



**International covenant
on civil and political
rights**

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HUMAN RIGHTS COMMITTEE
Ninetieth session
9 – 27 July 2007

VIEWS

Communication No. 1445/2006

<u>Submitted by:</u>	Mrs. Libuse Polacková and Mr. Joseph Polacek (not represented by counsel)
<u>Alleged victim:</u>	The authors
<u>State Party:</u>	The Czech Republic
<u>Date of communication:</u>	20 December 2005 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 97 decision, transmitted to the State party on 23 January 2006 (not issued in document form)
<u>Date of adoption of Views:</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: Another international instance of investigation, abuse of the right of submission

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

Articles of the Covenant: 26

Article of the Optional Protocol: 3, and 5, 2(a)

On 24 July 2007, 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.1445/2006.

[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

Eighty-ninth session

concerning

Communication No. 1445/2006**

<u>Submitted by:</u>	Mrs. Libuse Polacková and Mr. Joseph Polacek (not represented by counsel)
<u>Alleged victim:</u>	The authors
<u>State Party:</u>	The Czech Republic
<u>Date of communication:</u>	20 December 2005 (initial submission)

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

Meeting on 24 July 2007,

Having concluded its consideration of communication No. 1445/2006, submitted to the Human Rights Committee by Mrs. Libuse Polacková and Mr. Joseph Polacek 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 authors of the communication, and the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1. The authors of the communication are Mrs. Libuse Polacková and Mr. Joseph Polacek, both US nationals of Czech origin and both born in 1925. They claim to be victims of violations

** 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. 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.

by the Czech Republic of their rights under article 26 of the International Covenant on Civil and Political Rights.¹ They are not represented by counsel.

Factual background

2.1 In August 1968, the authors escaped from Czechoslovakia. They remained in France prior to emigrating to the United States in 1970, where they acquired US citizenship, thereby losing their Czech citizenship pursuant to a bi-lateral treaty, the 1928 Naturalization Treaty. In the meantime, in Czechoslovakia, the authors were sentenced *in absentia* to a prison term for having fled the country, and their property (a chalet and a plot of land) was confiscated by the State. In 1975, it was sold to a prominent member of the then Communist party.

2.2 On 23 April 1990, the Czech and Slovak Republic passed Act No. 119/1990 Coll. on Judicial Rehabilitation, which rendered null and void all sentences handed down by Communist courts for political reasons. Persons whose property had been confiscated were, under section 23(2) of the Act, eligible to recover their property, subject to conditions to be spelled out in a separate restitution law. On 1 February 1991, Act No. 87/1991 on Extra-Judicial Rehabilitation was adopted.

2.3 Under Act No. 87/1991, a person claiming restitution of property had to: be a Czech-Slovak citizen; be a permanent resident in the Czech Republic; and to prove the unlawfulness of the acquisition by the current owner of the property in question. The first two requirements had to be fulfilled during the time period in which restitution claims could be filed, between 1 April and 1 October 1991.

2.4 On 12 July 1994, a judgment of the Constitutional Court (No.164/1994), annulled the condition of permanent residence and established a new time frame of six months for the submission of restitution claims, beginning on 1 November 1994. The Supreme Court and the Constitutional Court supported an interpretation of this judgement to the effect that the newly entitled persons were persons who, during the original period of time (1 April to 1 October 1991), met all the other conditions, including the citizenship condition, with the exception of permanent residence.

2.5 The authors sought restitution of their former property pursuant to this new law. In 1991 and 1995, they requested the current owner of their house voluntarily to return it. As he refused to do so, they initiated judicial proceedings against him: they filed complaints at district court, a regional court, and the Constitutional Court. On 23 May 1996, 19 September 1996 and 10 September 1997, respectively, all three instances denied the authors' claims on the grounds that they were not entitled persons under law, as they had not been citizens of the Czech Republic before or on 1 October 1991 at the latest, as required by the Act No. 87/1991.

