



**International covenant
on civil and political
rights**

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HUMAN RIGHTS COMMITTEE
Ninetieth session
9 – 27 July 2007

DECISION

Communication No. 1452/2006

<u>Submitted by:</u>	Mr. Renatus J. Chytil (not represented by counsel)
<u>Alleged victim:</u>	The author
<u>State Party:</u>	The Czech Republic
<u>Date of communication:</u>	16 January 2006 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 97 decision, transmitted to the State party on 16 February 2006 (not issued in document form)
<u>Date of adoption of Decision:</u>	24 July 2007

* Made public by decision of the Human Rights Committee.

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

Procedural issues: Abuse of right of submission

Substantive issues: Equality before the law; equal protection of the law

Article of the Covenant: 26

Articles of the Optional Protocol: 3

[ANNEX]

ANNEX

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

Ninetieth session

concerning

Communication No. 1452/2006**

Submitted by: Mr. Renatus J. Chytil (not represented)
Alleged victim: The author
State Party: The Czech Republic
Date of communication: 16 January 2006 (initial submission)

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

Meeting on 24 July 2007,

Adopts the following:

DECISION ON ADMISSIBILITY

1. The author of the communication is Mr. Renatus J. Chytil, born in 1925 in the former Czechoslovakia. He claims to be a victim of violations by the Czech Republic of his rights under article 26 of the International Covenant on Civil and Political Rights.¹ He is not represented by counsel.

** The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Yuji Iwasawa, Mr. Edwin Johnson, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Mr. Michael O'Flaherty, Ms. Elisabeth Palm, Mr. José Luis Pérez Sanchez-Cerro, Mr. Rafael Rivas Posada, Sir Nigel Rodley and Mr. Ivan Shearer.

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.

Factual background

2.1 On 13 June 1948, the author escaped from Czechoslovakia. He was recognized as a political refugee in Germany, before emigrating to the United States of America, where he acquired US citizenship in 1957, thereby losing his Czech citizenship pursuant to a bi-lateral treaty, the 1928 Naturalization Treaty². In 1948, the Czechoslovak authorities confiscated his law certificates and professional degree allowing him to practice law. According to the author, the following property was confiscated over time by the Czechoslovak authorities:

- The Vonmiller textile mill at Zamberk, East Bohemia, confiscated in 1945, which was subsequently privatized in 1995;
- About 1.500 kg of gold coins and bars. The author claims that the gold which was confiscated by the Nazis during World War II was recovered in Germany, and taken and stored in the United States. The author further claims that his family gold was commingled with 18.4 metric tons of the Czech gold labeled as 'monetary restitution gold', and shipped by the United States government to the regime in Prague in February 1982. The author did not receive compensation from the United States government;
- The Chytil family villa in 1983, while the author's mother and sister were visiting him in California. Both subsequently obtained political asylum in the United States;
- The LITAS construction businesses, nationalized and confiscated in 1948; and
- Other land, buildings and investments.

2.2 In 1990, pursuant to Act 119/1990, the author's doctorate and professional certificate of *magister juris* were returned to him. He made a statement on 19 January 1994 before the constitutional committee of the Czech parliament. He also sought restitution of the family's former property and gold by lodging a complaint before the Czech Constitutional Court for violation of human rights and other matters on 10 June 1994. On 26 November 1995, and according to the author, the Czech Constitutional Court denied him standing on the ground that he was not an entitled person under law, as required by article 3 of the Act No. 87/1991, since he did not meet the continuous nationality criterion. He claims that this decision is final and no appeal is allowed. He tried to pursue his case, which was denied on 4 March 1996 by an assistant judge of the Czech Constitutional Court.

The complaint

3. The author invokes the Committee's jurisprudence against the Czech Republic (Communication No. 516/1992, *Simunek et al v. Czech Republic*, Views adopted on 19 July 1995)³ and recalls that it has found violations of the Covenant in situations similar to his. He

² Treaty of Naturalisation, concluded between Czechoslovakia and the United States of America on 16 July 1928 (date of entry into force: 14 November 1929).

