



## International Covenant on Civil and Political Rights

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### Human Rights Committee

#### Communication No. 1563/2007

#### Views adopted by the Committee at its 103rd session, 17 October to 4 November

<i>Submitted by:</i>	Oldřiška (Olga) Jünglingová (not represented by counsel)
<i>Alleged victim:</i>	The author
<i>State party:</i>	The Czech Republic
<i>Date of communication:</i>	29 May 2006 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 14 May 2007 (not issued in document form)
<i>Date of adoption of Views:</i>	24 October 2011
<i>Subject matter:</i>	Discrimination on the basis of citizenship with respect to restitution of property
<i>Procedural issue:</i>	Abuse of the right to submit a communication
<i>Substantive issues:</i>	Equality before the law; equal protection of the law
<i>Article of the Covenant:</i>	26
<i>Articles of the Optional Protocol:</i>	3

On 24 October 2011, 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. 1563/2007.

[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 (103rd session)**

concerning

#### **Communication No. 1563/2007\*\***

*Submitted by:* Oldřiška (Olga) Jünglingová (not represented by counsel)

*Alleged victim:* The author

*State party:* The Czech Republic

*Date of communication:* 29 May 2006 (initial submission)

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

*Meeting on* 24 October 2011,

*Having concluded* its consideration of communication No. 1563/2007, submitted to the Human Rights Committee by Ms. Oldřiška (Olga) Jünglingová 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, dated 29 May 2006, is Oldřiška (Olga) Jünglingová, a naturalized American citizen residing in the United States of America and born on 19 February 1917 in Bystročice, District of Olomouc, former Czechoslovakia. She claims to be a victim of a violation by the Czech Republic of article 26 of the International Covenant on Civil and Political Rights.<sup>1</sup> She is not represented by counsel.

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\*\* The following members of the Committee participated in the examination of the present communication: Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Ahmad Amin Fathalla, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Mr. Rajsoomer Lallah, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Mr. Gerald L. Neuman, Mr. Rafael Rivas Posada, Mr. Fabian Omar Salvioli and Ms. Margo Waterval.

<sup>1</sup> The Optional Protocol entered into force for the Czech Republic on 1 January 1993, as a consequence of the Czech Republic's notification of succession to the ratification of the Optional Protocol by the Czech and Slovak Federal Republic on 12 March 1991.

### **The facts as submitted by the author**

2.1 The author's husband, Augustin Jüngling, an evangelical pastor, fled Czechoslovakia shortly after the communist coup of February 1948 and the author and her two daughters followed him in 1949. The family obtained United States citizenship in 1957, and lived in the United States until their return to the Czech Republic in 1994.

2.2 On 31 March 1938, the author had obtained, as part of her dowry, two parcels of land, recorded in the Land Register in Olomouc as parcels No. 219/1, of 86.180 m<sup>2</sup>, and No. 324/3, of 183.280 m<sup>2</sup>. A piano, which was not on that list, had been purchased new for 20,000 Czech koruna. The author also had a bank deposit of 15,990 Czech koruna. After she left Czechoslovakia, all the author's possessions, including her land parcels, equipped house and furniture, were confiscated by the State.

2.3 An agreement on the release of real property between the Agricultural Cooperative Bystročice-Žerůvsky and the author was concluded on 20 October 1995. The District Land Office in Olomouc rejected this agreement on 23 April 1996 under Act No. 229/1991, on the basis that the author did not meet the condition of Czech citizenship as of 31 January 1993,<sup>2</sup> as she only acquired citizenship on 29 May 1995. On 4 February 1997, the Regional Court in Ostrava confirmed the decision of the District Land Office in Olomouc. On 13 August 1997, the District Land Office of Olomouc ruled that both parcels had become the property of the Municipality of Bystročice. The property had been evaluated in 1950 at 37,952 Czech Crowns and sold.

2.4 On 22 February 1999, the District Court of Olomouc rejected the author's claim for compensation for 60,000 Czech crowns under Law No. 87/1991 on extrajudicial rehabilitation, on the ground that she should have submitted her claim before the deadline set by the law and as she was not a Czech citizen within the statutory restitution period.<sup>3</sup> On 24 May 2000, this decision was confirmed by the Regional Court in Ostrava.

