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International Covenant on Civil and Political Rights

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Views

Communication No. 1491/2006

Submitted by:	Nikolaus Fürst Blücher von Wahlstatt (represented by counsel, Lovells Solicitors)
Alleged victim:	The author
State party:	Czech Republic
Date of communication:	7 July 2006 (initial submission)
Document references:	Special Rapporteur's rule 97 decision, transmitted to the State party on 6 September 2006 (not issued in document form)
Date of adoption of Views:	27 July 2010

* 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 and equal protection of the law
Article of the Covenant:	26
Article of the Optional Protocol:	3

On 27 July 2010 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. 1491/2006.

[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-ninth session)

concerning

Communication No. 1491/2006**

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Date of communication:	7 July 2006 (initial submission)

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

Meeting on 27 July 2010,

Having concluded its consideration of communication No. 1491/2006, submitted to the Human Rights Committee on behalf of Nikolaus Fürst Blücher von Wahlstatt 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 Nikolaus Fürst Blücher von Wahlstatt, a British and Czech citizen. He claims to be a victim of violations by the Czech Republic of his rights under article 2, paragraph 1; article 2, paragraph 3; article 14; and article 26 of the International Covenant on Civil and Political Rights.[1] He is represented by counsel, Lovells Solicitors.

** The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Mahjoub El Haiba, Mr. Yuji Iwasawa, Ms. Helen Keller, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Mr. Michael O'Flaherty, Mr. Rafael Rivas Posada, Mr. Fabian Omar Salvioli and Mr. Krister Thelin.

[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 Optional Protocol.

The facts as presented by the author

2.1 The author is the cousin and claims to be the lawful heir of the last rightful owner of certain real (agricultural) properties situated in what is now the Czech Republic. The author submitted documents to Czech courts apparently establishing that these properties had belonged to the von Wahlstatt family since 1832.[2] They belonged to Hugo Blücher von Wahlstatt (a British and allegedly Czech citizen) in 1948 when he died, and the property was inherited by Alexander Blücher von Wahlstatt (also a British and allegedly Czech citizen), Hugo's brother. Between 1948 and 1949, after Hugo's death, the property was nationalized by the Czech Republic pursuant to Acts Nos. 142/1947 and 46/1948.[3]

2.2 After his death in 1974, Alexander Blücher von Wahlstatt, through his will and testament, bequeathed, inter alia, all of his properties in Czechoslovakia to the author, his first cousin. According to the author, the will was drawn up and executed pursuant to the laws of Guernsey, where the author and his father then resided.

2.3 After the revolution in 1989, the author moved to Czechoslovakia. In 1991, the Government of the Czech Republic passed the Land Law No. 229/1991[4] to redress former land confiscations that had occurred with regard to agricultural properties in the period between 1948 and 1989. The operative paragraphs of this Act are article 4, paragraph 1, which specifies that, the "beneficiary" shall be a citizen of the Czech and Slovak Federal Republic who has his permanent residence on its territory and whose land, buildings and structures belonging to the original farmstead passed over to the State between the period of 25 Feb 1948 and 1 January 1990. In terms of inheritances of such properties, article 4, paragraph 2, specifies the "authorized" recipients of compensation as the natural citizens of the Czech and Slovak Federal Republic permanently resident on its territory, in the following order: (a) an heir who by virtue of a testament acquires the entire inheritance; b) an heir who by virtue of a testament has acquired part of the property corresponding to his or her inheritance entitlement. The author alleges, and provides expert testimony to support his view, that the law does not require Czech citizenship of the original owner in cases where the original owner is deceased and the claim is made by his/her inheritors (para. 4(2)). In fact, he alleges that pursuant to Law No. 93/1992 Coll., article 4, para. 2 of Land Law No. 229/1991, was amended to remove the citizenship requirement in relation to the original owner.

2.4 The original property was situated in the jurisdiction of three separate districts, and the author initiated administrative restitution proceedings in the land offices of Ostrava,

[2] In the proceedings at issue, the State party contested whether the will allowed the author to rely on the law of restitution of property, but did not contest the ownership of the property itself.

