



**International Covenant on
Civil and Political Rights**

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Human Rights Committee
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Views

Communication No. 1586/2007

<u>Submitted by:</u>	Adolf Lange (not represented by counsel)
<u>Alleged victim:</u>	The author
<u>State party:</u>	The Czech Republic
<u>Date of communication:</u>	29 January 2007 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 97 decision, transmitted to the State party on 22 August 2007 (not issued in document form)
<u>Date of adoption of Views:</u>	13 July 2011

* 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 to submit a communication; inadmissibility <i>ratione temporis</i>
<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

On 13 July 2011, 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. 1586/2007.

[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 (102nd session)

concerning

Communication No. 1586/2007**

Submitted by: Adolf Lange (not represented by counsel)
Alleged victim: The author
State party: The Czech Republic
Date of communication: 29 January 2007 (initial submission)

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

Meeting on 13 July 2011,

Having concluded its consideration of communication No. 1586/2007, submitted to the Human Rights Committee on behalf of Mr. Adolf Lange, his wife and two children 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 author 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 January 2007, is Adolf Lange, a naturalized American citizen residing in the United States of America and born on 1 May 1939 in Pilsen, 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 Rights¹. He is not represented by counsel.

The facts as submitted by the author

2.1 The author escaped from Czechoslovakia on 10 August 1968 and obtained US citizenship on 6 August 1980, thereby losing his Czechoslovak citizenship. Upon his application, Czech citizenship was returned to him on 16 May 2003. The author was

** The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Lazhari Bouzid, Ms. Chistine Chanet, Mr. Ahmed Amin Fathalla, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Ms. Helen Keller, Mr. Rajsoomer Lallah, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Mr. Gerald L. Neuman, Mr. Michael O'Flaherty, 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.

supposed to inherit half of villa No. 601 and half of an apartment building No. 70 in Pilsen.

2.2 The author was denied his inheritance on the basis of Czech law No. 87/1991 on extrajudicial rehabilitation². On 9 September 1998, the District Court in Pilsen rejected his request for restitution on the basis of law No. 87/1991, which requires claimants to be Czech citizens. On 30 May 2000, the Regional Court in Pilsen rejected his appeal. On 8 February 2001, the Constitutional Court also rejected his appeal on the basis of the same law.

2.3 The author went to the European Court of Human Rights, which, on 3 October 2002, in a committee of three judges rejected his complaint as inadmissible.

The complaint

3. The author claims that the Czech Republic violated his rights under article 26, of the Covenant in its application of Law No. 87/1991, which requires Czech citizenship for property restitution.

The State party's observations on admissibility and merits

4.1 On 1 February 2008, the State party submits its observations on the admissibility and merits. It clarifies the facts as submitted by the author. On 7 June 1980, the author lost his Czechoslovak citizenship and on 20 February 2003, he re-acquired it.

4.2 On 27 October 1995, the author applied to the Pilsen District Court seeking the surrender of property. The original owner of the property was the author's grandfather, who was sentenced in 1950 to, *inter alia*, punishment of the forfeiture of property. He died in 1951 and was rehabilitated in 1990. Until 1992, the property was used and managed by two entities acting on behalf of the State. Under Law No. 87/1991, the property was surrendered to the children of the author's brother, who then transferred the ownership title to a third person. On 9 September 1998, the District Court rejected the author's action holding that the author had failed to prove his relationship to the original owner of the properties and, therefore also his status as entitled person under Law No. 87/1991. In his appeal, the author provided documentation proving that he was a relative of the original owner and he also claimed that he has never lost Czechoslovak citizenship. On 30 May 2000, the Regional Court upheld the judgment of the first instance court and noted that the author failed to prove his claim that he had continuous Czech citizenship. On 8 February 2001, the Constitutional Court noted that the author failed to meet the requirements of the restitution law. On 24 September 2002, the European Court of Human Rights rejected the author's application as manifestly ill-founded.