2.6 In or around 1997, the authors made an application to the European Court of Human Rights (ECHR). On 10 July 2002, the ECHR rejected their application, on the grounds that the

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.

facts of the case did not fall within the scope of Article 1 of Protocol No.1 to the European Convention, and that article 14 of the European Convention on Human Rights is not autonomous. It concluded that their application was inadmissible *ratione materiae*.

2.7 The authors contend that there were thousands of Czechs who obtained restitution of their property who retained their Czech citizenship after emigrating to countries which did not have dual citizenship rules like that of the United States. The authors' refer to the Committee's jurisprudence against the Czech Republic and recall that it has consistently found violations of the Covenant in situations similar to theirs.

The complaint

3. The authors claim that the failure to return their property on the ground that they were not of Czech citizens by 1991 violates article 26 of the Covenant.

The State party's submission on admissibility and merits

4.1 On 8 July 2003, the State party commented on the admissibility and merits of the communication. On the facts, the State party submits that despite the Naturalisation Treaty, those who wished to acquire Czech citizenship (for the purpose of obtaining restitution of property) could have done so between 1990 and the time limit for raising restitution claims (1 October 1991). In fact, all applications for citizenship submitted between 1990 and 1992 were granted by the Minister of the Interior. There is no indication that the authors ever submitted such an application.

4.2 On admissibility, the State party submits that the case is inadmissible for abuse of the right of submission, due to the delay of eight years and three months the authors waited after the decision of the Constitutional Court of 10 September 1997 before submitting their case to the Committee. Even if the authors' case to the ECHR is taken into account, this still leaves a delay of three years and five months after the ECHR's decision of 10 July 2002. 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 Committee on the Elimination of Racial Discrimination (CERD) - six months following exhaustion of domestic remedies - to demonstrate the unreasonable length of time the authors waited in this case.

4.3 On the merits, the State party refers to its observations made in earlier property cases considered by the Committee², in which it outlined the political circumstances and legal conditions pertaining to the proposal for, and passing of, the restitution law. The purpose of the law was twofold: to mitigate, to the extent possible, injustices committed by the former Communist regime; and to allow for comprehensive economic reform with a view to introducing a well-functioning market economy. The restitution laws were among those laws which sought to transform the whole society. The citizenship requirement was envisaged to ensure that returned property would be looked after.

² Communication No. 586/1994, *Adam .v the Czech Republic*, adopted on 23 July 1996.

4.4 The State party invokes the judgements of the Constitutional Court, which upheld the constitutionality of the restitution law, specifically the precondition for citizenship. It argues that the authors themselves were responsible for the failure to obtain restitution of their property, as they failed to apply for citizenship within the deadline (see para.3.1). Even if the authors had satisfied the citizenship condition, it is not clear whether they would have been successful in obtaining restitution of their property, given that the District Court rejected their claims on the ground that they were not entitled persons under the restitution laws. Having found that they were not so entitled, it did not consider whether they complied with the other requirements of the restitution laws³.

The authors' comments

5.1 On 2 October 2006, the authors commented on the State party's submission. They deny that they had a right to acquire Czech citizenship between 1990 and 1991 for the purposes of obtaining restitution of their property. They quote from the law in question, No. 88/1990 of 28 March 1990, which states, in its article II, § 3b) that,

“State citizenship cannot be granted in case it would be in contradiction to international obligations, which have been assumed by Czechoslovakia”.

According to the authors, this is a reference to the Naturalisation Treaty between the U.S and the former Czechoslovakia.

5.2 The authors deny that the submission of their case three years after the decision of the European Court of Human Rights (ECHR) is an abuse of the right of submission. They claim that they diligently pursued their claims through the domestic courts, putting up with significant delays prior to applying to the ECHR. Finally, they argue that the restitution of small personal properties has nothing to do with economic reform and that none of the properties had been acquired lawfully and in good faith.