³ The author indicates that he was the first to bring the *Simunek* decision of the Committee to the attention of the U.S. government in 1996. The author also includes the text of a submission dated

claims that the Czech government's failure to reconstitute his property to him violates article 26 of the Covenant.

The State party's submission on admissibility and merits

4.1 On 11 August 2006, the State party commented on the admissibility and merits of the communication. On the facts, the State party clarifies that the author apparently did not regain Czech citizenship, and that on 18 April 1994, he applied to the Constitutional Court in a submission designated as "an action against the violation of human rights and submittal of a petition for an amendment of the law". In this submission, he sought the repeal and amendment of certain provisions of Act No.87/1991 on Extra-Judicial Rehabilitations, the reconstitute of his property, and compensation for his rights *in rem* and inheritance rights amounting to more than USD 50 million. On 29 November 1995, the Constitutional Court dismissed his application, and on 4 March 1996, the Constitutional Court set aside the author's complaint against the 29 November 1995 decision.

4.2 The State party recalls that Section 1 of Act No. 87/1991 applies to the mitigation of certain property and other injustices which arose in the period from 25 February 1948 to 1 January 1990. The Act lays down preconditions for raising claims relating to forfeiture of property and items, as well as the rules governing compensation, and the scope of such claims. Under Section 2, the forfeited property or item is either surrendered, or financial compensation is provided. Pursuant to Section 3, subsection 1, 'eligible persons' are those persons who were rehabilitated under Act No. 119/1990, whose property item passed into State ownership in specified instances, provided the person is a Czech or Slovak citizen. The person liable to surrender the property, as defined by Section 4, must surrender the property item upon a request made in writing by the eligible person, who has proved his entitlement to the property item and who has specified how the State came to have the item. If the item is a movable item, the eligible person must also prove where the movable is situated. Section 5, subsection 2, provides that the eligible person must request the liable person to surrender the property item within six months of the entry into force of the Act. If the liable person fails to surrender the property item, the eligible person may bring his claims to a court within one year. Further, Section 8 of the Act specifies that the eligible person has a right to financial compensation if the property item is not surrendered to him. An application in writing for financial compensation must be filed within one year of the entry into force of the Act, or within one year of the day of the judgment whereby the request for surrender of the item was rejected.

4.3 On admissibility, the State party recalls that the author has not proved in any way, whether at the national level or before the Committee, that he presented his reconstitute claim to the 'liable persons' or, as applicable, to the ordinary courts of the Czech Republic, nor has he shown that he presented the claim within the time limit specified in Section 5 of Act No. 87/1991. Thus, he has clearly failed to exhaust domestic remedies.

4.4 As regards the proceedings before the Constitutional Court, the author deprived himself of the opportunity for the Court to consider, and decide on, his petition. The author's application to

19 March 1999, addressed to the Chairman of the Commission on Security and Cooperation in Europe, which refers to *Simunek*.

the Court of 18 April 1994 suffered from procedural defects that prevented the Court from considering it⁴. The author did not submit a copy of the decision on the latest remedy provided by the law for the protection of his rights, and omitted to be represented by a lawyer (a requirement before the Constitutional Court). As a result, he was requested by the Constitutional Court, on 22 June 1994, to remedy these defects. In his reply, he merely presented additional reflections *de lege ferenda* on the issue of Czech restitution legislation, and the defects in his petition were not remedied. Therefore, on 29 November 1995, the Constitutional Court dismissed his application⁵.

