



**International Covenant on
Civil and Political Rights**

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Human Rights Committee
One hundredth session
11 to 29 October 2010

Views

Communication No. 1581/2007

<u>Submitted by:</u>	Victor Drda (not represented by counsel)
<u>Alleged victim:</u>	The author
<u>State party:</u>	The Czech Republic
<u>Date of the communication:</u>	29 December 2006 (initial submission)
<u>Documentation 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 Views:</u>	27 October 2010

* Made public by decision of the Human Rights Committee.

<i>Subject matter:</i>	Discrimination on the basis of citizenship with respect to restitution of property
<i>Procedural issue:</i>	Abuse of the right of submission, preclusion <i>ratione temporis</i>
<i>Substantive issues:</i>	Equality before the law; equal protection of the law without any discrimination
<i>Article of the Covenant:</i>	26
<i>Article of the Optional Protocol:</i>	3

On 27 October 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. 1581/2007.

[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 (one hundredth session)

concerning

Communication No. 1581/2007**

<u>Submitted by:</u>	Victor Drda (not represented by counsel)
<u>Alleged victim:</u>	The author
<u>State party:</u>	The Czech Republic
<u>Date of the communication:</u>	29 December 2006 (initial submission)

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

Meeting on 27 October 2010,

Having concluded its consideration of communication No. 1581/2006, submitted to the Human Rights Committee by Mr. Victor Drda 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 author of the communication, dated 29 December 2006, is Mr. Victor Drda, an American national (former citizen of Czechoslovakia), born in 1922, and currently residing in the Czech Republic. He claims to be a victim of a violation by the Czech Republic of his rights under article 26 of the International Covenant on Civil and Political Rights¹, having been forced to cede his property to the State of Czechoslovakia. He is not represented.

** 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. 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 to the International Covenant on Civil and Political Rights entered into force for Czech Republic on 22 February 1993.

The facts as submitted by the author

2.1 In June 1964, the author left Czechoslovakia for the United States. He obtained American citizenship in 1970 and thereby lost his Czechoslovak citizenship. He never applied to recuperate his Czechoslovak citizenship.

2.2 The author owned an apartment building in Prague-Vinohrady with a parcel of land (No. 2913), as well as several other parcels of land (No. 1011/1-2, and 1012) in Kunratice (a suburb of Prague). On 28 November 1961, the author was forced to cede his apartment building to the State. Law No. 119/1990 on judicial rehabilitation pronounced all forced donations null and void, as of the date of donation.

2.3 On 24 March 1998, the Prague Regional Court decided that the author failed to prove that he had been forced to donate the building to the State. He further did not fulfil the condition of citizenship and could therefore not lodge his complaint according to the restitution legislation. The Court also concluded that the author's decision to donate the building to the State was not influenced by any concrete distress.

2.4 In another decision, on 24 June 1998, the same court rejected the author's restitution claim, because he was not a Czech citizen and thus not an "entitled person", according to the special restitution law 87/1991². On 10 November 2000, the Constitutional Court rejected the author's complaint, stating that the author, as an American citizen, was not entitled to submit a complaint under the restitution legislation.

2.5 With regard to the land parcels in Kunratice, the Town Council of Prague had informed the author was informed on 7 January 1991 that the parcels had been nationalized³ in 1966 pursuant to Decree 5/1945 and Regulation 85/1960.

The complaint

3. The author claims that the State party's refusal to proceed with the restitution of his property constitutes discrimination on grounds of nationality in violation of article 26 of Covenant.

The State party's submission on admissibility and merits

4.1 On 4 February 2008, the State party submits its comments on admissibility and merits of the communication. It clarifies the facts as presented by the author and adds that on 16 March 1965, the author was sentenced by the Prague 4 District Court for the criminal offence of leaving the Republic. On 13 August 1990, the District Court, on the basis of Act No. 119/1990 on Judicial Rehabilitation, reversed the author's sentence of 16 March 1965.

4.2 On 2 November 1994, the author sought a declaration of nullity of the deed of gift of his apartment building in Prague. After a hearing held on 14 September 1995, the District Court declared the deed to be null, recognizing that it had been concluded under duress and conspicuously disadvantageous conditions. After a hearing held on 26 January 1996, the

² Act No. 87/1991 on Extra-judicial 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 the Act, 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.