[3] According to information from communication No. 757/1997, *Pezoldova v. Czech Republic*, a general confiscation law No. 142/1947 was enacted on 13 August 1947, allowing the Government to nationalize, in return for compensation, agricultural land over 50 hectares and industrial enterprises employing more than 200 workers.

[4] According to information from the *Pezoldova* case, Act No. 229/1991 was enacted by the Federal Assembly of the Czech and Slovak Federal Republic and came into force on 24 June 1991. The purpose of the Act was "to alleviate the consequences of some property injuries suffered by the owners of agrarian and forest property in the period from 1948 to 1989". According to the Act, persons who are citizens of the Czech and Slovak Federal Republic who reside permanently on its territory and whose land and buildings and structures belonging to their original farmstead devolved to the State or other legal entities between 25 February 1948 and 1 January 1990 are entitled to restitution of this former property inter alia if it devolved to the State by dispossession without compensation under Act No. 142/1947, and in general by expropriation without compensation. By judgment of 13 December 1995, the Constitutional Court held that the requirement of permanent residence in Act No. 229/1991 was unconstitutional.

Nový Jicín, and Opava on or around 14 December 1992. These proceedings, and their appeals, lasted for more than ten years, and resulted in 23 decisions. All tribunals and courts rejected the applications for restitution, but applied varying and often conflicting reasons, requiring from the author diverse and in his view often unreasonable burden of proof. By way of example, before the land registry of Opava, the administrative court required that the author prove that his cousin had been a Czech citizen, knowing that the land registry had been destroyed, and not accepting as dispositive the numerous pieces of evidence that he provided to the court. The Ostrava Municipal Courts, in its second examination of the issue, held that the will was not sufficient to meet the wording of the Land Act, because an inheritance must be quantified as a percentage of assets (which was not the case in this instance[5]): "... inheritance share is an ideal share in the testator's assets specified in the testament but it has to be specified in numbers, e.g. by fractions or percentage, or verbally, e.g. equal shares." This standard was upheld in four decisions of the Prague Municipal Court of 23 June 1999. Grounds for rejection of restitution were often different and sometimes contradictory with each level of appeal.

2.5 The author also applied to the Constitutional Court seven times. Final rejections[6] were based on the assertion that Alexander Blücher von Wahlstatt (the author's cousin), as the bearer of the inherited rights in question, did not have, or was not proven to have had, Czech citizenship.

2.6 Finally, the author filed complaints in the European Court of Human Rights (ECHR) on 6 June 2000 (App. No. 58580/00, regarding proceedings relating to the Land Office at Opava) and 1 December 2003 (App. No. 38751/03, regarding proceedings relating to the Land Office at Nový Jicín). No application was made in relation to the proceedings relating to the Land Office at Ostava. The basis of the complaints in the two applications was identical: the author relied on article 6 of the European Convention on Human Rights, article 1 of Protocol 1 of the Convention and article 1 of Protocol 1 of the Convention read together with article 14. Three main objections were raised: (a) that the imposition of a citizenship requirement by the Government of the Czech Republic was arbitrary; (b) that the allocation of the burden of proof with regard to proving the nationality was arbitrary; and (c) that the interpretation of the will of the author's cousin (by the Ostrava land office) was arbitrary. The author's first application was declared partly inadmissible (as to article 1 of Protocol 1 and article 14 of the Convention) on 24 August 2004. On 11 January 2005 (deemed definitive on 11 May 2005), the ECHR concluded that there had been no violation of article 6, para. 1 of the Convention, as the national jurisdictions had competently assessed the evidence presented by the author, that they were responsible for interpreting the legislation on restitution, and that their conclusions were not arbitrary. The author's second application was declared inadmissible on 17 May 2005, as it did not disclose any appearance of a violation of the rights in the Convention.

The complaint

3.1 The author claims to be a victim of a violation of article 26 of the Covenant, in that the citizenship requirement in Land Law No. 229/1991 for the original owner of the confiscated property is discriminatory. He argues that the violation arises from the fact that

[5] In his will Alexander bequeathed: (a) £500 and all his vehicles to his chauffeur; (b) £500 to his cleaning woman; (c) all his property situated in South Africa to his cousin Wolfgang von Schimonsky; and (d) to his cousin Nikolaus Blücher absolutely …his papers, portraits and generally all his estate other than bequeathed under (a), (b) and (c) above.

