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Human Rights Committee

One hundredth session

11 to 29 October 2010

Decision

Communication No. 1583/2007

<u>Submitted by:</u>	Josef and Vlasta Jahelka (not represented by counsel)
<u>Alleged victim:</u>	The authors
<u>State party:</u>	The Czech Republic
<u>Date of communication:</u>	22 January 2007 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 97 decision, transmitted to the State party on 14 August 2007 (not issued in document form)
<u>Date of adoption of decision:</u>	25 October 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 to submit a communication
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 (one hundredth session)

concerning

Communication No. 1583/2007**

<u>Submitted by:</u>	Josef and Vlasta Jahelka (not represented by counsel)
<u>Alleged victim:</u>	The authors
<u>State party:</u>	The Czech Republic
<u>Date of communication:</u>	22 January 2007 (initial submission)

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

Meeting on 25 October 2010,

Adopts the following:

Decision on Admissibility

1. The authors of the communication are Mr. Josef Jahelka, born on 1 November 1948 and Ms. Vlasta Jahelka, born on 2 May 1952. They are both citizens of the United States and the Czech Republic. The authors claim to be victims of a violation by the Czech Republic of article 26, of the International Covenant on Civil and Political Rights¹. They are not represented by counsel.

The facts as submitted by the authors

2.1 In 1975, the authors purchased a family home No. 289 in Chrast near Pilsen, together with a parcel of land No. 454. In August 1983, the authors escaped from Czechoslovakia and obtained, in 1989, citizenship of the United States. They thereby lost their Czechoslovak citizenship, which they regained in 2005. After their escape, the authors' property was confiscated and is presently held by the municipality of Chrast.

2.2 On 27 March 1996, the District Court in Pilsen rejected the authors' application for property restitution in view of Law No. 87/1991 and the Constitutional Court decision No. 164/1994, on the ground that the authors did not have Czech citizenship.

** 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 Chanut, Mr. Mahjoub El Haiba, 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. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabian Omar Salvioli and Mr. Krister Thelin.

¹ The Optional Protocol entered into force for the State party on 22 February 1993.

2.3 On 2 May 1997, the Supreme Court rejected the authors' appeal stating that the requirements for the release of the property according to Law No. 119/1990 were not met as the authors did not have citizenship of the Czech Republic. On 12 January 1998, the Constitutional Court found that the district court, by applying Law No. 87/1991, did not violate the authors' right to property and to fair proceedings, as the authors did not fulfil the citizenship requirement.

The complaint

3. The authors claim that the Czech Republic violated their rights under article 26, of the Covenant in its applying Law No. 87/1991, which requires Czech citizenship for property restitution.

The State party's observations on admissibility and merits

4.1 On 1 February 2008, the State party submitted its observations on the admissibility and merits. It clarifies the facts as submitted by the authors. On 12 and 13 July 1989 respectively, the authors lost their Czechoslovak citizenship and on 29 July 2004, they acquired Czech citizenship again. The State party submits that the authors lost their property on the basis of a district court decision of 8 February 1984, in which they were condemned for the criminal offence of leaving the Republic. On 14 February 1991, pursuant to Law No. 119/1990 on Judicial Rehabilitation, this decision was reversed.

4.2 On 27 March 1996, the district court rejected the authors' application for property restitution on account of their failure to meet the citizenship requirement of Law No. 87/1991. On 8 July 1996, the Plzen Regional Court rejected the authors' appeal. On 2 May 1997, the Supreme Court equally rejected their appeal stating that Law No. 87/1991 is *lex specialis* for all claims relating to property restitution and that the requirements of the Law, including the citizenship requirement must be met. On 12 January 1998, the authors' constitutional appeal was dismissed as manifestly ill-founded.

4.3 The State party submits that the communication should be found inadmissible for abuse of the right of submission under article 3, of the Optional Protocol. The State party recalls the Committee's jurisprudence according to which the Optional Protocol does not set forth any fixed time limits and that a mere delay in submitting a communication in itself does not constitute an abuse of the right of its submission. The State party however submits that the authors submitted their communication on 22 January 2007, which is more than nine years after the last decision of the domestic court dated on 12 January 1998. The State party argues that the authors have not presented any reasonable justification for this delay and therefore the communication should be declared inadmissible.² The State party further observes that it shares the view expressed by a Committee member in his dissenting opinion in similar cases against the Czech Republic, according to which in the absence of an explicit definition of the notion of abuse of the right of submission of a communication in the Optional Protocol, the Committee itself is called upon to define the time limits within which communications should be submitted.³

² See communication No. 787/1997, *Gobin v. Mauritius*, Inadmissibility decision of 16 July 2001, para. 6.3; communication No. 1434/2005, *Fillacier v. France*, Inadmissibility decision of 27 March 2006, para. 4.3; communication No. 1452/2006, *Chytil v. the Czech Republic*, Inadmissibility decision of 24 July 2007, para. 6.2; and *a contrario* communication No. 1533/2006, *Ondracka and Ondrackova v. the Czech Republic*, para. 6.4.

