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Decision

Communication No. 1546/2007

Submitted by:	V. H. (represented by Gebhard Klötzl)
Alleged victim:	The author
State party:	The Czech Republic
Date of communication:	11 November 2006 (initial submission)
Document references:	Special Rapporteur's rule 97 decision, transmitted to the State party on 2 March 2007 (not issued in document form)
Date of adoption of decision:	19 July 2011

* Made public by decision of the Human Rights Committee.

Subject matter:	Discrimination on the basis of citizenship, political opinion and social background with respect to restitution of property
Procedural issue:	Abuse of the right to submit a communication; non-exhaustion of domestic remedies; inadmissibility *ratione temporis*
Substantive issues:	Equality before the law; equal protection of the law
Article of the Covenant:	26
Articles of the Optional Protocol:	1; 5, paragraph 2 (b); and 3
	[Annex]

Annex

Decision of the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political rights (102nd session)

concerning

Communication No. 1546/2007**

Submitted by:	V. H. (represented by Gebhard Klötzl)
Alleged victim:	The author
State party:	The Czech Republic
Date of communication:	11 November 2006 (initial submission)

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

Meeting on 19 July 2011,

Adopts the following:

Decision on admissibility

1. The author of the communication, dated 11 November 2006, is V. H., Austrian (former Czech) citizen, born in 1927 in Czechoslovakia. He claims to be a victim of a violation by the Czech Republic of article 26, of the International Covenant on Civil and Political Rights[1]. He is represented by Mr. Gebhard Klötzl.

The facts as submitted by the author

2.1 The author's family opposed the communist regime. His mother owned, among other things, a property in Ceske Velenice, a building with several flats, a small shop and a garden. The property consists, legally speaking, of two plots registered in the cadastre, i.e. plots 1088/11 (building) and 1088/14 (garden).

2.2 In 1959, the municipality of Ceske Velenice transferred the possession of the shop, located in the building, to a South Bohemian Co-operative on a compulsory basis. The co-operative then undertook work on the building and refused to pay any rent for 17 months, because it claimed a right to deduct the investment from the rent. The author's mother was still obliged to cover maintenance costs of the building and other duties, which were higher than the rent income.

** 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, Ms. Helen Keller, Mr. Rajsoomer Lallah, Ms. Iulia Antoanella Motoc, Mr. Gerald L. Neuman, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabian Omar Salvioli, Mr. Krister Thelin and Ms. Margo Waterval.

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

2.3 Under such conditions, the author's mother gave the building to the State in 1960. A donation contract between the author's mother and the State was passed. According to the author, this was a donation passed under political and material pressure, which is characterized as "forced donation" under the Czech Restitution Laws of 1991 and 1994. The expropriated building is now owned by the municipality of Ceske Velenice.

2.4 In 1966, at the time of the Prague Spring, the author had the opportunity to study abroad, which he did. In August 1970, he ignored an individual order of the Czechoslovak Home Authority to return immediately to his country. Instead, he established himself in Austria. On 5 October 1971, he was granted Austrian citizenship. On 21 January 1972, the District Court of Plzen convicted the author *in absentia*, of absconding from the Republic. He was sentenced to an unconditional imprisonment of three years. He was rehabilitated by an order of the District Court of the City of Plzen dated 23 October 1990. The author's mother was allowed to leave the country legally and also moved to Austria. She died in Vienna on 7 September 1986. The author was declared sole heir of the property by Order of the District Court of Jindrichuv Hradec of 19 October 1998. Since then, he is the sole successor with respect to his mother's rights and has thus also inherited the claim for restitution of the property in question in Ceské Velenice.

2.5 The author started his restitution efforts in 1991. According to him, he could not complain under the special restitution law No 87/1991 (which became law No 116/1994, after the Czech Republic and the Slovak Republic separated into independent States on 1 January 1993) because he did not have the Czech nationality[2]. Therefore the author contested the validity of the "contract of donation" according to the general principles of civil law before civil courts.

2.6 The author's case was examined by the District Court of Jindrichuv Hradec (judgement of 30 April 1993), the Regional Court of Ceske Budejovice (judgement of 14 July 1993), and the Supreme Court in Brno (judgment of 27 June 1996). In all instances, the courts recognised the coercive character of donation, but dismissed the action because the validity of the donation had to be contested within three years, under the Czech Civil Code of 1951, and the author had missed the deadline.