2.5 The author contends that no domestic remedies are available for the restitution of her property, referring to a decision of the Constitutional Court, which upheld the constitutionality of Law No. 87/1991.<sup>4</sup>

### **The complaint**

3. The author claims that the Czech Republic violated her rights under article 26 of the Covenant in its application of Law No. 87/1991, which requires Czech citizenship for property restitution.

<sup>2</sup> Act No. 229/1991 on the Regulation of Property Relations to the Land and Other Agricultural Property, sect. 13, para. 4.

<sup>3</sup> Law No. 87/1991 on extrajudicial rehabilitation was adopted by the Czech Government, spelling out the conditions for recovery of property for persons whose property had been confiscated under the Communist rule. Under this law, in order to claim entitlement to recover property, a person claiming restitution of the property had to be, inter alia, (a) a Czech citizen, and (b) a permanent resident in the Czech Republic. These requirements had to be fulfilled during the time period in which restitution claims could be filed, namely between 1 April and 1 October 1991. A judgment by the Czech Constitutional Court of 12 July 1994 (No. 164/1994) annulled the condition of permanent residence and established a new time-frame for the submission of restitution claims by persons who had thereby become entitled persons, running from 1 November 1994 to 1 May 1995.

<sup>4</sup> Constitutional Court of the Czech Republic, Pl. ÚS. 33/96-41, 4 June 1997.

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

4.1 On 12 November 2007, the State party submits its observations on the admissibility and merits. It refers to the applicable law, namely Act No. 229/1991 on the Regulation of Property Relations to the Land and Other Agricultural Property and Law No. 87/1991 on extrajudicial rehabilitation.

4.2 Under Act No. 229/1991, section 4, paragraph 1, and section 13, paragraph 4, a Czechoslovak citizen was entitled to recover his/her legal title over land which had previously passed on to the State within a fixed time limit (by 31 January 1993). Law No. 87/1991 (section 3, paragraph 1, and section 13, paragraph 2) further allowed entitled persons, i.e. Czechoslovak citizens, compensation (60,000 Czech Crowns), where the judicial decision by which the State had seized their real property was subsequently rescinded under Act No. 119/1990 on Judicial Rehabilitation. Such compensation request had to be filed within one year of the day of entry into force of the Act, or within one year of the day of finality of the judgement which dismissed the claim for recovery.

4.3 The State party outlines the reasons for which the author's restitution requests were rejected: in addition to the fact that she did not submit her claims within the time limits set forth under Act No. 229/1991 and Law No. 87/1991, and that she was not a Czech citizen within the relevant statutory period, the author should have engaged legal proceedings against the municipality of Bystročice, rather than the Cooperative Zemědělské družstvo Bystročice-Žerůvsky, with whom she had concluded an agreement for the release of the property on 20 October 1995. A further reason for dismissing her request was the fact that, contrary to the explicit provision of Law No. 87/1991, section 13, paragraph 2, part of the confiscated property consisted in real property.

4.4 The State party further 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 author submitted her communication before the Committee on 29 May 2006, which is six years after the last decision of the domestic court dated 24 May 2000. The State party argues that the author has not presented any reasonable justification for this delay, and therefore considers that the communication should be declared inadmissible by the Committee.<sup>5</sup>

4.5 On the merits, the State party argues that the author failed to comply with the legal citizenship requirement and recalls its earlier submissions in similar cases, clarifying the rationale and historic reasons for the legal scheme adopted on property restitution. In conclusion, it states that the Committee should declare the communication inadmissible under article 3 of the Optional Protocol, or, in the alternative, find it ill-founded under article 26 of the Covenant.

**Author's comments**

5.1 On 4 January 2008, the author submits her comments on the State party's observations on the admissibility and merits.

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<sup>5</sup> The State party refers to communication No. 787/1997, *Gobin v. Mauritius*, decision of inadmissibility of 16 July 2001, para. 6.3.

5.2 With regard to her belated submission of the present communication, she argues that the State party does not publish any decisions by the Human Rights Committee; hence she only belatedly became aware of this avenue.

5.3 Concerning the merits, the author reiterates the discriminatory nature of the citizenship requirement contained in Act No. 229/1991 and Law No. 87/1991, in breach of her rights under article 26 of the Covenant.