[6] On 30 May 1997, for proceedings relating to the Land Office at Ostrava; on 3 February 2000, for proceedings relating to the Land Office at Nový Jicín; and on 3 June and 9 October 2003 for proceedings relating to the Land Office at Opava.

the courts read this citizenship requirement into the law. He invokes the jurisprudence of the Committee in similar previous cases.[7] He also argues that the discrimination is aimed at the entire family, who are considered not "Czech enough", implying political motivations for this discrimination.

3.2 The author claims a violation of his right to a fair trial, guaranteed by article 14, by the arbitrary insertion of a citizenship requirement for the original owner of the confiscated property by the domestic courts. In the alternative, if the Committee considers that Land Law No. 229/1991 contains such a citizenship requirement, the author claims that the law itself is discriminatory and violates article 26. He further claims that the standard of proof, requiring that he prove the Czech citizenship of his cousin, amounts to a violation of article 14. He claims that the State party's courts (Ostrava Regional Court and Prague Municipal Court) failed to respect his right to a fair trial under article 14 on account of the arbitrary interpretation of his cousin's will.

3.3 The author claims that the State party failed to provide him with an effective remedy, within the meaning of article 2, paragraph 3 and article 2, paragraph 1, read in combination with articles 14 and 26, against the arbitrary interpretation of the will, since the Constitutional Court refused to address the author's complaints about arbitrary interpretation and instead relied on the citizenship issue.

State party's submission on admissibility and merits

4.1 On 7 March 2007, the State party commented on the admissibility and merits of the communication. It submits that the case is inadmissible for abuse of the right of submission, due to the following delays prior to addressing the Committee on 7 July 2006: over ten years from the decision of the Constitutional Court of 30 May 1997 (relating to the procedure before the office of Ostrava); over six years from the decision of the Constitutional Court of 3 February 2000 (relating to the procedure before the office of Nový Jicín); and nearly three years from the decision of the Constitutional Court of 9 October 2003 (relating to the procedure before the office of Opava).

4.2 The State party claims that, contrary to what was expressed by the author, the application submitted on 6 June 2000 (App. No. 58580/00) to the ECHR referred to proceedings relating to the Land Office at Nový Jicín, as well as proceedings relating to the Land Office at Opava[8]. Even if the author's application to the ECHR is taken into account, this still leaves a delay of over one year after the ECHR decision of 11 January 2005 (deemed definitive on 11 April 2005), prior to addressing the Committee on 7 July 2006. The State party confirms that no proceedings were initiated before the ECHR with respect to the proceedings before the Land Office in Ostava. Thus, with respect to these proceedings, the State party highlights that the author waited for a period of over ten years, from the date of the Constitutional Court decision of 30 May 1997 until 7 July 2006, before he addressed the Committee. While acknowledging that there is no explicit time limit for the submission of communications to the Committee, the State party refers to the limitation period of other international instances, notably the International Convention on the

[7] Communications No. 586/1994, *Adam v. Czech Republic*, Views adopted on 23 July 1996; No.857/1999, *Blazek v. Czech Republic*, Views adopted on 12 July 2001; No. 747/1997, *Des Fours Walderode v. Czech Republic*, Views adopted on 30 October 2001; and No. 945/2000, *Marik v. Czech Republic*, Views adopted on 26 July 2005.

[8] It would appear from the decision of the ECHR of 11 January 2005 (deemed definitive on 11 April 2005) that it only related to the proceedings before the Land Office at Nový Jicín, as expressed by the author. As to the proceedings before the Land Office of Opava, it states in the judgement (French only) "*La Cour observe que cette dernière procédure fait l'objet d'une autre requête introduite par l'intéressé, enregistrée sous le n° 38751/03*."

Elimination of All Forms of Racial Discrimination (six months following exhaustion of domestic remedies) to demonstrate the unreasonable length of time the authors waited in this case without providing adequate reasons for the delay.

4.3 The State party also submits that, although it has not made a reservation to article 5, paragraph 2 (a), of the Optional Protocol, the Committee should observe that the issues raised in this case have already been considered by the ECHR, and that in the light of this the Committee should examine the communication more rigorously. The Committee should not become an appeal body from decisions of the ECHR.