2.7 The Supreme Court found, however, when analysing the contract of 1960 that the author's mother had signed a donation with respect to the building, not with respect to the garden plot. The Court thus declared that the plots continued to be the author's property. The building was finally adjudged to the municipality of Ceske Velenice. For the plots without the building, the municipality of Ceske Velenice has been paying a minimal rent to the author since the judgement of the Supreme Court of 1996.

2.8 The author lodged an application with the European Court of Human Rights in Strasbourg. This application was declared inadmissible by the European Court on 15 March 2002, for failure to observe the six months time-limit since exhaustion of domestic remedies.

[2] Law 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.

The complaint

3.1 The author argues that, while the Czech government today recognizes that the expropriation of the property of the author's family was discriminatory on grounds of political opinion and social origin, it has prevented the author from obtaining restitution because of narrow formal requirements. According to the author, this represents discrimination in comparison to thousands of persons to whom the Czech Government has already granted restitution in similar cases, and thus violates article 26 of the International Covenant on Civil and Political Rights.

3.2 The author states that as he was not in a position to file an application for restitution according to special restitutions laws No 87/1991 and No 116/1994, because of the lack of Czech citizenship, he was obliged to assert his claims under civil law before ordinary courts. He considers that if the decision on forced donation made in 1960 had to be challenged within three years by his mother, this period would have run in 1963. The author states that even assuming that a new three-year period had started running after his mother's death on 7 September 1986, for him as her heir, this period would have expired on 6 September 1989. The author states that it was unconceivable in the political circumstances of that time to file a complaint against the Czech Government. He argues that in such cases, the person concerned must be granted a suspension of the Statute of Limitations with respect to his claims, until the end of political pressure and until the situation allows him to raise his claim.

3.3 The author refers to the Committee's Views regarding communication No. 765/1997, in which a limitation of prosecution of Nazi injustice during communist times was asserted on the part of the Government, which the Committee considered to be in violation of the article 26 of the Covenant. He also refers to the Committee's Views regarding communications No. 747/1997 *Des Fours Walderode* of 2 November 2001, No. 757/1997 *Pezoldova* of 9 December 2002, No. 945/2000 *Marik* of 4 August 2005, and No. 1054/2002 *Kriz* of 18 November 2005.

The State party's observations on admissibility and merits

4.1 On 5 September 2007, the State party submitted its observations on the admissibility and merits. It states that the author is an Austrian citizen since 1971 but notes that contrary to his claim, the author is also a citizen of the Czech Republic. He has never lost his Czech (earlier also Czechoslovak) citizenship.

4.2 The State party submit that while in 1972 the Plzen District Court sentenced the author for illegally emigrating from the Republic of Czechoslovakia (he was rehabilitated under a legislation passed in 1990), he has never been deprived of his citizenship. Under the legislation then in place, his acquiring of the Austrian citizenship in 1971 did not imply a simultaneous loss of his Czech citizenship. Nor has the author ever applied for release from the bond of national citizenship. The State party further notes that on 1 February 2007, the author applied, through the Embassy of the Czech Republic in Vienna for the issuance of a certificate of Czech citizenship. Since he has never lost his citizenship, the Plzen 3 Municipal District Authority, which was competent in this case, issued him with the relevant certificate on 9 February 2007.

4.3 With regard to court proceedings, the State party notes that on 29 March 1991, the author commenced proceedings before the Jindrichuv Hradec District Court against the state-owned enterprise Okresni bytovy podinik (District Housing Entreprise), seeking the vacation and restitution of this property. The author claimed that the donation contract between his mother and the State had been passed under duress and under conspicuously disadvantageous conditions on 7 November 1960. On 25 February 1992, the author sent a motion to the District Court requesting a change of plea. Instead of requesting the vacation

and restitution of the property, the author demanded a declaration from the Court that his mother had been the sole owner of the property until she died. In its judgment of 30 April 1993, the District Court decided that as of the date of her death, the author's mother had been the owner of both parcels of the property, since these parcels had not become State's property. However, the house itself was the property of the State as it had been donated by the author's mother on 7 November 1960. The District Court rejected the plea of nullity of the donation contract on the ground that the Civil Code in force at the time of the contract provided for a relative nullity of contracts passed under duress[3]. Relative nullities can be invoked within a period of three years. This statute of limitation having expired, the District Court rejected the author's claim.