### **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 observes that the author has not exhausted all available domestic remedies, as she could have appealed the decision of the Regional Court of Ostrava of 24 May 2000. The Committee nevertheless recalls that the author of a communication need not exhaust domestic remedies when these remedies are known to be ineffective. It observes that other claimants have unsuccessfully challenged the constitutionality of the law in question; that earlier views of the Committee in similar cases remain unimplemented and that the Constitutional Court nevertheless upheld the constitutionality of the Restitution Law.<sup>6</sup> Recalling its previous jurisprudence,<sup>7</sup> the Committee is of the view that any further appeal of the author would have been futile.

6.4 The Committee has noted the State party's argument that the communication should be considered inadmissible as an abuse of the right of submission of a communication under article 3 of the Optional Protocol in view of the delay in submitting the communication to the Committee. The State party asserts that the author waited more than six years after exhaustion of domestic remedies before submitting her complaint to the Committee. The author argues that the delay was caused by lack of available information. The Committee observes that according to its new rule of procedure 96 (c), applicable to communications received by the Committee after 1 January 2012, the Committee shall ascertain that the communication does not constitute an abuse of the right of submission. An abuse of the right of submission is not, in principle, a basis of a decision of inadmissibility *ratione temporis* on grounds of delay in submission. However, a communication may constitute an abuse of the right of submission, when it is submitted after five years from the exhaustion of domestic remedies by the author of the communication, or, where applicable, after three years from the conclusion of another procedure of international investigation or settlement, unless there are reasons justifying the delay taking into account all the circumstances of the communication. Nevertheless, in the meantime and in accordance with its current jurisprudence, the Committee considers that in the particular circumstances of the instant case it does not consider the delay of six years and five days since the exhaustion of domestic remedies to amount to an abuse of the right

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<sup>6</sup> Constitutional Court of the Czech Republic, Pl. ÚS. 33/96-41.

<sup>7</sup> See, for example, communication No. 1742/2007, *Gschwind v. Czech Republic*, Views adopted on 27 July 2010, para. 6.4.

of submission under article 3 of the Optional Protocol.<sup>8</sup> The Committee therefore decides that the communication is admissible, in so far as it appears to raise issues under article 26 of the Covenant.

*Consideration of the merits*

7.1 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.

7.2 The issue before the Committee, as it has been presented by the parties, is whether the application to the author of Law No. 87/1991 on extrajudicial rehabilitation amounted to discrimination, in violation of article 26, of the Covenant. The Committee 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.<sup>9</sup>

7.3 The Committee recalls its Views in the numerous Czech property restitution cases,<sup>10</sup> 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 in those cases that the citizenship requirement was unreasonable. In the case *Des Fours Walderode*,<sup>11</sup> the Committee observed 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. The Committee considers that the principle established in the above cases equally applies to the author of the present communication, and therefore concludes that the application to the author of the citizenship requirement under Law No. 87/1991 violates her rights under article 26 of the Covenant.

8. 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 Covenant.

9. 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 compensation if her property cannot be returned. The Committee reiterates that the State party should

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<sup>8</sup> See communication No. 1574/2007, *Slezak v. Czech Republic*, Views adopted on 20 July 2009, para. 6.3.

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

<sup>10</sup> Communications No. 516/1992, *Simunek v. Czech Republic*, Views adopted on 19 July 1995, para. 11.6; No. 586/1994, *Adam v. Czech Republic*, Views adopted on 23 July 1996, para. 12.6; No. 857/1999, *Blazek v. Czech Republic*, Views adopted on 12 July 2001, para. 5.8; No. 945/2000, *Marik v. Czech Republic*, Views adopted on 26 July 2005, para. 6.4; No. 1054/2002, *Křiz 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 and Ondracka v. Czech Republic*, Views adopted on 31 October 2007, para. 7.3.

<sup>11</sup> Communication No. 747/1997, *Des Fours Walderode v. Czech Republic*, Views adopted on 30 October 2001, paras. 8.3–8.4.

review its legislation to ensure that all persons enjoy both equality before the law and equal protection of the law.

10. 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 that a violation has been established, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the Committee's Views and to have them translated in the official language of the State party and widely distributed.

[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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