4.4 On the merits, the State party contests the author's claim that the Constitutional Court created a new condition for restitution based on a citizenship requirement for the original owner as well as the heir. It submits that the Court relied on the principle of *nemo plus juris ad alium transferre potest quam ipse habet*: that a person who asserts a claim after the death of the original owner should not have more rights than the original owner himself and that this argument was accepted by the ECHR in its decision of 11 January 2005.

4.5 The State party denies that the proof required for the purpose of demonstrating the Czech nationality of the original owner was onerous. It lists the type of documents that would have sufficed for this purpose and submits that the author failed to provide any document directly attesting to the claim that his uncle (through which his cousin is alleged to have received Czech citizenship) was indeed a Czech citizen. The national courts examined this issue extensively, and the Land Office of Opava even requested an investigation by the Service of Internal Affairs, which confirmed that it could find no proof that the original owner of the property was indeed a Czech citizen. The State party submits that the author had many opportunities to comment on all the evidence put forward by the authorities during the domestic proceedings, and the author is not claiming to have had no access to such information. The State party argues that article 14 cannot be interpreted to mean that the national authorities should consider a condition to be fulfilled simply because it is too difficult to demonstrate. In its view, the fact that the author could not prove that his cousin was a Czech citizen is simply because he was not.

4.6 The State party denies that the will in question was interpreted arbitrarily and regards the court's interpretation of article 4, paragraph 2 of the Land Law as correct (see para. 2.4 above). Similarly, the domestic authorities correctly did not apply the law of Guernsey to the given case, contrary to the author's claim. The State party denies that the citizenship requirement is discriminatory and refers to its submissions in the earlier property restitution cases filed against it.[9] At the beginning of the 1990s, the legislature decided to remedy some of the wrongs caused by the communist regime, through restitution. The group of people who could receive restitution of property was large but obviously certain conditions had to be fulfilled of which the citizenship requirement was one. It points to the decisions of the Constitutional Court, which on several occasions has attested to the constitutionality of the requirement, and in the present case considered that it was not possible that the heir to the property would have more rights than the original owner.

4.7 The State party submits that the reasoning of the Constitutional Court, to the effect that the original owner must have been a Czech citizen for the purposes of the restitution laws, does not invalidate the decisions of the Land Offices to dismiss the author's claim for failure to fulfill other criteria. The reason the Constitutional Court did not consider the

[9] *Adam v. Czech Republic*, *Blazek v. Czech Republic*, *Des Fours Walderode v. Czech Republic* and *Marik* v. *Czech Republic*, (see note 7 above).

author's other claims, including the alleged arbitrary interpretation of the original owner's will, was that this would not have changed the result – namely that the author was not entitled to restitution as the original owner was not a Czech citizen. The State party contends that the findings of the Land Offices as to the author's failure to fulfill the other conditions of the restitution law still stand and that the Constitutional Court was not obliged to examine whether the author satisfied these other conditions of the law once it found that the citizenship requirement had not been fulfilled.

4.8 The State party denies that the Blücher von Wahlstatt family was discriminated against by the Czech authorities, and submits that the only question under examination was whether the original owner was indeed a Czech citizen. If the authorities were discriminating against the family on the basis of their national origin, the Czech authorities would not have awarded the author Czech citizenship in 1992.

Author's comments on State party's submission

5.1 On 4 February 2008, with respect to the arguments on abuse of submission, the author submits that he pursued his grievances before the Czech authorities and courts and the European Court of Human Rights for over twelve years. The last ECHR application was dismissed in May 2005 and the communication was submitted to the Committee in July 2006. He also refers to the State party's own observation that the Optional Protocol does not require a communication to be submitted within a certain deadline. Furthermore, he submits that the State party failed to produce any evidence to substantiate the alleged.

5.2 As to the argument that the Committee is not an appeal body of the ECHR, the author submits that it is irrational to suggest that the Committee should take a stricter stance towards his submission because the case has already been examined in another forum. The Committee is an independent expert body and there are different considerations which apply to its deliberations as compared with the ECHR. Moreover, the argument concerning his discrimination by the Czech authorities has not been (and could not have been) previously examined by the ECHR. Furthermore, the discrimination against the author on the basis of his national origin is an illegitimate distinction and warrants stricter scrutiny.