4.4 The author appealed the District Court's decision to the Ceske Budejovice Regional Court, which upheld the District Court's decision on 14 July 1993, coming to the same conclusion than the District Court as to the relative nullity of acts passed under duress. The author appealed the Regional Court's decision on a point of law to the Supreme Court which rejected the appeal on 27 June 1996. In addition to the arguments set forth by the lower courts, the Supreme Court argued that an heir may invoke the nullity of an act, but only within the limitation period to which he/she has subrogated as the deceased's successor and only provided that the limitation period has not yet expired. The State party deduces that where nullity of a legal act is pleaded after the expiry of the limitation period, the legal act suffers from a defect, but is nevertheless regarded as a valid legal act.

4.5 As for the author's claim under article 26, the State party interprets it as a claim based on the assumption that the "expropriation" suffered by the author's family amounted to discrimination on the grounds of political and social origin. The State party further notes that the author also sees a violation of article 26 in what he claims was his inability to proceed under the applicable restitution law, Act No. 87/1991 on Extrajudicial Rehabilitations, because he purportedly failed to meet the statutory requirements of citizenship and permanent residence. As discriminatory, the author would see the fact that the national courts of first and second instances concluded that the limitation period had started running from the day of the acceptance of the deed of donation by the State and ended upon completion of the general three-year limitation period. The author invoked the impossibility for his mother to act within these three years and further considered that even if the three-year period had started after his mother's death in 1986, he could not have acted within the time line due to the risk upon return in Czechoslovakia of being imprisoned for illegal emigration from the Republic. The author therefore contends that in order to restore justice, the limitation period should be suspended until political changes occur, thus enabling the author to successfully invoke the nullity of the legal act.

4.6 The State party rejects the author's claim and considers it inadmissible for failure to exhaust all domestic remedies, *ratione temporis* and on the grounds of abuse of the right of submission. In the event that the Committee found the communication admissible, the State party invokes the non-violation of article 26 of the Covenant.

4.7 The State party considers that the author has failed to exhaust domestic remedies as he did not file a constitutional complaint against the decisions rendered by the ordinary courts, laying his argumentation as to where in the respective court proceedings he saw a violation of constitutional laws and international treaties, including article 26 of the Covenant. Moreover, since the author never lost his Czech nationality, he could have sought the restitution of his property under the provisions of Act No. 87/1991 on Extrajudicial Rehabilitations, after the abolition of the permanent residence requirement (after the Constitutional Court's judgment was published in the Official Gazette under

[3] Section 37 of Act. 141/1950 (integrated in the Civil Code in force at the time of facts).

No. 164/1991). The State party notes that the author did not use this remedy. The State party notes the author's contention that ordinary courts failed to interpret the rule of statute of limitation in the light of the external circumstances such as the political situation which did not enable him to return to Czechoslovakia to invoke the nullity of the donation contract. It remarks however that such point of contention was never invoked before ordinary courts. The State party therefore considers that the author has failed to exhaust domestic remedies.

4.8 The State party further notes that the deed of donation was executed in 1961 and at a time when the Covenant did not yet exist and when Czechoslovakia could not be a party of it. The communication should therefore be declared inadmissible *ratione temporis*.

4.9 The State party also 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. However, it recalls the Committee's jurisprudence which, when such time lapse occurs, requires a reasonable and objectively understandable explanation[4]. The State party recalls that the author submitted his communication on 11 November 2006, more than 10 years after the last decision of the domestic court dated 27 June 1996 and four years from the European Court of Human Rights' decision of 15 March 2002. The State party argues that the author has not presented any reasonable justification for this delay and therefore the communication should be declared inadmissible under article 3 of the Optional Protocol.

4.10 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 Covenant[5]. The State party considers that article 26 does not suggest any obligation for the State party to make right the injustices that occurred in the period of the previous regime, moreover at a time when the Covenant did not exist, by suspending the running of limitation periods for the exercise of the right to invoke nullity of civil-law acts made under duress caused by political circumstances, or otherwise. According to the State party, there has been no discriminatory treatment of the author within the meaning of this provision. It contends that it was at the sole discretion of the legislator to decide on its approach to reparation of the injustices committed by the previous regime and that not all injustices could ever be repaired.

4.11 The State party contends that it is unaware of any claimant who benefited from a suspension of the statute of limitation on the ground of a change of regime. In the domain of civil law, a legal regulation based on the suspension of the running of the limitation period for invoking nullity of civil-laws acts executed under duress due to political circumstances would seriously unsettle, and for a long time, the legal certainty and stability of civil-law relationships that may have lasted for decades. It was also in the light of these considerations that the legislator adopted a special solution in the form of property restitution legislation. This legislation provided for a prescribed and quite strictly time-limited procedure for reacquiring the ownership of property that had passed to the State under circumstances specified in the legislation.

