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International Covenant on Civil and Political Rights

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Human Rights Committee

Communication No. 1848/2008

Decision adopted by the Committee at its 105th session (9–27 July 2012)

Submitted by:	D.V. and H.V. (not represented by counsel)
Alleged victims:	The authors
State party:	The Czech Republic
Date of communication:	7 September 2006 (initial submission)
Document references:	Special Rapporteur's rule 97 decision, transmitted to the State party on 12 December 2008 (not issued in document form)
Date of adoption of decision:	23 July 2012
Subject matter:	Discrimination on the basis of citizenship
Procedural issues:	Non-exhaustion of domestic remedies; abuse of the right of submission
Substantive issue:	Equality before the law
Article of the Covenant:	26
Article of the Optional Protocol:	3

Annex

Decision of the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights (105th session)

Concerning

Communication No. 1848/2008*

Submitted by:	D.V. and H.V. (not represented by counsel)
Alleged victims:	The authors
State party:	The Czech Republic
Date of communication:	7 September 2006 (initial submission)

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

Meeting on 23 July 2012,

Adopts the following:

Decision on admissibility

1. The authors of the communication are Mr. D.V and Ms. H.V., both naturalized American citizens born in Modrany, former Czechoslovakia, on 31 October 1933 and 8 December 1938, respectively. They claim to be victims of a violation by the Czech Republic of their rights under article 26 of the International Covenant on Civil and Political Rights[1]. They are not represented.

The facts as presented by the authors

2.1 The authors fled Czechoslovakia for political reasons, in 1964, and emigrated to the United States of America, where they have since lived. In 1970, they obtained American citizenship and lost their Czechoslovak citizenship.[2]

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* The following members of the Committee participated in the examination of the present communication: Mr. Yadh Ben Achour, Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Ahmad Amin Fathalla, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Mr. Walter Kälin, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Mr. Michael O'Flaherty, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabián Omar Salvioli, Mr. Marat Sarsembayev, Mr. Krister Thelin and Ms. Margo Waterval. Pursuant to rule 91 of the Committee's rules of procedure, Committee member Mr. Gerald Neuman did not participate in the adoption of the present decision.

[1] The Optional Protocol entered into force for the Czech Republic on 1 January 1993, as a consequence of the notification by the Czech Republic of succession of the international obligation of Czechoslovakia, which had ratified the Optional Protocol in March 1991.

[2] On the basis of the United States – Czechoslovakia bilateral Naturalization Treaty of 16 July 1928, art. I.

2.2 As they left Czechoslovakia without permission,[3] the authors were sentenced in abstentia[4] to a prison term of two years and of one year and six months, respectively, with confiscation of their property, including their family home located in Modrany.

2.3 Following the enactment of Act No. 119/1990,[5] the authors were rehabilitated and their sentences annulled. Thereafter, the authors applied for the renewal of their Czech citizenship, which they were granted on 5 June 2001, i.e., after the deadline for submitting applications for restitution of properties pursuant to Act No. 87/1991, which required claimants to be Czech citizens, and to have permanent residence in the Czech Republic in order to be eligible to regain properties.

2.4 When they attempted to regain ownership of their property,[6] in 2006, the authors were informed by the Department of Property Relationships of the Ministry of Finance, in a letter of 10 August 2006, that they did not qualify for the restitution since they had not been Czech citizens between April 1 and 31 October 1993. The authors submit that they did not appeal the above decision before the national courts, because they considered that the appeal would be futile, taking into account a judgment of the Czech Constitutional Court of 4 June 1997, whereby the Court refused the request to strike out the condition of citizenship in the restitution laws in a case similar to theirs.

2.5 The authors contend that in any event, no effective remedies are available to them and that they do not have to exhaust ineffective domestic remedies.

The complaint

3. The authors claim that they are victims of discrimination, and argue that the requirement of citizenship for restitution of their property under Act No. 87/1991 is in violation of article 26 of the Covenant.

State party's observations on admissibility and merits

4.1 By note verbale of 21 May 2009, the State party presented its observations on the admissibility and the merits of the communication. It notes that the authors emigrated from Czechoslovakia and settled abroad. The authors acquired the citizenship of the United States of America on 17 July 1970 and, as a consequence, lost their Czechoslovak citizenship under the Naturalization Treaty of 16 July 1928 between the Czechoslovak Republic and the United States of America. They acquired the Czech citizenship again on 5 June 2001.

4.2 The State party requested information from the Czech Office for Survey, Mapping and Cadastre on the authors' former property – a house with a building plot at Cholupicka 105, Prague 4 – Modrany. However, the Office explained that there was no house with a No. 105 or registered under No. 105 in the said street.