5.3 On the merits, the author reiterates his claim that the requirement of citizenship imposed by the Czech courts as a condition for restitution – be it in relation to the applicant, for the original owner or for both – is incompatible with the requirement of non-discrimination in article 26 of the Covenant. On the argument that the nationality requirement is justified by the approval given by the Constitutional Court, the author submits that this condition imposed upon the original owner also violated article 26, and that the State's obligation under the Covenant not only extends to the executive branch but to all three branches of State authority, including the legislature and the judiciary.

5.4 As to the principle of "*nemo plus juris ad alium transferre potest quam ipse habet*", the author submits that this principle has been wrongly portrayed and applied by the State party and does not apply to this case. It specifically cannot justify any differential treatment on the basis of nationality. Contrary to the State party's assertion, the principle of "*nemo plus*" cannot justify discrimination on the basis of nationality. The State party's reasoning is flawed. It does not apply to the facts of the case and simply states that the transferor cannot transfer more rights than he actually has. Therefore, the principle applies to cases in which the transferor tries to transfer rights, which do not belong to him, to the transferee. As a consequence, the principle is mainly concerned with third party protection.

5.5 The State party's translation of the principle "the transferee/successor cannot dispose of more rights than the transferor/original owner actually had" is misleading, as it does not concern the disposal of rights by the transferee, but is only concerned with the protection of third parties' rights during the transfer of rights by the transferor. While a

correct translation and application of the principle to the author's case would mean that "Alexander Blücher could not transfer more rights than he actually had" (which is not a problem in this case), the Government turns the meaning into "Nikolaus Blücher (successor) cannot dispose of more rights than Alexander Blücher (original owner) actually had". The State party's version of the principle refers to a comparison of the scope and the value of the right(s) before and after the actual transfer. In the author's view, rights do not have to remain unchanged forever after the actual transfer between transferor and transferee has taken place. Consequently, it is of course possible that the successor can dispose of more (or less) rights than the original owner actually had, simply because rights do not necessarily have to stay the same and are subject to possible changes.

5.6 The author submits that in his case, the rights in question did in fact change after the actual transfer: it was the Czech Republic itself that by virtue of the Land Law No. 229/1991 granted the author (successor) a claim to restitution which the original owner, who had died long before the Land Act has entered into force, did not have. The reason why the author disposes of more rights than the original owner had is to be found in the restitution legislation of the Czech Republic. When the author became the heir of Alexander Blücher in 1974 he entered into Alexander Blücher's position with regard to the estate in the Czech Republic. Therefore, Alexander Blücher never transferred more rights than he had and consequently Nikolaus Blücher never received more rights from Alexander Blücher than the latter had. In 1991, some 17 years after the death of Alexander Blücher, the Czech Republic by virtue of Land Law No. 229/1991 granted the heirs of wrongfully expropriated persons the right to restitution. As to the assumption that Alexander Blücher would not have been entitled to claim restitution under the Land Act because he was allegedly not a Czech citizen and therefore would not have fulfilled the criteria under the Land Act, the "logic" behind this reasoning is based on a hypothetical application of a discriminatory citizenship requirement to the original owner as if he were the applicant under the Act.

5.7 As to the argument that the Czech legislature was entitled to restrict restitution by the imposition of certain requirements, the author submits that it was the Czech courts and not the legislature that imposed such a requirement. The relevant and widely accepted principle of public international law is that the expropriation of property, even in the case of compensation, is illegal if it is based on discriminatory grounds. This principle must apply also to measures of restitution relating to expropriation. In the case of discrimination against non-nationals, such discrimination may be lawful only if the expropriation is in the public interest, but this is not the case here. The injustices which the Land Law seeks to redress occurred to owners of land, by virtue of their ownership, rather than to "nationals", by virtue of their nationality. Therefore, undoing these wrongs must not discriminate on grounds of nationality. Finally, he submits that the fact that he has acquired Czech citizenship in accordance with the law does not disprove the fact that the Czech authorities have a certain prejudice against the Blücher von Wahlstatt family. It merely proves that the Czech authorities in this respect have acted in accordance with the law.