³ The author uses the term "national administration of the parcels was introduced".

Prague Municipal court remanded the case back to the District Court for further findings on the facts of the contractual conclusion under duress. On 11 March 1997, after several hearings of the author and witnesses proposed by him, the District Court concluded that the author had not been under any duress when he donated his apartment building. On 1 November 1997, the Municipal Court reversed the District Court's decision on formal grounds and remanded the case back to the District Court.

4.3 On 24 March 1998, the District Court referred to its earlier deliberations and rejected the author's action. On 8 March 1999, the Municipal Court reversed the lower court's decision again on formal grounds. After a hearing held on 17 August 1999, the District Court rejected the author's application for failure to meet the citizenship requirement in Law No. 87/1991 on Extra-judicial Rehabilitation. On 24 February 2000, the Municipal Court confirmed the judgment of the lower court. On 10 November 2000, the Constitutional Court dismissed the author's appeal as manifestly ill-founded.

4.4 With regard to the parcels of land in Kunratice, the State party refers to the opinion of the Financial Department of 6 December 1990 and 7 January 1991, in which it stated that the author continues to be the owner of these properties and that he should exercise his property rights in court.

4.5 On 19 March and 10 September 2002, the European Court of Human Rights (ECHR) rejected the author's applications as manifestly ill-founded. The State party highlights that, as the author did not mention this fact the content of these applications remains unknown.

4.6 The State party challenges the admissibility of the communication on the ground that it constitutes an abuse of the right of submission of communications within the meaning of article 3 of the Optional Protocol. It invokes the Committee's jurisprudence, in particular communications No. 1452/2006, *Renatus J. Chytil v. the Czech Republic*⁴, No. 1434/2005, *Claude Fillacier v. France*⁵ and No. 787/1997 *Gobin v. Mauritius*⁶, in which the Committee declared inadmissible communications which had been submitted with considerable delays after the alleged violation of the Covenant. In the present case, the State party argues that the author petitioned the Committee on 29 December 2006, six years after the Constitutional Court judgment of 10 November 2000 and more than four years from the 10 September 2002 ECHR decision, provided that the ECHR decision concerned the issues under review, without offering any reasonable explanation for this time lapse.

4.7 The State party further challenges the admissibility of the communication on grounds of *ratione temporis*, given that the author donated his properties to the State in 1961, therefore before the Optional Protocol was ratified by the Czechoslovak Socialist Republic.

4.8 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 Covenant⁷. The State party argues the author failed to comply with the legal citizenship requirement and his

⁴ Communication No. 1452/2006, *Renatus J. Chytil v. the Czech Republic*, inadmissibility decision adopted on 24 July 2007, para. 6.2.

⁵ Communication No. 1434/2005, *Claude Fillacier v. France*, inadmissibility decision adopted on 27 March 2006, para. 4.3.

⁶ Communication No. 787/1997, *Gobin v. Mauritius*, inadmissibility decision adopted on 16 July 2001, para. 6.3.

⁷ See communication No. 182/1984, *Zwaan de Vries v. the Netherlands*, views adopted on 9 April 1987, para. 12.1 to 13.

action for surrender of the apartment building was therefore not supported by the legislation in force. The State party further reiterates its earlier submissions in similar cases⁸.

4.9 With regard to the land parcels in Kunratice, the State party observes that the author has not furnished any information about litigation or legal treatment of this property and that this part of the communication should therefore be declared manifestly ill-founded.

The author's comments to the State party's observations

5.1 On 29 July 2008, the author comments on the State party's submission and confirms the State party's clarifications on the facts. He underlines that according to article III⁹ of the Treaty of Naturalization between the United States and Czechoslovakia, signed by Czechoslovakia on 16 July 1928, a national of either country who renews residence in his original country without the intent to return to that in which he was naturalized, is considered to have lost that nationality. The intent not to return is held to exist if the person has resided more than two years in the original country. The author returned to Czechoslovakia in November 1989 and has lived on the territory of the State party since then.

5.2 With regard to the delay in submission of his communication, the author explains that he was not aware of any of the Committee's jurisprudence, as the State party does not publish any of the Committee's views. He underlines that he filed his complaint immediately after he heard about the Committee. The author further maintains that his complaint does not concern the forced donation in 1961 but the partial view by the State party's courts in proceedings of property restitution, which he claims to be discriminatory.