4.5 In addition, the author failed first to approach the ‘liable person’ or, as applicable, seize the ordinary courts with his restitution request (see Section 4 and 5 of Act No. 87/1991). Since the Constitutional Court cannot substitute these authorities’ activities in their decision-making powers in restitution claims, it had to dismiss this part of the author’s application in accordance

⁴ The State party explains that Section 30, subsection 1, of Act No.182/1993 on the Constitutional Court provides that natural and legal persons, as parties or enjoined parties to proceedings before the Constitutional Court, shall be represented by a barrister, or a commercial lawyer, or a notary public. Section 34, subsection 1, of the Act provides that the petition for the initiation of proceedings shall be lodged with the Constitutional Court in writing. The petition must clearly indicate the person lodging the petition, what matter the petition concerns, and what the petition pursues. The petition must also be signed and dated. It should contain an account of the relevant facts and evidence referred to. Section 43, subsection 1, provides that the judge rapporteur shall dismiss the petition in a Resolution, without holding a hearing and without calling the parties, (a) if the petitioner has failed the remedy the defects in his petition within the time limit given to him for this purpose, or (b) if the petition was lodged after the time limit stipulated in the law, [...] (e) if it is a petition for the consideration of which the Constitutional Court has no competence, or (f) if the petition is inadmissible, unless the law stipulates otherwise. Section 72, subsection 2, provides that a constitutional appeal can be lodged within sixty days. This time limit starts running on the day of the last decision on the latest remedy the law provides for the protection of the right, and if there is no such remedy, on the day on which the fact which is the subject matter of the constitutional appeal arose. Section 75, subsection 1, provides that a constitutional appeal is inadmissible if the appellant has not exhausted all procedural remedies provided by the law for the protection of his rights; a petition for the permission to reopen proceedings is not regarded as such remedy.

⁵ The State party provides a translation into English of the Resolution of the Constitutional Court of the Czech Republic, File Ref. II ŮS 62/94-35: the author “failed to lodge his constitutional appeal through a barrister, he failed to prove his membership of the Czech Bar association, and he failed to submit a copy of the decision on the latest remedy provided by the law for the protection of his rights”. It appears that the part of the complaint requesting a review of the constitutionality of Act No. 87/1991 were dismissed as proceedings on this matter were already under way (Pl. ŮS 3/94): “the admission of the petition was prevented by the obstacle of litispendence, i.e. a case instigated under Section 35, subsection 2 of the Act on the Constitutional Court [...] it was not possible to accord to the appellant the status of an enjoined party, because in the light of the defects in his petition he could not be regarded as an eligible petitioner”.

with section 43, subsection 1(e)⁶. For the same reason, it dismissed the author's petition for an amendment to Act No. 87/1991, as only Parliament has the power to do so. For these reasons, the author failed to exhaust domestic remedies and the communication is inadmissible in accordance with articles 2 and 5, paragraph 2(b), of the Optional Protocol.

4.6 Secondly, the State party argues that the author failed to substantiate his claims related to the discriminatory treatment in the decision-making on his restitution claim. He only lists the property items the surrender of which he seeks. However, under Section 5 of Act No. 87/1991, he should support his restitution titles, document his claim to the surrender of the property or the way in which it was taken by the State, and, in the case of movables, he should indicate the place where these items are located. His communication is therefore inadmissible under article 2 of the Optional Protocol.

4.7 Thirdly, the State party considers that the communication is inadmissible on the ground of abuse of the right of submission (article 3 of the Optional Protocol). While the Optional Protocol does not set fixed time limits for submitting a communication, and a mere delay in submission does not itself involve abuse of the right of submission, the State party recalls the jurisprudence of the Committee which expects a reasonable and objectively understandable explanation to such a time lapse⁷. In the present case, the author submitted his communication to the Committee on 16 January 2006, while the latest domestic decision in the matter is the Constitutional Court's decision of 4 March 1996. The author does not explain the ten-year delay, and thus the communication is inadmissible for abuse of the right of petition, within the meaning of article 3 of the Optional Protocol.