Author's supplementary submissions and the State party's comments thereon

6.1 On 23 January 2009, the author provided responses to questions posed by the Secretariat on behalf of the Committee. According to the author, Hugo lived for most of his life in Czechoslovakia. Apart from completing his University education in the United Kingdom of Great Britain and Northern Ireland and fighting for the Allies in World War I as an officer of the British Royal Air Force, he was otherwise resident in Czechoslovakia. When his father died in 1928, Hugo took over the management of the family estate at Radun in Czechoslovakia. In 1947, he left the estate before Christmas for a trip to the United Kingdom and died unexpectedly of a heart attack on 8 January 1948 in Guernsey, the Channel Islands.

6.2 As to Alexander, the author submits that he was born in Guernsey in 1916 and went to Czechoslovakia after Hugo's death in February 1948 to take over the management of the estate. He remained there until it was nationalized, which "began in September/October 1948 and was completed by May 1949", i.e. after Hugo's death. During this period he lodged a legal complaint against the decisions of the Ministry of Agriculture with the Highest Court of Justice in Prague in July 1948. Alexander commuted between Czechoslovakia and Guernsey until he was denied re-entry on a return trip[10] "on account of the communist's opposition to his and his family's status within a class of prominent landowners". After being so refused re-entry he divided his time between South Africa and Guernsey until his death in Cape Town on 18 September 1974.

6.3 As to the author himself, he submits that he was born in Germany in 1932 but moved to Switzerland on account of his father's vehement opposition to the Nazi regime. In 1950 he returned to Germany to attend university. Throughout his childhood he made frequent visits to the families' estate in Czechoslovakia until its nationalization. At the end of the Velvet Revolution in the 1990s, he moved to the Czech Republic and was granted citizenship in 1992 and permanent residence in 1993. Subsequently, he began dividing his time between the Czech Republic and Switzerland.

7. On 3 June 2009, the State party indicated that it did not intend to comment on the author's submission.

8.1 On 5 February 2010, the author responded to further requests for clarification from the Committee. The Committee requested to know: under which provisions of the Acts Nos. 142/1947 and 46/1948, the property in question was nationalized; what the objective of Law 229/1991 was; why citizenship was made a condition for restitution in Law 229/1991. A copy of Acts Nos. 142/1947 and 46/1948 were also requested.

8.2 The author submitted a decision of the Ministry of Agriculture dated 15 April 1948 made under the authority of the Land Act 142/1947 in which it states that all of the land over 150 hectares with the exception of certain lands was confiscated pursuant to paragraph 1 of the same Act and that everything between 50 and 150 hectares was also confiscated under the same paragraph. The author could not find a similar document regarding Act 46/1948, but according to him given the relationship between the two Acts it is clear that the basis of confiscation of the reminder of the land in question under this latter Act was paragraph 1. The author did not provide a copy of either of these acts.[11]

Issues and proceedings before the Committee

Consideration of admissibility

9.1 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 it is admissible under the Optional Protocol to the Covenant. The Committee has ascertained, as required under article 5, paragraph 2 (a), of the Optional Protocol, that the matter is not being examined under another procedure of international investigation or settlement.

[10] No date provided.

[11] Upon a review of the decision of 15 April 1948, although there is no explanation of para. 1 of Law 142/1947, it would appear that the basis behind the nationalization related to the desire not to have large estates concentrated in the hands of individuals or joint owners as well as the urgent local need for agricultural land for the "public good" and in light of the expected return of Czech and Slav compatriots, who it is assumed were supposed to benefit from redistribution of the land.

9.2 As required under article 5, paragraph 2 (a), of the Optional Protocol, the Committee has ascertained that the same matter is not being examined under another international procedure of investigation or settlement. It notes that this case was already considered and decided by the European Court of Human Rights on 11 January and 17 May 2005, but that in accordance with its jurisprudence[12] previous examination by another body does not preclude it from considering the claims raised herein and the Czech Republic has not made a reservation under article 5, paragraph 2 (a) of the Optional Protocol..