³ See dissenting opinion by Mr. Abdelfattah Amor.

4.4 The State party further adds that the authors' property was forfeited in 1984, thus a long time before it ratified the Optional Protocol. The communication should therefore be declared inadmissible *ratione temporis*.

4.5 On the merits, the State party recalls the Committee's jurisprudence on article 26, which asserts that a differentiation based on reasonable and objective criteria does not amount to prohibited discrimination within the meaning of article 26 of the Covenant⁴. The State party argues that the authors failed to comply with the legal citizenship requirement and their application for property restitution was therefore not supported by the legislation in force. The State party further reiterates its earlier submissions in similar cases⁵.

The authors' comments

5.1 On 1 March 2008, the authors submitted their comments on the State party's observations on the admissibility and merits. The authors argue that all domestic court decisions have denied their applications for property restitution on the ground of loss of their Czech citizenship according to Law No. 87/1991, which in the Committee's view is in violation of article 26, of the Covenant.

5.2 On the issue of the delay in submitting their communication to the Committee, the authors explain that they were misled by the closing sentence of the Constitutional Court decision, which states that against that decision no appeal is possible. They further argue that the State party does not publish the Committee's decisions in similar cases and that they learnt of the Committee's jurisprudence only from the Czech Coordinating Office in Canada.

5.3 The authors further submit that, while being aware that the confiscations were carried out during the Communist era, they dispute the behaviour of the State party's current administration.

5.4 On the merits, the authors refer to the Committee's previous jurisprudence, its concluding observations of 27 August 2001 and 9 August 2007, as well as General Assembly Resolution 60/147 of 21 March 2006.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its Rules of Procedure, decide whether or not the communication is admissible under the Optional Protocol to the Covenant.

6.2 The Committee has ascertained that the same matter is not being examined under another procedure of international investigation or settlement for purposes of article 5, paragraph 2(a), of the Optional Protocol.

6.3 The Committee has also considered whether the violations alleged can be examined *ratione temporis*. It notes that although the confiscations took place before the entry into force of the Covenant and of the Optional Protocol for the Czech Republic, the new

⁴ See for example communication No. 182/1984, *Zwaan de Vries v. the Netherlands*, views adopted on 9 April 1987, para. 12.1 to 13.

⁵ See for example, State party observations on communication no. 586/1994, *J. F. Adam v. the Czech Republic*, views adopted on 23 July 1996; communication no. 1000/2001, *George Mráz v. the Czech Republic*. It also refers to the constructive dialogue with the Committee during the review of its periodic report, see CCPR/C/CZE/CO/2.

legislation, that excludes claimants who are not Czech citizens from claiming restitution continues to be operative having consequences even after the entry into force of the Optional Protocol in the Czech Republic and therefore does not preclude the Committee from considering the communication.⁶

6.4 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 complained of by the authors is the one delivered by the Constitutional Court on 12 January 1998, rejecting the authors' application as manifestly ill-founded. Thus, a period of nine years and ten days passed before the authors submitted their communication to the Committee on 22 January 2007. The Committee recalls its jurisprudence, according to which there are no fixed time limits for the submission of communications under the Optional Protocol and that the mere delay in submission does not of itself, except in exceptional circumstances, constitute an abuse of the right to submit a communication.⁷ In this regard, it observes that the authors waited for nine years and ten days after the date of the Constitutional Court judgment before submitting their complaint to the Committee. The Committee observes that it is for the authors to diligently pursue their claim and considers that in the present case, they have not provided any reasonable justification for the delay in submitting their communication to the Committee. The Committee, therefore, regards the delay to be so unreasonable and excessive as to amount to an abuse of the right of submission, which renders the communication inadmissible under 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 authors.

[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.]

⁶ See for example communication N° 586/1994, *Adam v. the Czech Republic*, Views of 23 July 1996, para. 6.3.

⁷ 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 decision of 27 March 2006, paragraph 4.3; communication No. 1452/2006, *Chytil v. the Czech Republic*, Inadmissibility decision of 24 July 2007; communication No. 1582/2007, *Kudrna v. the Czech Republic*, Inadmissibility decision of 21 July 2009.