



International Covenant on Civil and Political Rights

Distr.: General
1 December 2011

Original: English

Human Rights Committee

Communication No. 1850/2008

Decision adopted by the Committee at its 103rd session, 17 October to 4 November 2011

<i>Submitted by:</i>	S. L. (not represented by counsel)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Czech Republic
<i>Date of communication:</i>	14 March 2006 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 12 December 2008 (not issued in document form)
<i>Date of adoption of decision:</i>	26 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; inadmissibility <i>ratione temporis</i> ; non-exhaustion of domestic remedies.
<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>	1; 3



Annex

Decision of the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political rights (103rd session)

concerning

Communication No. 1850/2008**

Submitted by: S. L. (not represented by counsel)
Alleged victim: The author
State party: Czech Republic
Date of communication: 14 March 2006 (initial submission)

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

Meeting on 26 October 2011,

Adopts the following:

Decision on admissibility

1. The author of the communication, dated 14 March 2006, is S.L., a naturalized American citizen residing in the United States of America and born on 6 April 1927 in Hradec Králové, 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.¹ She is not represented by counsel.

The facts as submitted by the author

2.1 In August 1968, the author and her husband, P.L., left Czechoslovakia for the United States of America, where they were granted refugee status. On 23 June 1970, they were sentenced *in absentia* to 7 months imprisonment and confiscation of their property by the Municipal Court of Prague for having unlawfully left the country. In 1970, the property was sold by the State to Mr. I.P., then Deputy Minister of International Trade. It was inherited by his daughter and then sold. In 1977, the author and her husband became U.S. citizens, thereby losing their Czechoslovakian citizenship.

** The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Mr. Rajsoomer Lallah, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Mr. Gerald L. Neuman, Mr. Michael O'Flaherty, Mr. Rafael Rivas Posada, Mr. Fabian Omar Salvioli, Mr. Krister Thelin and Ms. Margo Waterval.

¹ 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.

2.2 In 1991, the author's husband contacted a lawyer but was told that, due to Law 87/1991, there was no legal means to obtain his property back as he had lost his Czech citizenship. He then wrote to the new owner of the property, asking for it to be returned as he was the legal owner, which was refused. P.L. died, and the son of the couple contacted another lawyer enquiring about restitution of their property. On 20 May 2003, he received a letter explaining that they had no options to get their property back as the restitution laws did not apply to Czechs who had lost their citizenship. The author and her husband never applied to have their Czech citizenship renewed as they thought this would not make a difference.

2.3 The author argues that no effective domestic remedies remained for her to exhaust because of the decision of June 1997 of the Constitutional Court of the Czech Republic, in which the court refused to strike out the condition of citizenship in the restitution laws in a case similar to hers.

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.

State party's observations on admissibility and merits

4.1 On 21 May 2009, the State party submitted its observations on the admissibility and merits. It clarifies the facts as submitted by the author.

4.2 The State party submits that the communication should be found inadmissible under article 5(2)(b) of the Optional Protocol as the author did not exhaust domestic remedies.

4.3 The State party also considers that the communication should be found inadmissible under article 3 of the Optional Protocol taking into account that the author only provides minimum information about the property confiscated in 1970, the surrender of which she claims almost forty years after the confiscation. Despite acknowledging the jurisprudence of the Committee according to which the Optional Protocol does not set forth any fixed time limits for submitting a communication and delay in submitting does not amount to an abuse, the State party considers the forty years delay as an abuse of the right of submission of a communication to the Committee.

4.4 The State party also considers that the situation must be analysed in light of another delay, starting from the date of the latest legally relevant fact in the absence of any decision of domestic courts in the author's case. In this case, the State party considers that the latest legally relevant fact is "the moment of expiry of the time limit granted by restitution laws for delivering the request to the liable person who owned the property in dispute," and it argues that the author presented her case to the Committee 11 years after the expiry of the normal time limits for the steps to be taken when using restitution laws, and that the author does not mention any fact justifying the delay in the submission of her communication to the Committee.

4.5 The State party adds that the referred house and land parcel became the property of the State in 1970, i.e. a long time before the Czechoslovak Socialist Republic ratified the Optional Protocol.

4.6 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.² The State party argues that the author failed to comply with the legal citizenship requirement and her application for property restitution was therefore not supported by the legislation in force.