4.8 On the merits, the State party argues that the communication contains nothing which would indicate any prohibited discrimination against the author. The author has not documented any decision by the national authorities dismissing his restitution claims, which would be at variance with the requirements of article 26, nor is the State party aware of any such decision. According to the information provided, only two decisions were made in this case, namely the Constitutional Court decisions of 29 November 1995 and 4 March 1996. These decisions do not carry any suspicion of prohibited discrimination. Should the author wish to object that Czech restitution legislation requires, *inter alia*, as a precondition for a valid restitution claim, citizenship of the State party, the State party does not contest this fact. However, the existence *per se* of this precondition does not constitute prohibited discrimination against the author. Prohibited discrimination against the author could only occur where the national authorities adopted a decision rejecting his restitution claim on the ground of his failure to meet this precondition⁸. Here, no such decision has been adopted. The Constitutional Court dismissed the

⁶ "Decisions on indemnification and restitution are made by the authorities named in Act No. 87/1991 rather than the Constitutional Court, which is called to review the constitutionality of their decision-making" (see translation provided by the State party).

⁷ The State party refers to Communication No. 787/1997, *Gobin v. Mauritius*, Inadmissibility decision of 16 July 2001, which the Committee declared inadmissible as the communication had been submitted five years after the alleged violation of the Covenant, holding that the author did not provide "convincing explanation" to justify the delay (paragraph 6.3).

⁸ The State party refers to Communication No. 516/1992, *Simunek et al v. Czech Republic*, Views adopted on 19 July 1995.

author's applications solely on the basis of procedural reasons, not on the basis of applying the precondition of citizenship. Therefore, there has been no violation of article 26 of the Covenant.

Author's comments

5. On 28 February 2007, and in relation to the State party's claims that he failed to provide documentary evidence on his properties, the author refers to his initial communication and the list of confiscated properties which he provided. The author invokes the *Simunek* decision⁹ in support of his claim that the citizenship issue is discriminatory and incompatible with the requirements of article 26. As to the argument that he did not exhaust domestic remedies, he argues that even if he had been re-naturalised as a Czech citizen¹⁰, he would breach the State party's requirement of continued nationality. Only Czecho-Slovak citizens enjoy restitution rights under Act No. 87/1991, and he is not an 'eligible person' under Section 3 of the Act. Although the residency condition was removed by the State party in 1993, the discriminatory citizenship condition remains. Under these conditions, the author, as a U.S. citizen and not a continuous Czech citizen, has no standing in Czech courts of law and therefore is unable to exhaust domestic remedies. Under the 'entitled person' definition, his rights to a remedy do not exist. In his view, the State party uses procedural rules to block restitution, and therefore breaches the *Simunek* precedent and article 26¹¹. He concludes that his communication should be declared admissible.

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 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.

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 the last decision in the file is the decision of the Constitutional Court of 4 March 1996, rejecting the author's request to appeal the previous decision of 29 November 1995. Thus, a period of almost ten years passed before the author submitted his case to the Committee on 16 January 2006. The Committee notes 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.¹² In this instance, although the State party raised the issue

⁹ Communication No. 516/1992, *Simunek et al v. Czech Republic*, Views adopted on 19 July 1995.

¹⁰ The author claims he never lost Czech citizenship in light of the law of *ius sanguinis*.

¹¹ The author also refers to article 46 of the 1907 Hague Convention which states that "private property cannot be confiscated".

¹² See Communication No. 787/1997, *Gobin v. Mauritius*, Inadmissibility decision of 16 July 2001, paragraph 6.3, Communication No. 1434/2005, *Claude Fillacier v. France*, Inadmissibility

that the delay amounts to an abuse of the right of petition, the author has not explained or justified why he waited for nearly ten years before bringing his claims to the Committee. Taking into account the fact that the *Simunek* decision of this Committee¹³ was rendered in 1995, and that the file indicates that the author was aware of this decision soon thereafter¹⁴, the Committee thus regards the delay to be so unreasonable and excessive as to amount to an abuse of the right of submission, and declares the communication inadmissible pursuant to article 3 of the Optional Protocol.

7. The Human Rights Committee therefore decides:

- (a) that the communication is inadmissible under article 3 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 also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

decision of 27 March 2006, paragraph 4.3 and Communication No. 1101/2002, *José María Alba Cabriadav. Spain*, Views adopted on 1 November 2004, paragraph 6.3.

¹³ Communication No. 516/1992, *Simunek et al v. Czech Republic*, Views adopted on 19 July 1995.

¹⁴ See footnote 3.