author's wife's share of the property. In 1981, the

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\*\* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, 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.

author and his two children fled the country and obtained refugee status the following year. On 30 April 1982, the District Tribunal of Pribram sentenced the author to imprisonment *in absentia*. Owing to this conviction, the remainder of his property was confiscated and its administration was entrusted to the Pribram National Committee.

2.2 In 1991 or 1992, the author discovered that on 8 July 1982, the Pribram National Committee had transferred the administration of his and his wife's common property to the Pribram National Municipal Committee and that, on 1 December 1982, the latter had sold the property to a state-owned company. This company proceeded to renovate and expand the family house.

2.3 On 7 December 1990, the author's sentence to imprisonment and property confiscation was annulled *ex tunc* by virtue of law No. 119/1990 on judicial rehabilitation. On 31 January 1991, the Prague Regional Court confirmed that the author had inherited from his father property No. 2008/3, for which he subsequently concluded a lease agreement with the same state-owned company that had bought the author's property. On 18 March 1992, the author filed an application with the Pribram District Court seeking an order under law No. 87/1991 on extrajudicial rehabilitation<sup>1</sup> for the restitution of his family house and plots 2008/1-2.

2.4 On 21 September 1992, the Pribram district prosecutor contested as contrary to law No. 87/1991 the decision of 8 July 1982 (see 2.2), by which the administration of the author's and his wife's common property was transferred to the Pribram National Municipal Committee. The prosecutor argued that, after the author's wife's death, a succession procedure should have been instituted for her property, and that there was no proof that the State had a full ownership title to that property. On 23 October 1992, the Pribram District Office annulled the decision of 8 July 1982. On 1 June 1993, the annulment was confirmed by the Ministry of Finance. As a result, the Land Registry Office registered the author as the owner of parcels 2008/1-2 and renewed the original record in the author's name. The author has been paying property taxes for this land since then.

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<sup>1</sup> See Communication No. 516/1992, *Simunek v. Czech Republic*, paras. 2.4-2.5, on Law No. 87/1991: "On 2 February 1991, the Czech and Slovak Federal Government adopted Act 87/1991, which entered into force on 1 April 1991. It endorses the rehabilitation of Czech citizens who had left the country under communist pressure and lays down the conditions for restitution or compensation for loss of property. Under Section 3, subsection 1, of the Act, those who had their property turned into State ownership in the cases specified in Section 6 of the Act are entitled to restitution, but only if they are citizens of the Czech and Slovak Federal Republic and are permanent residents in its territory. Under Section 5, subsection 1, of the Act, anyone currently in (illegal) possession of the property shall return it to the rightful owner, upon a written request from the latter, who must also prove his or her claim to the property and demonstrate how the property was turned over to the State. Under subsection 2, the request for restitution must be submitted to the individual in possession of the property, within six months of the entry into force of the Act. If the person in possession of the property does not comply with the request, the rightful owner may submit his or her claim to the competent tribunal, within one year of the date of entry into force of the Act (subsection 4)".

2.5 On 5 September 1993, the author lodged a complaint asking for attribution of the family house to him. However, on 19 October 1993, the municipality ordered its demolition. On 20 October 1994, the Prague Regional Tribunal quashed the demolition order. The Tribunal held that the author should have, but had failed to file an application for the restitution of his property rights under law No. 229/1991 (which deals with property on agricultural land) following the annulment of his conviction.