5.3 The author withdraws his complaint with regard to the land parcels in Kunratice, for which he will renew proceedings in the State party's courts.

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 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 four years after the inadmissibility decision of the ECHR (six years after exhaustion of domestic remedies) before submitting his complaint to the Committee. The author argues

⁸ 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*.

⁹ Article III of the Treaty of Naturalization between the United States and Czechoslovakia: "If a national of either country, who comes within the purview of Article I, shall renew his residence in his original country without the intent to return to that in which he was naturalized, he shall be held to have lost the nationality acquired by naturalization. The intent not to return may be held to exist when a person naturalized in the one country shall have resided more than two years in the other".

that the delay was caused by lack of available information. The Committee observes that the Optional Protocol does not establish time limits within which a communication should be submitted, and that the period of time elapsing before doing so, other than in exceptional circumstances, does not in itself constitute an abuse of the right of submission of a communication¹⁰. Recalling its previous jurisprudence, the Committee considers that, in the circumstances of the present case, a delay of six years since the exhaustion of domestic remedies and over four years since the decision of another procedure of international investigation or settlement does not constitute an abuse of the right of submission under article 3 of the Optional Protocol.

6.4 The Committee further notes the State party's argument that it considers the Committee precluded *ratione temporis* from examining the alleged violation. With regard to the land parcels in Kunratice, the Committee notes the author's withdrawal of his complaint in this regard and notes that although the donation of the apartment building took place in 1961 and before the entry into force of the Covenant and the Optional Protocol for the State party, the new legislation that excludes applicants for property restitution who are not Czech citizens, has continuing consequences subsequent to the entry into force of the Optional Protocol for the State party, which could entail discrimination in violation article 26 of the Covenant¹¹. The Committee therefore decides that the communication is admissible; in as 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 has been presented by the parties, is whether the application to the author of Law No. 87/1991 on extra-judicial 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 26¹².

7.3 The Committee recalls its Views in the numerous Czech property restitution cases¹³, where it held that article 26 had been violated, and that it would be incompatible with the

¹⁰ See for example Communication No. 1223/2003, *Tsarjov v. Estonia*, Views adopted on 26 October 2007, para. 6.3; Communication No. 1434/2005, *Fillacier v. France*, inadmissibility decision adopted on 28 April 2006, para. 4.3; and Communication No. 787/1997, *Gobin v. Mauritius*, inadmissibility decision adopted on 16 July 2001, para. 6.3.

¹¹ See Communication No. 586/1994, *Adam v. the Czech Republic*, views adopted on 23 July 1996, para. 6.3.

¹² See Communication No. 182/1984, *Zwaan-de Vries v. The Netherlands*, Views adopted on 9 April 1987, paragraph 13.

¹³ Communication No. 516/1992, *Simunek v. the Czech Republic*, Views adopted on 19 July 1995, paragraph 11.6; Communication No. 586/1994, *Adam v. the Czech Republic*, Views adopted on 23 July 1996, paragraph 12.6; Communication No. 857/1999, *Blazek v. the Czech Republic*, Views adopted on 12 July 2001, paragraph 5.8; Communication No. 945/2000, *Marik v. the Czech Republic*, Views adopted on 26 July 2005, paragraph 6.4; Communication No. 1054/2002, *Kriz v. the Czech Republic*, Views adopted on 1 November 2005, paragraph 7.3; Communication 1463/2006, *Gratzinger v. the Czech Republic*, Views adopted on 25 October 2007, paragraph 7.5; and Communication No. 1533/2006, *Ondracka v. the Czech Republic*, Views adopted on 2 November 2007, paragraph 7.3.

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 author's 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*¹⁴, 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. The Committee considers that the principle established in the above cases equally applies to the author of the present communication. The Committee therefore concludes that the application to the author of the citizenship requirement under Law No. 87/1991 violate his 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 authors with an effective remedy, including 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.

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 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.

[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.]

¹⁴ Communication No. 747/1997, *Des Fours Walderode v. the Czech Republic*, Views adopted on 30 October 2001, paragraphs 8.3 - 8.4.