9.3 As to the State party's argument that the submission of the communication to the Committee is an abuse of the right of submission under article 3 of the Optional Protocol, the Committee notes that the author diligently pursued his claims through the domestic courts until the judgments of the Constitutional Court of 30 May 1997, 3 February 2000, and 9 October 2003, whereupon he filed two claims with the European Court of Human Rights. It notes that this Court handed down judgments, relating to the proceedings before the Land Offices of Opava and Nový Jicín, on 11 January and 17 May 2005, respectively, and that the authors filed a complaint before the Committee on 7 July 2006. Thus, a period of just over one year expired prior to filing a complaint before the Committee.

9.4 While noting that no claim was filed before the ECHR with respect to the proceedings before the Land Office of Ostava, leaving a period of over ten years between the Constitutional Court decision and the complaint to the Committee, the Committee observes that the ECHR was seized of the author's remaining claims on 6 June 2000, in which the same citizenship issue was raised. The Committee considers it reasonable that the author waited for the outcome of the ECHR decision before addressing the Committee.

9.5 The Committee recalls that there are no fixed time limits for submission of communications under the Optional Protocol and that mere delay in submission does not of itself, except in exceptional circumstances, involve an abuse of the right to submit a communication.[13] The State party has not duly substantiated why it considers a delay of just over one year to be excessive in the circumstances of this case. Thus, in the circumstances, the Committee does not regard the delay to have been so unreasonable to amount to an abuse of the right of submission and considers the communication admissible.

Consideration of the merits

10.1 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.

10.2 The main issue before the Committee is whether the application to the author of Land Law No. 229/1991 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. It 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.[14]

[12] *Alzbeta Pezoldova v. Czech Republic*, (see note 3 above).

[13] See communications No. 787/1997, *Gobin v. Mauritius*, decision on inadmissibility of 16 July 2001, para. 6.3, No. 1434/2005, *Claude Fillacier v. France*, decision on inadmissibility of 27 March 2006, para. 4.3; and No. 1101/2002, *Alba Cabriada v. Spain*, Views adopted on 1 November 2004, para. 6.3.

[14] See communication No.182/1984, *Zwaan-de Vries v. The Netherlands*, Views adopted on 9 April 1987, para. 13.

10.3 The Committee recalls its Views in the cases of *Simunek, Adam, Blazek, Marik, Kriz, Gratzinger* and *Ondracka*[15] 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*,[16] 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 individuals who are equally victims of prior State confiscations, and constitutes a violation of article 26 of the Covenant. This is all the more so in the present case, where the author himself does in fact satisfy the citizenship criterion but is denied restitution on the basis of a reliance on the same requirement of the original owner.

10.4 While noting that, according to the State party, there are other reasons which would prevent the author from fulfilling the conditions of the law in question, the Committee notes that the only criteria considered by the Constitutional Court in dismissing the author's request for restitution was that the original owner did not satisfy the citizenship criteria. Thus, irrespective of whether the citizenship requirement was inherent in Land Law No. 229/1991 itself or whether it resulted from the application of the law by the courts of the State party, the Committee finds that the application of the requirement for citizenship violated the author's rights under article 26 of the Covenant.

10.5 In light of a finding of a violation of article 26, due to the fact that the citizenship criteria, as applied in this case, was discriminatory, the Committee need not pronounce itself on the author's other claims under articles 14 and 2, which relate to the national court's assessment of whether or not the original owner was in fact a Czech citizen, as well as their interpretation of the will in question.

11. 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.

12. 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 appropriate 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.

13. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized 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 recognized in the Covenant and to provide an effective and enforceable remedy in case a violation has been established, the Committee wishes to

[15] See communication No. 516/1992, *Simunek v. Czech Republic*, Views adopted on 19 July 1995, para. 11.6; *Adam v. Czech Republic*,, para. 12.6, *Blazek v. Czech Republic*, , para. 5.8, *Marik v.Czech Republic*, , para. 6.5, *Des Fours Walderode v. Czech Republic*, (see note 7 above), communications No. 1054/2002, *Kriz v. Czech Republic*, Views adopted on 1 November 2005, para. 7.3; No. 1463/2006, *Gratzinger v. Czech Republic*, Views adopted on 25 October 2007, para. 7.5; and No. 1533/2006, *Ondracka v. Czech Republic*, Views adopted on 2 November 2007, para. 7.3.

[16] *Des Fours Walderode v. Czech Republic* (note 7 above), paras. 8.3-8.4.

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.]