2.6 On 3 March 1994, the State Farming Machinery Enterprise (SPZT) that succeeded the state-owned company lodged a civil suit before the Příbram District Court to have its property rights to plots 2008/1-2 recognized. On 7 March 1994, encouraged by a constructive dialogue with the SPZT on reaching an extrajudicial agreement, the author withdrew his restitution claim of 18 March 1992 (see 2.3) and his claim of 5 September 1993 requesting that the family home be attributed to him (see 2.5). On 8 November 1995, the Municipal Office confirmed that land plots 2008/1-3 were the author's property. On 1 January 1996, however, the SPZT started a liquidation process and on 28 February 1996, the Příbram District Court held that plots 2008/1-2 belonged to the SPZT. The Court ruled that the annulment by the Příbram District Office of the decision of 8 July 1982 (see 2.2), which was confirmed by the Ministry of Finance, did not constitute a proper transfer of the property title and that on 7 March 1994, the author effectively withdrew his restitution claims for the land and building. Nonetheless, the author continued to pay property taxes. On 3 December 1996, the Prague Regional Court revised the District Court's ruling of 28 February 1996 and held that the annulment decision of 7 December 1990 (see 2.3) could not restore former property rights but that these are regulated by law No. 87/1991 on extrajudicial rehabilitation (*lex specialis*). It considered that the state-owned company, the SPZT and its successor companies were merely administrators or managers of the property as opposed to owners, and that the property continued to belong to the State.

2.7 On 17 February 2000, the Příbram District Court rejected the author's request asking for attribution of the expanded building constructed by the state-owned company on plots 2008/1-3. The Court held that there was insufficient evidence of the author's property rights and that he failed to complete the process according to law No. 87/1991 on extrajudicial rehabilitation. On 30 October 2000, the Regional Court confirmed this decision and stated that the administrative decisions by the Příbram District Office and the Ministry of Finance could only transfer the administration of the property, which remained in State possession. On 28 June 2001, the Supreme Court dismissed as inadmissible the author's application for failure to raise a question of judicial importance. In his application, the author had asked if the annulment of 7 December 1990 and his subsequent registration in the Land Registry constituted a property title under civil law.

2.8 On 22 October 2002, the Constitutional Court declared inadmissible the author's constitutional complaint by which he claimed a violation of his right to judicial protection, to fair proceedings and a violation of his property rights. The Court held that his claim was prescribed as well as insufficiently substantiated.

2.9 On 14 April 2004, the Land Registry Office registered the State as owner of plots 2008/1-2, based on the confiscation title of 30 April 1982. In November 2004, the Land Registry Office advised the author that it had rectified the registration of 14 April 2004 and re-registered him as the owner. Following an administrative procedure, the Land Registry Office re-registered the

State as owner of plots 2008/1-2 in accordance with a judicial precedent, a Constitutional Court decision holding that the annulment of a property confiscation decision is not tantamount to the conferral of a property title.

2.10 On 28 November 1996, a Committee of three members of the former European Commission of Human Rights declared inadmissible the author's application contesting the legality of the construction permit granted to the state-owned company to extend the original building (see 2.2)<sup>2</sup>. On 24 September 2002, the European Court of Human Rights (ECHR) declared inadmissible the author's second complaint claiming that the decision by the Prague Regional Court of 3 December 1996 (see 2.6) had violated his property rights, as well as his right to fair proceedings<sup>3</sup>. On 17 January 2006, the ECHR found a violation of the author's right to fair proceedings, in particular his right to access a court. It held that the overly rigorous interpretation of procedural requirements had deprived the author of access to a court and amounted to a violation of his right to fair proceedings<sup>4</sup>.

2.11 In January and March 2003 and in 2004 and 2005, the author lodged criminal claims against a State party representative, based in Strasbourg, who appears before the ECHR. The author alleges that the representative submitted false evidence in the examination of his case. For this reason, he has asked the ECHR and the Council of Europe to strip the representative of his immunity.

### **The complaint**

3. The author claims to be a victim of violations by the State party of articles 1, paragraph 2, 17, paragraphs 1 and 2, 26<sup>5</sup> and 47 of the Covenant.