4.3 The State party 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

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.

does not constitute an abuse of the right of its submission. The State party however submits that the author submitted his communication on 29 January 2007, which is more than six years after the last decision of the domestic court dated 8 February 2001 and nearly four-and-a-half years from the European Court of Human Rights' decision of 24 September 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.³ The State party further observes that it shares the view expressed by a Committee member in his dissenting opinion in similar cases against the Czech Republic, according to which in the absence of an explicit definition of the notion of abuse of the right of submission of a communication in the Optional Protocol, the Committee itself is called upon to define the time limits within which communications should be submitted.

4.4 The State party further adds that the author's grandfather's property was forfeited in 1950, thus a long time before Czechoslovakia ratified the Optional Protocol. The communication should therefore be declared inadmissible *ratione temporis*.

4.5 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 Covenant⁴. The State party argues that the author failed to comply with the legal citizenship requirement and his application for property restitution was therefore not supported by the legislation in force. The State party further reiterates its earlier submissions in similar cases.

The author's comments

5.1 On 6 March 2008, the author submits his comments on the State party's observations on the admissibility and merits. With regard to the author's loss of Czechoslovak citizenship on the basis of the Naturalization Treaty of 16 July 1928 between the Czechoslovak Republic and the United States of America, the author argues that the State party misused this treaty, which had been set up for temporary loss of citizenship only and for protection of young Europeans coming to the United States of America in the 19th and 20th centuries.

5.2 With regard to the author's belated submission of his communication, he argues that both the Constitutional Court and the European Court of Human Rights decisions mentioned that they are final and cannot be appealed. As the State party does not publish any decisions by the Human Rights Committee, the author only found out later about this possibility. He claims that his late submission is not due to any negligence on his part but due to the State party's intentional withholding of information on jurisprudence of the Human Rights Committee.

5.3 With regard to the merits, the author submits that he claims a violation of his inheritance rights under the Covenant due to the citizenship requirement, which was made impossible to comply with. He submits that the legislation in force is not constitutional.

³ See communication No. 787/1997, *Gobin v. Mauritius*, Inadmissibility decision of 16 July 2001, para. 6.3; communication No. 1434/2005, *Fillacier v. France*, Inadmissibility decision of 27 March 2006, para. 4.3; communication No. 1452/2006, *Chytil v. the Czech Republic*, Inadmissibility decision of 24 July 2007, para. 6.2; and *a contrario* communication No. 1533/2006, *Ondracka and Ondrackova v. the Czech Republic*, Views adopted on 31 October 2007, para. 6.4.

⁴ See for example communication No. 182/1984, *Zwaan de Vries v. the Netherlands*, Views adopted on 9 April 1987, para. 12.1 to 13.

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 nearly four-and-a-half years after the inadmissibility decision of the ECHR (more than six years after exhaustion of domestic remedies) before submitting his complaint to the Committee. The author argues that the delay was caused by lack of available information and intentional withholding of information by the State party. The Committee observes that according to rule 96 (c), of the Committee's rules of procedure, 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 after 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. Nevertheless, in the meantime and in accordance with its current jurisprudence, the Committee considers that in the particular circumstances of the instant case it does not consider the delay of six years and one month since the exhaustion of domestic remedies and four years and five months since the decision of another procedure of international investigation or settlement to amount to 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. The Committee notes that although the forfeiture of the author's grandfather's property took place in 1950 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 Covenant.⁵ 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.

⁵ See communication No. 586/1994, *Adam v. the Czech Republic*, views adopted on 23 July 1996, para. 6.3.

7.2 The issue before the Committee, as it 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 26⁶.

7.3 The Committee recalls its Views in the numerous Czech property restitution cases⁷, where it held that article 26 had been violated, and that it would be incompatible with the 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*⁸, 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 author with an effective remedy, including adequate compensation if the properties cannot be returned. The Committee reiterates the position taken in its earlier jurisprudence⁹ 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.

⁶ See communication No. 182/1984, *Zwaan-de Vries v. The Netherlands*, Views adopted on 9 April 1987, paragraph 13.

⁷ 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.

⁸ Communication No. 747/1997, *Des Fours Walderode v. the Czech Republic*, Views adopted on 30 October 2001, paragraphs 8.3 - 8.4.

⁹ 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.

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. In addition, it requests the State party to publish 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.]