4.3 The State party further notes that the authors did not exhaust domestic remedies with regard to the restitution proceedings, as they have never initiated court proceedings for the

[3] Reports indicate that in the former Czechoslovakia, those attempting to leave the country without authorization were subject, inter alia, to imprisonment.

[4] The authors do not specify by which court they were sentenced.

[5] Act No. 119/1990 Coll. on Judicial Rehabilitation 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.

[6] It should be noted that the proceedings before the Ministry of Finance permitted the gaining of monetary compensation for lost property.

purpose of reinstating their ownership of the property in question. It recalls that under article 5, paragraph 2 (b), of the Optional Protocol to the Covenant, the Committee is precluded from considering any individual communications unless it has ascertained that available domestic remedies have been exhausted.

4.4 In this regard, the State party submits that a court system exists in the Czech Republic composed of several levels, the Constitutional Court being on the top of this system. The State party notes that the authors of the present communication mention only the absolute minimum information about the allegedly confiscated property. Consequently, since the authors did not resort to domestic remedies available within the national court system, including by submitting a complaint with the Constitutional Court, some significant facts related to the circumstances of their communication could not have been verified at the national level and the Czech courts were not given an opportunity to examine the merits of the authors' discrimination claims, within the meaning of article 26 of the Covenant.[7]

4.5 The State party further contends that the communication should be declared inadmissible as constituting an abuse of the right of submission under article 3 of the Optional Protocol. It notes that the Optional Protocol does not set forth any fixed time limits for submitting a communication and that a mere delay in submitting a communication in itself does not present abuse of the right of its submission. In the present case, however, the authors submitted their case to the Committee with a delay of more than 10 years, without providing any reasonable justification for such a delay and, thus, the communication can be considered as constituting an abuse of the right of submission.[8]

4.6 The State party further maintains that, in the absence of any domestic courts' decisions in the authors' case, it should be concluded that the latest legally relevant fact is the moment of expiry of the time limit granted under Act No. 87/1991 (i.e. 1 April 1995) for delivering the request to the liable person who owned the property in dispute. Moreover, at the moment when the above time limit elapsed, restitution law ceased to be usable for the authors, and if the law had discriminated against them, as they allege, the situation of discrimination ceased to exist therefrom. Consequently, the State party maintains that the time limit for delivering the request to the liable person to surrender the contested property expired under Act No. 87/1991 on 1 April 1995. The authors, however, approached the Committee only on 16 September 2006, i.e., more than 10 years after the expiry of the deadline established by the restitution law, which constitutes an unreasonable delay.

4.7 In the light of the above, the State party suggests that the Committee adopts the approach of the European Court of Human Rights, which rejects any application if it has been submitted outside the six-month time limit following the final domestic courts' decision in accordance with article 35, paragraph 1, of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

4.8 In the State party's opinion, it is appropriate to require the authors to provide, in respect of the delay, a reasonable explanation that has an objective basis and is sustainable. The lack of abuse of the right of submission, in other words, the observance of the obligation to attend one's rights, known in a number of legal orders, cannot be dependent

[7] In the latter's regard the State party refers to the Committee's jurisprudence in the communication No. 1515/2006, *Schmidl* v. *the Czech Republic*, decision of inadmissibility adopted on 1 April 2008, paragraph 6.2.

[8] The State party makes reference, inter alia, to the Committee's decisions in communications No. 1434/2005, *Fillacier* v. *France*, decision of inadmissibility adopted on 27 March 2006; No. 787/1997, *Gobin* v. *Mauritius*, decision of inadmissibility adopted on 16 July 2001; and No. 1452/2006, *Chytil* v. *the Czech Republic*, decision of inadmissibility adopted on 24 July 2007.

only on the extent to which the author, ex post facto, succeeds in believing subjectively of having an opportunity to approach the Committee only after a long period of time.[9]

4.9 The State party further submits that the Committee's conclusions on the admissibility of various communications as regards the length of the time period seem to be rather inconsistent and far from the legal certainty.

4.10 In the light of the above, the State party maintains that, by approaching the Committee many years after 1 April 1995 (see para. 4.6 above) without providing any objective and reasonable explanation, the authors have abused their right to submit a communication to the Committee.

4.11. On the merits, the State party notes that the authors have failed to demonstrate, both at the domestic level and in the present communication, that they were owners of the property which was passed to the State's ownership under the conditions stipulated in the Act No. 87/1991 on Extrajudicial Rehabilitations. The State party reiterates that, according to the information provided by its competent authorities in cadastral matters, the property specified by the authors is not in the registry. According to the State party, if the authors cannot demonstrate that they owned the specific property that had been passed to the State's ownership and that the only reason for the decision not to transfer the property back to them was the fact that at the material time they were not Czech citizens, then it cannot be concluded that they were not subjected to equal protection of the national law and that they were discriminated against. Consequently, the State party maintains that the authors' communication should be declared unsubstantiated.