### **The State party's observations on admissibility and merits**

4.1 On 10 January 2008, the State party submits its observations on admissibility and merits. It clarifies the facts as presented by the author and explains that the annulment decision by the Pribram District Authority of 23 October 1992, following the protest by the district prosecutor, concerned the transfer to the Municipal National Committee and subsequently to the Machinery and Tractor Station National Enterprise, of management as opposed to ownership of the property. On 1 June 1993, the Ministry of Finance rejected an appeal filed by the Machinery and Tractor Station National Enterprise against the decision. On the basis of the District Authorities' decision of 23 October 1992, the Land Registry mistakenly issued the author, on 21 July 1993, an official copy of the entry in the Land Registry.

4.2 On 25 March 2004, the representative of the State party before the ECHR advised the Government Representation in Property Affairs in the Czech Republic that the information in the author's case before the ECHR suggested that the State was the owner of the properties in question. Based on this information, the Government Representation in Property Affairs

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<sup>2</sup> See Application No. 32116/96, *Šroub v. the Czech Republic*.

<sup>3</sup> See Application No. 40048/98, *Šroub v. the Czech Republic*.

<sup>4</sup> See Application No. 5424/03, *Šroub v. the Czech Republic*.

<sup>5</sup> See Communication No. 516/1992, *Simunek v. Czech Republic*, views adopted on 31 July 1995, para. 11.8.

requested the Land Registry Office to register the property in the State party's name. Following the reversal of this decision in May 2004 and the re-registration of the property in the State party's name in November 2004, the author filed an appeal with the Geodesy and Cadastre Inspectorate, which confirmed the State party's ownership on 21 March 2005.

4.3 On 10 April 2007, the author filed an application against the State party before the Příbram District Court seeking a declaration of his ownership of parcels 2008/1-2. These proceedings are currently pending.

4.4 The State party underlines that the author's initial submission is not sufficiently clear as to how he considers that his rights under the Covenant have been violated. It maintains that the author seems to claim that the change of entry in the Land Registry in November 2004 violated his property rights. The State party submits that the Covenant does not protect property rights, and therefore the communication should be declared inadmissible *ratione materiae*. It further submits that the author's claim before the Příbram District Court in April 2007 remains pending and that the author thus failed to exhaust domestic remedies within the meaning of article 5, paragraph 2 (b), of the Optional Protocol.

4.5 The State party further submits that domestic courts have ascertained that the 30 April 1982 annulment of the author's sentence *in absentia* did not constitute a property title. It maintains that the author voluntarily withdrew his application seeking the surrender of his property under the Law on extra-judicial rehabilitation. It concedes that registering the author in the Land Registry was a mistake, as was the delay of ten years before this was corrected. However, it submits that these facts have no relevance for the assessment of the merits. It submits that the State party has been the owner of the property since 1982 and that bringing the entry in the Land Registry in line with the actual legal state of affairs did not constitute a violation of the Covenant. It further submits that none of the State actors has ever acted *ultra vires* and distances itself from allegations by the author on reported pressure exerted on the Land Registry or the existence of agreements between the State party and the President of the ECHR on property restitution cases.

#### **Author's comments on State party's observations**

5.1 On 21 February 2008, the author submits comments to the State party's observations and claims that the State party has presented "half-truths and lies" in its submission. The author clarifies the facts and maintains that on 18 March 1992, he filed an application against the State for property restitution (see 2.3) and only withdrew it because of SPZT's misrepresentation that it was acting on behalf of the State and thus empowered to reach an extrajudicial agreement with the author on the issue of restitution. The author further explains that this withdrawal was motivated by prospects of a settlement between himself and the SPZT as well as the Machine and Tractor Enterprise with regard to plots 2008/1-2 and his family house.

5.2 He reiterates that in agreement with the district prosecutor's protest of 21 September 1992, his wife's property never belonged to the State, as after her death in 1978, succession proceedings should have been initiated. The author further clarifies that, following the official issuance of the entry in the Land Registry on 21 July 1993, he started repairs on the original building and preparations for his family's move from Canada to the Czech Republic. He claims to have spent over \$15,000 CAD for these undertakings.