Author's comments on the State party's observations

5.1 On 21 March 2011, the author submitted her comments regarding the State party's observations on the admissibility and merits. With regard to the author's belated submission of her communication, she argues that the time limits imposed on filing a claim before the national authorities were unreasonable and that the delays were also the result of the time required in order to gather the necessary information and to get the case ready, managing the process from abroad. The author also refers to family circumstances at the time when the procedure was started.

5.2 The author also recalls the steps taken with lawyers on two occasions by her family, with the purpose of initiating legal actions before the domestic courts and thereby exhausting domestic remedies. On both occasions, the author, her husband and her son were advised not to pursue their case under Czech law, as it did not give them any likelihood of success.

5.3 With regard to the merits, the author submits that she claims a violation of her rights under the Covenant since she was not able to claim restitution of her family's property due to the citizenship requirement.

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

6.3 The Committee notes the State party's arguments that the author has not exhausted domestic remedies and 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 author argues that no effective domestic remedies were available, and that the 11-year delay referred to by the State party was caused by the time taken by the lawyers contacted by the family before telling them not to initiate any proceedings; the lack of available information; and the delays involved in accessing and providing information and documentation from abroad.

6.4 The Committee refers to its established jurisprudence that, for purposes of the Optional Protocol, the author of a communication need not exhaust domestic remedies when these remedies are known to be ineffective. The Committee notes that the author's family was advised in 1991 and again in 2003 that, as a result of the preconditions of Law No. 87/1991, the author could not claim restitution because she and her husband no longer

² See for example, communication No. 182/1984, *Zwaan-de Vries v. the Netherlands*, Views adopted on 9 April 1987, paras. 12.1 to 13.

had Czech citizenship. In this context, the Committee notes 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 despite those challenges, in June 1997, the Constitutional Court upheld the constitutionality of the Restitution Law No. 87/1991.³ The Committee concludes that no effective remedies were available to the author.⁴

6.5 The Committee observes that the Optional Protocol does not establish time limits within which a communication should be submitted. 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 5 years from the exhaustion of domestic remedies by the author of the communication, or, where applicable, after 3 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. In the meantime, the Committee applies its jurisprudence which allows for finding an abuse where an exceptionally long period of time has elapsed before the presentation of the communication, without sufficient justification.⁵

6.6 The period of delay before the author's submission of the present communication cannot be calculated from the date of exhaustion of domestic remedies, because the author never availed herself of the domestic remedies considered as ineffective. It is to be noted that the author does not suggest that she and her husband were deterred from proceeding in the domestic courts for fear of retaliation or similar considerations. The author submitted this communication in March 2006. That submission occurred some 15 years after the author and her husband were advised that no effective domestic remedy existed, nearly 11 years after the Committee adopted its Views in the *Simunek* case⁶, and nearly 9 years after the decision of the Constitutional Court of the State party that established the absence of a domestic remedy. The author identifies as causes of the delay her difficult family circumstances and the logistical problems of conducting legal proceedings from abroad. In comparable situations of delay *after* the exhaustion of domestic remedies, the Committee has found an abuse of the right of submission.⁷ The Committee concludes in the present circumstances that the delay has been 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.

³ Pl. US 33/96-41, decision of the Constitutional Court of the Czech Republic, June 4, 1997.

⁴ The Committee reached a similar conclusion in communications No. 1484/2006, *Lněnička v. the Czech Republic*, Views adopted on 25 March 2008, para. 6.3; No. 1497/2006, *Preiss v. the Czech Republic*, Views adopted on 17 July 2008, para. 6.5; No. 1742/2007, *Gschwind v. the Czech Republic*, Views adopted on 20 August 2010, para. 6.4.

⁵ See for example, communications No. 1223/2003, *Tsarjov v. Estonia*, Views adopted on 26 October 2007, para. 6.3; No. 1434/2005, *Fillacier v. France*, decision of inadmissibility adopted on 27 March 2006, para. 4.3; No. 787/1997, *Gobin v. Mauritius*, decision of inadmissibility adopted on 16 July 2001, para. 6.3.

⁶ Communication No. 516/1992, *Simunek et al. v. the Czech Republic*, Views adopted on 19 July 1995.

⁷ See communications No. 1582/2007, *Kudrna v. the Czech Republic*, decision of inadmissibility adopted on 21 July 2009, para. 6.3; No. 1583/2007, *Jahelka v. the Czech Republic*, decision of inadmissibility adopted on 25 October 2010, para. 6.4.

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 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.]