4.12 The State party notes that the right protected by article 26 of the Covenant, invoked by the authors, is an autonomous one, independent of any other right guaranteed by the Covenant. It recalls that, in its jurisprudence, the Committee has reiterated that not all differences of treatment are discriminatory and that a differentiation based on reasonable and objective criteria does not amount to a violation of article 26.[10]

4.13 Article 26 does not imply that a State would be obliged to set right injustices of the past, especially considering the fact that the Covenant was not applicable at the time of the former communist Czechoslovakia. By referring to its previous observations in similar cases, the State party reiterates that it was not feasible to remedy all injustices of the past and that, as part of its legitimate prerogatives, the legislator, using its margin of appreciation, had to decide over which factual areas and in which way it would legislate, so as to mitigate damages. The State party concludes that no violation of article 26 occurred in the present case.

Authors' comments on the State party's observations

5.1 On 5 August 2011, the authors explain that they were not pursuing their claim in civil courts in the Czech Republic because, based on the publicly available information and the experience of other Czech emigrants, they believed they had no prospect of success. They acknowledge that they could have initiated further proceedings under the pertinent act No. 87/1991 to regain their property, but that law required Czech citizenship at the time when it was impossible for the authors to obtain it to be eligible for restoration of the ownership of the confiscated property. The authors were not "eligible persons" under that

[9] In this regard, the State party makes reference to the Committee's jurisprudence in communication No. 1533/2006, *Ondracka and Ondrackova* v. *the Czech Republic*, Views adopted on 31 October 2007.

[10] The State party refers to the Committee's Views adopted on 9 April 1987 in the communication No. 182/1984, *Zwaan de Vries* v. *the Netherlands*, paras. 12.1–12.3.

Act, as they did not have Czech citizenship during the relevant period. Accordingly, their claim would have been futile.

5.2 As to the State party's submission that their property is not in the cadastral registry, the authors argue that their house with a building plot at Cholupicka 105, Prague 4 – Modrany, indeed does not exist anymore, since it was demolished at around 1973, after having been confiscated and probably sold by the authorities, together with other houses, in order to gain additional space for a new street and apartment buildings. However, one of the authors was born in that house and lived there for 31 years. Moreover, the address Cholupicka 105, Prague 4 – Modrany is mentioned in the respective author's birth certificate, marriage licence, driving licence, etc.

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, first, 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 has noted the State party's argument that the communication should be considered inadmissible on the ground of non-exhaustion of domestic remedies. The Committee refers to its established jurisprudence that, for purposes of the Optional Protocol, the author of a communication needs not to exhaust domestic remedies when these remedies are known to be ineffective. The Committee notes that because of the preconditions of Act No. 87/1991, the authors could not claim restitution at the time because at the time concerned they did not have 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 complaints, the Constitutional Court upheld the constitutionality of Act No. 87/1991. The Committee therefore concludes that the authors were not obliged to exhaust any remedies at the national level.[11]

6.3 As to the State party's argument that the communication amounts to an abuse of the right of submission under article 3 of the Optional Protocol, the Committee notes that the authors approached the Committee with the present communication almost 15 years after the contested Act No. 87/1991 entered into force. In this connection, the Committee observes that the authors have not provided any explanation for such a delay other than the mere explanation that, at that time, they were unable to regain their Czech citizenship. The Committee further notes that the authors have affirmed that they were aware of the Act No. 87/1991 and its requirements, but provided no explanation as to why they approached the Committee 15 years after the Act entered into force and almost 11 years after the said Act stopped operating.

6.4 In the consideration of the present communication, 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.[12]

[11] The Committee reached a similar conclusion in communication No. 1497/2006, *Preiss* v. *the Czech Republic*, Views adopted on 17 July 2008, para. 6.5.

[12] See communication No. 1615/2007, *Bohuslav Zavrel* v. *the Czech Republic*, Views adopted on 27 July 2010, para. 8.6.

In this connection the Committee reiterates that the authors approached the Committee with the present communication almost 15 years after the contested Act No. 87/1991 entered into force and almost 11 years after the said Act stopped operating. The Committee observes that the authors have not provided any explanation for such a delay other than the mere explanation that at that time, they were unable to regain their Czech citizenship. In this instance, although the State party raised the issue that the delay amounts to an abuse of the right of petition, the authors have not explained or justified why they waited for nearly almost 15 years before bringing their claims to the Committee. In the light of these elements, read as a whole, and taking into account the fact that the *Simunek* decision of this Committee[13] was rendered in 1995, the Committee thus regards the delay to be so unreasonable and excessive as to amount to an abuse of the right of submission, and declares in particular circumstances of the present case the communication inadmissible pursuant to article 3 of the Optional Protocol.

6.5 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 authors.

[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.]

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