5.3 With regard to the correction of the entry in the Land Registry undertaken by the representative of the State party before the ECHR, the author underlines that this was done based on an invalid certificate<sup>6</sup>, considering that the Prague Regional Court on 3 December 1996 invalidated the State's ownership certificate issued by the Land Registry. He claims that this fraudulent action constitutes an abuse of power.

5.4 As concerns the proceedings before the ECHR, the author underlines that restitution matters are regarded as political issues according to an agreement between the President of the State party and the President of the ECHR<sup>7</sup>.

5.5 Based on the judgement by the ECHR holding that the State party had violated the author's right to fair proceedings, in particular before the Constitutional Court, the author filed an application for review proceedings before the Constitutional Court. On 20 April 2007, the Constitutional Court decided that, according to a Bill of Parliament introduced by the Government in 2004, new proceedings could not be initiated in the author's case. He therefore initiated new proceedings on 10 April 2007 before the Příbram District Court and underlines that he expects these proceedings to be delayed considerably due to the attitude and pressure of the Government.

5.6 With regard to the admissibility and the merits of his case, the author submits that due to the indivisibility of the plots 2008/1-3, he was deprived of all his property despite the fact that the attribution of plot 2008/3 to him is undisputed. He underlines that he is a victim of a continuous violation of his rights by the State party.

#### **Further submission by the parties**

6.1 On 8 January 2009, the State party submits additional observations informing the Committee that on 1 February 2008, the Příbram District Court rejected the author's application of 10 April 2007 (see 5.5), and that on 26 June 2008, the Prague Regional Court upheld this decision. The Court held that the author could not claim to have believed in good faith to be the owner of the plots 2008/1-2, given that he started but then withdrew proceedings under the law on extrajudicial rehabilitation (No. 87/1991) on 7 March 1994. It further decided that in the absence of good faith, the author did not acquire the property by adverse possession from 1993 to 2004. The State party reiterates that the author's claims were unsubstantiated and that he failed to exhaust domestic remedies, as the case remains pending before the Supreme Court. It also submits that the author lodged another application on 2 September 2008 before the Příbram District Court seeking restitution of the land parcels 2008/1-2, which remains pending in the first instance.

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<sup>6</sup> According to Law No. 265/92 on Land Registry, article 10/1 states that "if anyone claims ownership, but cannot plausibly support his/her claim, the appropriate agent of the Republic will invite him to submit, within one month a petition to the courts to establish ownership".

<sup>7</sup> The author refers to article 295 of the Treaty establishing the European Community: "This treaty shall in no way prejudice the rules in member states governing the system of property ownership".



6.2 The State party further submits that the communication should be rejected as an abuse of submission according to article 3 of the Optional Protocol, considering that the author neglected to inform the Committee of all the proceedings he has initiated at the national level.

7. On 29 January and 17 August 2009, the author reiterates that he considers himself the rightful owner of parcels 2008/1-2 with its original buildings. He considers that the essence of his communication is contained in the modification of title to these properties by the Land Registry on 14 April 2004 without notifying him. He considers that this was done fraudulently and in abuse of power. The author further underlines that the new proceedings pending before domestic courts are related to other authorities and do not address the violations caused by the decision of 14 April 2004. On 17 August 2009, the author further requests the Committee to suspend his communication, as his case is pending before the European Court of Human Rights.

## **Issues and proceedings before the Committee**

### **Consideration of admissibility**

8.1 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.