[4] See communication No. 787/1997, *Gobin* v. *Mauritius*, Inadmissibility decision of 16 July 2001, para. 6.3

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

4.12 The State party notes that after the Constitutional Court's judgement No. 164/1994 (effective from 1 November 1994), the author satisfied the preconditions for being granted the status of entitled person under Act No. 87/1991 on Extrajudicial Rehabilitations. The author failed to seek restitution of his mother's property within the new six-month time-limit running from 1 November 1994. The State party adds that since the author is Czech, the jurisprudence of the Committee considering the requirement of citizenship for the purpose of property restitution to be discriminatory within the meaning of article 26 is not applicable to this case.

The author's comments

5.1 On 12 January 2008, the author submitted that for several decades, he was not aware that, although he had been convicted by the Plzen District Court for absconding from the Republic and although he had obtained the Austrian citizenship, he had not lost the Czechoslovak (then Czech citizenship).

5.2 The author based his assumption that he had lost his Czechoslovak citizenship on his knowledge of international law, which in his view states that each individual should have only one nationality. As he was already Austrian at that time, he had reasons to believe, that he had lost his nationality of origin. Until 1989, it was impossible for him to establish contact with the Government of the then Czechoslovak Socialist Republic (CSSR), with respect to the issue of his citizenship, for fear of arrest and imprisonment. The author still thought he had lost his citizenship at the time of initial submission to the Committee. Around that time, he decided to inquire about his nationality to the Consular Section of the Embassy of the Czech Republic in Vienna. There, he was advised to initiate citizenship determination proceedings before the Plzen 3 Municipal authority (last place of residence). The author initiated such proceedings and obtained a certificate of citizenship dated 9 February 2007 indicating that his citizenship had continued to exist without interruption. The author argues that he himself sent this information to the Committee on 17 July 2007 with the official documents attached. He therefore rejects the State party's assumption that he would have omitted to mention this fact in his submission. The author considers he is not liable for not having inquired earlier on his status based on the circumstances of past years.

5.3 The author considers he has been the victim of discrimination based on his social status and political opinions. He considers that he is discriminated against only because he lived in exile and had no adequate possibilities there to obtain proper legal advice on the options he had. The State party never informed Czech emigrants in exile, through their diplomatic mission, about the possibility of restitution of property. The author adds that he was always treated as if he was a foreigner without Czech citizenship because the Czech authorities and courts were no longer aware of his continuing citizenship. Thus, the author considers the State party's contention that he could have resorted to the new restitution Law of 1994, to be baseless.

5.4 The author further argues that the implementation of the Czech Restitution Law No. 87/1991 continues to be politically and socially biased, since restitutions were granted in a disproportionate manner to individuals from socially privileged backgrounds, thus violating article 26 of the Covenant. The author also refers to two resolutions from the United States' Congress calling *inter alia* on the Czech Republic to remove restrictions based on nationality for restitution of properties expropriated by Communist and Nazi regimes.

5.5 With regard to the State party's contention on exhaustion of domestic remedies, the author replies that after consulting with a lawyer on this issue, he was advised that his claim had no prospect of success before the Constitutional Court.

5.6 As for the State party's arguments on the impossibility to suspend the limitation period until political changes occur in a country, the author refers back to his arguments of his initial submission of 11 November 1996 and insists on the importance of restoring justice in this regard.

State party's further observations on admissibility and merits

6.1 On 13 October 2008, the State party responds to the allegations further brought by the author in his comments. With regard to the author's presumption of having lost the Czechoslovak citizenship, and while admitting that the author could have reasonable fears of being arrested on the Czechoslovak territory before 1989, the State party points out that the author could have taken measures to inquire about his citizenship without taking any risks. Indeed, according to the Act of the Czech National Council No. 39/1969, a Czechoslovak citizen who acquired a foreign citizenship on his own request did not automatically lose his original citizenship. Since the author did not ask for the release from his citizenship bond and since the decision of the Ministry of Interior following his absconding from the Republic did not deprive him of his Czech citizenship, there was no reason to assume that he had lost the Czechoslovak nationality. The only measure the author needed to take was to inquire about the above regulation. Even if it could be admitted that potential obstacles prevented the author from seeking such information before 1989, those obstacles did not exist anymore after the change of political regime in that year. The State party thus considers that it cannot be reproached for consequences stemming from the author's failure to take the necessary steps in due time.

