



International Covenant on Civil and Political Rights

Distr.: Restricted*
11 May 2010

Original: English

Human Rights Committee
Ninety-eighth session
8 to 26 March 2010

Decision

Communication No. 1778/2008

<u>Submitted by:</u>	Mr. Jaroslav Novotny (represented by counsel, Mr. David Strupek)
<u>Alleged victim:</u>	The author
<u>State party:</u>	Czech Republic
<u>Date of communication:</u>	18 March 2008 (initial submission)
<u>Documentation references:</u>	Special Rapporteur's rule 97 decision, transmitted to the State party on 8 April 2008 (not issued in document form)
<u>Date of adoption of decision:</u>	19 March 2010

* Made public by decision of the Human Rights Committee.

<i>Subject matter:</i>	Remuneration of the work performed by a prisoner.
<i>Procedural issues:</i>	Insufficient substantiation of allegations.
<i>Substantive issues:</i>	Discrimination against the author on the basis of his status.
<i>Articles of the Covenant:</i>	26
<i>Articles of the Optional Protocol:</i>	2
	[Annex]

ANNEX

Decision of the Human Rights Committee under the Optional protocol to the International Covenant on Civil and Political Rights (ninety-eighth session)

concerning

Communication No. 1778/2008**

Submitted by: Mr. Jaroslav Novotny (represented by counsel, Mr. David Strupek)

Alleged victim: The author

State party: Czech Republic

Date of communication: 18 March 2008 (initial submission)

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

Meeting on 19 March 2010

Adopts the following:

Decision on admissibility

1. The author of the communication is Jaroslav Novotny, a Czech national, who at the time of the events that gave rise to his communication, was serving a sentence at the prison Jiřice in the Czech Republic. He claims to be a victim of a violation of article 26 of the International Covenant on Civil and Political Rights by the Czech Republic¹. He is represented by counsel, Mr. David Strupek.

Facts as presented by the author

2.1 From 25 September to 10 November 2006, the author was employed at a private entity, pursuant to section 30 of the Act on the Execution of the Penalty of Imprisonment (AEPI).² His remuneration was CZK 4,500 monthly, as decided by the Prison's Director on 21 September 2006, in application of the Government's order No. 365/1999. At that time, the statutory minimum wage in the Czech Republic was CZK 7,995 monthly.

** The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Mahjoub El Haiba, Mr. Ahmad Amin Fathalla, Mr. Yuji Iwasawa, Mrs. Hellen 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. Fabián Salvioli and Mr. Krister Thelin.

¹ The Covenant and the Optional Protocol to the Covenant entered into force for the Czech Republic, succeeding to Czechoslovakia as State party to the Covenant and its Optional Protocol, on 22 February 1993.

² Under section 30 (1) prisons shall create conditions enabling prisoners to work either within the prison's own operation, production or business, or within a contractual relationship with another entity.

2.2 On unspecified dates, the author unsuccessfully complained to the General Directorate of the Prison Service and to the Public Defender about the inequality of being paid less than an employee earning the statutory minimum wage. On 3 January 2007, the author unsuccessfully filed a constitutional complaint with the Constitutional Court, on the ground that he had been discriminated against in his right to just remuneration for work. On 1 March 2007, the complaint was rejected by the Court as manifestly ill-founded since a convict employed under the AEPI is not in a comparable position to a person employed on the basis of a labour contract.

The complaint

3.1 The author alleges a violation of his right not to be discriminated against under article 26 on the basis of his status as a convict, as his remuneration for the work performed while in prison was disproportionately low compared to the minimum standard wage. He claims that under Section 32 of the APEI, prisoners' work conditions, working hours and overtime work are governed by the Czech Labour Code and other labour law regulations. Under Section 33, taxes and payments of health insurance and social security are deducted from the convict's remuneration in the same manner as from the wages paid on the basis of a labour contract. The author alleges that he was performing comparable work to a regular employee and that his relationship with his employer was comparable to a general labour contract.

3.2 The author denies that employment was an integral part of the execution of his penalty as he was not sentenced to forced labour but just to a deprivation of liberty. He argues that he was working for a private entity and not for the prison authorities and that he was not ordered to work but was free to reject this assignment. He asserts that the alleged purpose of his employment, to prepare him to reintegrate into his community, cannot justify the differential treatment regarding his remuneration.

3.3 The author claims that employed convicts have to pay the same expenses relating to their imprisonment as unemployed convicts. The fact that the State party provides convicts' basic needs cannot justify the disproportionate remuneration as convicts also continue to pay rent and support their families.

State party's observations

4.1 On 3 October 2008, the State party submitted its observations on the communication, arguing that it is inadmissible for a number of reasons. Firstly, the State party, referring to the Committee's jurisprudence,³ argues that it constitutes an abuse of the right to submit a communication. It claims that the author approached the Committee more than one year after the last domestic decision and that such delay, which was not justified by the author, is unreasonable.

4.2 The State party further argues that the claim is insufficiently substantiated for purposes of admissibility. It refers to the communication *Marijan Radosevic v. Germany*,⁴ also concerning the level of remuneration of work performed by a prisoner, in which the Committee held that the communication was inadmissible because, similarly to the present case, the author had not provided sufficient information on the work performed.

4.3 On the merits, the State party argues that the claim is ill-founded. It claims that the difference of treatment between prisoners and employees when it comes to remuneration for work, is justified and based on objective and reasonable criteria. Referring to the

³ Communications no. 1434/2005 *Claude Fillacier v. France* at para. 4.3, no. 787/1997 *Vishwadeo Gobin v. Mauritius* at para. 6.3, and no. 1452/2006 *Renatus J. Chytil v. the Czech Republic* at para. 6.2.