8.2 The Committee notes that certain facets of the same matter have already been considered by the ECHR and concluded by inadmissibility decisions of 28 November 1996 and 24 September 2002, as well as by judgement of 17 January 2006 finding a violation of the author's right to fair proceedings. The Committee further notes the author's request that the Committee suspend its proceedings, as his case is pending before the ECHR. However, the author has not provided the Committee with details on the object of his ECHR complaint. With regard to matters that have already been decided by the ECHR, the Committee recalls its jurisprudence<sup>8</sup> that it is only where the same matter *is being* examined under another procedure of international investigation or settlement that the Committee has no competence to deal with a communication under article 5, paragraph 2 (a), of the Optional Protocol. The Committee observes further that in the absence of any details with regard to the author's case before the ECHR and in light of the author's request to suspend proceedings before the Committee, it considers that, article 5, paragraph 2 (a), of the Optional Protocol, constitutes an obstacle to the admissibility of the present communication.

8.3 The Committee notes that the State party contests the admissibility of the communication on grounds of non-exhaustion of domestic remedies. The Committee notes that the author's claim, which seeks a declaration of his property rights on parcels 2008/1-2 and on the original building, still remains pending in the Supreme Court. The Committee also notes that the author initiated new domestic proceedings on 2 September 2008, by which he seeks restitution of the property in question. The author claims that these proceedings do not relate to his communication before the Committee, with which the author seeks to establish a violation of his

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<sup>8</sup> See Communication No. 824/1998, *Nicolov v. Bulgaria*, decision on admissibility adopted on 24 March 2000, para. 8.2; Communication No. 1185/2003, *Van den Hemel v. The Netherlands*, decision on admissibility adopted on 25 July 2005, para. 6.2; Communication No. 1193/2003, *Sanders v. The Netherlands*, decision on admissibility adopted on 25 July 2005, para. 6.2.

rights under the Covenant with regard to the 14 April 2004 change of property registration in the Land Registry initiated by the representative of the State party before the ECHR. The Committee nevertheless considers that his pending claims before the domestic courts are intrinsically linked to his alleged violations of articles 17 and 26 of the Covenant. It also notes that his claim would become moot if domestic courts confirmed his property rights to parcels 2008/1-2 and the original building. The Committee therefore considers that the author has not exhausted all available and effective domestic remedies, and declares this part of the communication inadmissible under article 5, paragraph 2 (b), of the Optional Protocol.

8.4 Concerning the authors' claims relating to the confiscation of his property, the Committee observes that the right to property is not expressly protected under the Covenant. The allegation concerning a violation of the authors' right to property *per se* is thus inadmissible *ratione materiae*, under article 3 of the Optional Protocol.

8.5 With regard to the author's claim under article 1, paragraph 2, of the Covenant, the Committee refers to its jurisprudence on the need for there to be a claim of a "people" within the meaning of article 1 of the Covenant and that article 1 cannot on its own be the subject of a communication under the Optional Protocol.<sup>9</sup> This aspect of the communication falls outside the scope of the Optional Protocol *ratione materiae* and *ratione personae*, respectively, and must be declared inadmissible under articles 1 and 3 of the Optional Protocol.

8.6 With regard to the author's claim under article 47 of the Covenant, the Committee recalls that it does not have competence under the Optional Protocol to consider claims that do not relate to violations of individual rights. These rights are set out in part III (articles 6 to 27) of the Covenant. It follows that this part of the communication is inadmissible under article 1 of the Optional Protocol<sup>10</sup>.

9. The Committee therefore decides:

- a) That, under the Optional Protocol, it does not have competence to consider claims that do not relate to violations of individual rights set forth in Part III (articles 6 to 27) of the Covenant;
- b) That the communication is inadmissible under articles 1, 3 and 5, paragraph 2 (a) and 2 (b), of the Optional Protocol;
- c) 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.]

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<sup>9</sup> See Communication No. 167/1984, *Ominayak et al. (Lubicon Lake Band) v. Canada* Views adopted on 26 March 1990, para 13.3 and 32.1; Communication No. 1169/2003, *Antonio Hom v. The Philippines*, inadmissibility decision adopted on 30 July 2003, para. 4.2.

<sup>10</sup> See Communication No. 1134/2002, *Fongum Gorji-Dinka v. Cameroon*, views adopted on 17 March 2005, para. 4.4.