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 The Committee notes that a similar claim filed by the authors was declared inadmissible by the European Court of Human Rights on 10 July 2002. However, article 5, paragraph 2 (a), of the Optional Protocol does not constitute an obstacle to the admissibility of the instant communication, since the matter was no longer pending before another procedure of

³ That the liable persons had acquired the disputed property either in contravention of the regulations then in force, or on the basis of an unlawful advantage (Section 4, subsection 2 of Act No. 87/1991).

international investigation or settlement, and the Czech Republic has not entered a reservation to article 5, paragraph 2, (a), of the Optional Protocol.

6.3 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 authors diligently pursued their claim through the domestic courts until the decision of the Constitutional Court in 1997, whereupon they filed a claim to the ECHR. It notes that this Court adopted its decision on 10 July 2002 and that the authors submitted their case to the Committee on 20 December 2005. Thus, a period of three years and five months passed prior to addressing the Committee. 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.⁴ The Committee does not regard the delay to have been so unreasonable as to amount to an abuse of the right of submission, and declares the communication admissible.

Consideration of 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 is whether the application to the authors of Act No. 87/1991 amounted to a violation of their rights to equality before the law and to equal protection of the law, contrary to article 26 of the Covenant.

7.3 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 26.⁵ Whereas the citizenship criterion is objective, the Committee must determine whether its application to the authors was reasonable in the circumstances of the case.

7.4 The Committee recalls its Views in the cases of *Simunek, Adam, Blazek* and *Des Fours Walderode*,⁶ where it held that article 26 of the Covenant had been violated: "the authors in that case and many others in analogous situations had left Czechoslovakia because of their political opinions and had sought refuge from political persecution in other countries, where they

⁴ See Communication no. 787/1997, *Gobin v. Mauritius*, Inadmissibility decision of 16 July 2001, para. 6.3, Communication no. 1434/2005, *Claude Fillacier v. France*, Inadmissibility decision of 27 March 2006, para. 4.3 and Communication no. 1101/2002, *José María Alba Cabriada v. Spain*, Views adopted on 1 November 2004, para. 6.3.

⁵ See Communication No.182/1984, *Zwaan-de Vries v. The Netherlands*, Views adopted on 9 April 1987, paragraph 13.

⁶ See Communication No.586/1994, *Adam v. Czech Republic*, Views adopted on 23 July 1996, paragraph 12.6, Communication No.857/1999, *Blazek v. Czech Republic*, Views adopted on 12 July 2001, paragraph 5.8, and Communication No. 747/1997, *Des Fours Walderode v. Czech Republic*, Views adopted on 30 October 2001, paragraph 8.3.

eventually established permanent residence and obtained a new citizenship. Taking into account that the State party itself is responsible for the author's ... departure, it would be incompatible with the Covenant to require the author ... to obtain Czech citizenship as a prerequisite for the restitution of [his] property or, alternatively, for the payment of appropriate compensation".⁷ The Committee further recalls its jurisprudence⁸ that the citizenship requirement in these circumstances is unreasonable.

7.5 The Committee considers that the precedent established in the above cases also applies to the authors of the present communication. It notes the State party's confirmation that the only criteria considered by the domestic courts in dismissing the authors' request for restitution was that they did not fulfil the citizenship criterion. Thus, the Committee concludes that the application to the authors of Act No. 87/1991, which lays down a citizenship requirement for the restitution of confiscated property, violated their 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 International Covenant on Civil and Political Rights.

9. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the authors with an effective remedy, which should be restitution, or otherwise, compensation. 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.

10. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognised 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 recognised in the Covenant and to provide an effective and enforceable remedy in case a violation has been established, the Committee wishes to receive from the State party, within 90 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.]

⁷ See footnote 7

⁸ See Communication 516/1992, *Simunek v. Czech Republic*, Views adopted on 19 July 1995, paragraph 11.6