⁴ Communication no. 1292/2004 at para. 7.2.

Committee's jurisprudence on the interpretation of Article 26,⁵ the State party alleges that the author received a lower income than the minimum standard wage (around 60%) because of the specific circumstances of the work undertaken by convicts. It notes that the difference between the legal position of convicted prisoners and regular employees is self-evident. Under Czech law, all prisoners sentenced to imprisonment are obliged to work as long as their health allows.⁶ A prisoner assigned to work is not allowed to refuse to work for the State, public authorities or other public entities, but he may refuse to work for a private business. Work performed by convicts is part of the rehabilitation process which is the purpose of imprisonment. The purpose of their remuneration is not to secure their subsistence, as the State provides the convicts' basic needs.

4.4 The State party also claims that another main difference between employees and working convicts is the regulations governing the remuneration of their work. A prisoner and an employer are not allowed to agree freely on the amount of the prisoner's remuneration, which is governed by mandatory regulations. Further, a prisoner cannot freely dispose of his income, as the State assigns some of it to a number of other uses.

4.5 The State party also claims that the minimum wage is a social concept whereby employees are provided the security of a minimum subsistence level, but in the prisoners' case, it is the State that provides the minimum subsistence to prisoners, regardless of whether they work or not. Thus, the minimum wage concept does not apply to prisoners. Furthermore, the State party provides information to the effect that it appears that other categories of regular employees are similarly provided with remuneration below the minimum standard wage, on the basis of their social or health situations.⁷

4.6 The State party observes that international standards⁸ provide for equitable remuneration of the work of prisoners, and not equal remuneration with the regular workforce, leaving a margin of appreciation to each State to determine the level of remuneration considered as equitable.

Comments by the author

5.1 On 18 December 2008, the author submits that the one year delay in his submission to the Committee cannot be compared to the delays encountered in the communications referred to by the State party.⁹ Furthermore, in some other instances, the Committee considered admissible, communications filed more than three years after the latest domestic decision.¹⁰

5.2 The author refutes the analogy made by the State party between his case and the *Radošević* case. He recalls that Mr. Radošević did not compare his income to the statutory minimum wage but to the average amount of benefits payable under the German statutory pension insurance scheme, which refers, in the author's view, to the average wage rather

⁵ Communication no. 182/1984 *Zwaan de Vries v. the Netherlands*, at paras. 12.1 to 13.

⁶ Section 29 of the APEI.

⁷ Section 2 of the Government order No. 303/1995 on the minimum wage, provides that employees between 18 to 21 years old receive 90% of the minimum wage for their first job for six months; underage employees (between 15 to 18 years old) receive 80%; beneficiaries of a partial disability pension receive 75% and beneficiaries of a permanent disability pension or underage employees suffering from full disability and who are beneficiaries of a permanent disability pension receive 50% of the minimum wage.

⁸ The United Nations Standard Minimum Rules for the Treatment of Prisoners (see ECOSOC resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977, and the 2006 Recommendation of the Committee of Ministers of the Council of Europe to member States on the European Prison Rules (Rec (2006)2).

⁹ Fifteen, eight and ten years, respectively.

¹⁰ See Communications no. 1353/2005 *Njaru v. Cameroon* and no. 1125/2002 *Quispe Roque v. Peru*.

than the minimum wage. This explains the Committee's decision that Mr. Radosevic should have submitted information on the type of work performed and wages paid for this work on the labour market. However, the author argues that he does not link his own claim to a specific type of work but compares his income to the minimum wage to be paid for any type of work.

Issues and proceedings before the Committee

On 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 As to the State party's argument that the submission of the communication to the Committee amounts to an abuse of the right of submission under article 3 of the Optional Protocol, the Committee notes that there are no fixed time limits for submission of communications under the Optional Protocol and that a mere delay in submission does not of itself, except in exceptional circumstances, involve an abuse of the right to submit a communication.¹¹ The Committee does not regard the delay of one year to have been so unreasonable as to amount to an abuse of the right of submission.

6.3 The Committee notes the author's claim that the fact that he received less than the minimum standard wage for the work he undertook as a prisoner between 25 September and 10 November 2006, in similar conditions to those of regular employees, amounts to discrimination under article 26 of the Covenant. The Committee recalls its jurisprudence in *Radosevic v. Germany*¹² and notes that the author has not provided any information on the type of work he performed during his incarceration and whether it was of a kind that is available on the labour market. Neither has he provided information on the amount of subsistence provided by the State party to cover his "basic needs" in addition to his remuneration. The Committee observes the information provided by the State party regarding other regular workers who are not paid the minimum standard wage (para. 4.5), and notes that the author's mere reference to minimum standard wage does not suffice to substantiate the alleged discrimination. The Committee also notes that the author only worked under the scheme in question for one and a half months, to which he freely agreed, with full knowledge of the remuneration to be received. For all of these reasons, the Committee considers that the author has not sufficiently substantiated, for purposes of admissibility, his claim that he was a victim of discrimination based on his status as a prisoner. It follows that the communication is inadmissible under article 2 of the Optional Protocol.

7. 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 in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

¹¹ See Communication no. 787/1997, *Gobin v. Mauritius*, Inadmissibility decision of 16 July 2001, para. 6.3, Communication no. 1434/2005, *Claude Fillacier v. France*, Inadmissibility decision of 27 March 2006, para. 4.3 and Communication no. 1101/2002, *José María Alba Cabriada v. Spain*, Views adopted on 1 November 2004, para. 6.3.

¹² Communication no. 1292/2004 at para. 7.2.