6.2 The State party rejects the author's affirmation that the determination of his citizenship was cumbersome. Indeed, the Plzen 3 municipal authorities was able to determine that the author was indeed Czech only by verifying that he had acquired his nationality at birth and that he had not lost it under the Act of the Czech National Council No. 39/1969. When drafting its initial observations to the Committee, the State party also performed a routine check operation to determine whether the author was indeed Czech, especially since this information was not contained in the author's submission. When seeking for this piece of information from the Ministry of Interior, the State party was informed of the author's own request for information on his citizenship status through the Czech Embassy in Vienna in February 2007 and of the provision of a citizenship certificate to the author the same month. The State party notes that the letter dated 16 July 2007 by which the author informed the Committee about the result of his citizenship determination request never reached the State party. As to the author's reference to international law's general preference for the existence of a single citizenship, the State party recalls that issues of acquisition and loss of citizenship are principally in the domain of national legal systems, which very often allow for dual or multiple citizenships.

6.3 The State party further rejects the author's claim that he was discriminated against for having lived outside the country without adequate possibilities to know his legal options related to property restitution. The State party contends that it is under no international obligation to inform potential beneficiaries of restitutions. In any event, the adoption of restitution laws was a subject of wide political debate which was extensively covered by the media. The author could also at any time consult the Czech Embassy in Vienna on potential developments. The State party remarks that the author was well aware of the existence of the Act on Extrajudicial Rehabilitations since 1991 as he himself mentioned in his initial submission (see par. 2.5 above). From 1994, all Czech citizens, irrespective of whether they live in the Czech Republic or abroad, were able to claim their rights under the Act on Extrajudicial Rehabilitations. If a person was unsure about his or her Czech citizenship, he or she could turn to the competent authorities of the country to have the issue of the Czech citizenship determined.

6.4 With regard to the author's claim that he was considered to be a foreigner by the judicial authorities, the State party contends that the author presented himself as a foreigner and that no authority was obliged to challenge it since the Czech citizenship is not a requirement to seek justice before national courts. The State party emphasizes that the author's nationality was particularly irrelevant to the case he brought to the national courts. The State party also rejects the author's claim with respect to the differential treatment existing between claimants from the Aristocracy and other individuals. The State party notes that the author has given no example or else supporting such claim. The State party also rejects the author's mention of US Congress resolution as these documents do not form part of international law and rather constitute political proclamations. The State party concludes that the author's claim that he was discriminated against have not been substantiated.

6.5 As to the exhaustion of domestic remedies and the author's contention that recourse to the Constitutional Court would have offered no prospect of success, the State party replies that its observations on the author's failure to exhaust domestic remedies were based on three arguments, the author's failure to file a constitutional complaint being only one of them. The State party notes that the Constitutional Court's jurisdiction is not limited to Czech citizens. There were therefore no obstacles for the author to submit a claim to the Constitutional Court for a violation of article 26 of the Covenant, even if the author thought that he was no longer a Czech citizen. The State party finally insists on the fact that the author has not raised his claims related to article 26 before any of the national courts. The author's claim should therefore be considered inadmissible for non exhaustion of domestic remedies.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 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.

7.2 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.

7.3 The Committee notes the State party's contention that the author did not exhaust domestic remedies pursuant to article 5, paragraph 2 (b) of the Optional Protocol, as he never raised the issue of discrimination based on political opinion and social background or any other status as provided by article 26 before national authorities; and that he also failed to seek restitution of his property under Act 87/1991 after the entry into force of the Constitutional Court's judgement No. 164/1994.

7.4 The Committee notes that the author has only commented on the State party's contention related to his failure to bring a constitutional claim against the ordinary courts, which he considered futile. The Committee notes that the author has not commented on the other aspects raised by the State party in relation to exhaustion of domestic remedies.

7.5 The Committee observes that the author has never raised in any domestic proceedings the issue of discrimination against him in relation to the restitution of his mother's property[6]. The Committee therefore concludes that the communication is

[6] See communication No. 1575/2007, *Herman Aster* v. *the Czech Republic*, Inadmissibility decision adopted on 27 March 2009, para. 6.2.

inadmissible for failure to exhaust domestic remedies pursuant to article 5, paragraph 2 (b) of the Optional Protocol.

7.6 In light of the conclusion reached by the Committee, it does not find it necessary to refer to the arguments of the State party related to the author's abuse of the right of submission and the inadmissibility of the communication *ratione temporis.*

8. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under article 5, paragraph 2 (b), 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.]