



**International covenant
on civil and political
rights**

Distr.
RESTRICTED*

CCPR/C/93/D/1448/2006
2 September 2008

Original: ENGLISH

HUMAN RIGHTS COMMITTEE
Ninety-third session
7 July -25 July 2008

VIEWS

Communication No. 1448/2006

<u>Submitted by:</u>	Mrs. Ivanka Kohoutek (not represented)
<u>Alleged victim:</u>	The author
<u>State Party:</u>	The Czech Republic
<u>Date of communication:</u>	2 February 2006 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 97 decision, transmitted to the State party on 16 February 2006 (not issued in document form)
<u>Date of adoption of Views:</u>	17 July 2008

* Made public by decision of the Human Rights Committee.

Subject matter: Discrimination on the basis of citizenship with respect to restitution of property

Procedural issue: Abuse of right of submission; non substantiation

Substantive issues: Equality before the law; equal protection of the law

Article of the Covenant: 26; 12

Article of the Optional Protocol: 3; 2

On 17 July 2008 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. 1448/2006.

[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

Ninety-third session

concerning

Communication No. 1448/2006*

<u>Submitted by:</u>	Mrs. Ivanka Kohoutek (not represented)
<u>Alleged victim:</u>	The author
<u>State Party:</u>	The Czech Republic
<u>Date of communication:</u>	2 February 2006 (initial submission)

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

Meeting on 17 July 2008,

Having concluded its consideration of communication No. 1448/2006, submitted to the Human Rights Committee by Mrs. Ivanka Kohoutek 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

1.1 The author of the communication dated 2 February 2006 is Mrs. Ivanka Kohoutek, a German citizen of Czech origin, born in 1947 in the former Czechoslovakia. She claims to be victim of a violation by the Czech Republic of article 26 of the International Covenant on Civil and Political Rights. She is not represented.

* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine Chanet, Mr. Maurice Glèlè Ahanhanzo, Mr. Yuji Iwasawa, Mr. Edwin Johnson, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Ms. Elisabeth Palm, Mr. José Luis Pérez Sanchez-Cerro, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Ivan Shearer and Ms. Ruth Wedgwood.

1.2 The Optional Protocol to the International Covenant on Civil and Political Rights (Optional Protocol) entered into force for the Czech Republic on 22 February 1993.

The facts as presented by the author

2.1 In 1981, the author left the former Czechoslovakia with her husband and their two children and emigrated to the former Federal Republic of Germany. They were sentenced *in absentia* in the former Czechoslovakia to 12 months' imprisonment, with confiscation of their property for leaving the country.

2.2 The author explains that their property was a family house in Hosov, now Jihlava district, with a garage, separate buildings, and a 861 sq.m. garden. According to her, their property right was duly recorded in the cadastral office of Jihlava, and an ownership certificate (No 433) was established to this effect.

2.3 On 23 February 1982, the author's sister applied to purchase the house. Due to political considerations, and although the author's sister had filed an application first, the house and land were transferred to Mr. and Mrs. Ch. This transfer of property was recorded on 12 November 1982 by notary in Jihlava. Although Mr. and Mrs. Ch. still occupy the house, the property right was officially transferred to one Michael S., allegedly to exclude any other possible litigation.

2.4 The author's husband died in 1987. At the time of his death, he was still a Czechoslovak citizen. The author obtained German citizenship in 1991, whereupon she lost her original Czechoslovak citizenship.

2.5 The author claims that she and her deceased husband were fully rehabilitated in 1990 under the provisions of Act No. 119/1990 on Judicial Rehabilitation. She requested restitution of their property from Mr. and Mrs. Ch. under the provisions of the Extra-Judicial Rehabilitation Act No. 87/1991. As Mr. and Mrs. Ch. refused to return the house, the author filed a complaint with the District Court of Jihlava. On an unspecified date, the court rejected her application, on the ground that the author was not a Czech national. On 8 December 1998, the Brno Regional Court confirmed the ruling of the District Court.

2.6 The author filed a recourse to the Constitutional Court, claiming to be victim of discrimination, invoking article 26 of the International Covenant on Civil and Political Rights. The Constitutional Court rejected her complaint on 27 September 1999.

2.7 The author lodged a complaint with the European Court for Human Rights (registered as Case No. 58716/00). On 10 September 2002, a Committee of three judges of the Court declared her application inadmissible as manifestly ill-founded.

The complaint

3. The author claims to be a victim of a violation of article 26 of the Covenant, as the citizenship requirement of the Act No. 87/1991 constitutes unlawful discrimination. She invokes

the jurisprudence of the Committee in the case of *Marik v. Czech Republic*¹ and *Kriz v. Czech Republic*², in which the Committee found a violation of article 26 by the State party.

The State party's submission on the admissibility and merits of the communication

4.1 On 6 September 2006, the State party commented on the admissibility and merits of the communication. Factually, the State party clarifies that on 23 February 1982, the Jihlava District Court sentenced the author and her husband to, *inter alia*, forfeiture of property for the offence of illegally emigrating. On 16 February 1989, the author and her husband, who had died in 1987, were granted amnesty by the Jihlava District Court. The State party confirms that they were rehabilitated by a decision adopted under Act No. 119/1990 on 13 February 1991 which quashed the judgment of 23 February 1982.

4.2 The State party underlines that Act No. 87/1991 on Extra-Judicial Rehabilitations (“the restitution law”) laid down other conditions that had to be met by claimants to be eligible for restitution beside the citizenship and permanence residence requirements. By judgment of the Constitutional Court No. 164/1994 of 12 July 1994, the condition of permanent residence was revoked. This judgment established a new time frame of six months for the submission of restitution claims, beginning on 1 November 1994.

4.3 On 3 October 1995, the author and her children claimed the restitution of the property. Her claim was rejected on 10 September 1997 because they did not satisfy the condition of citizenship. On 8 December 1998, the Brno Regional Court upheld the first instance court's decision.

4.4 The State party challenges the admissibility of the communication as an abuse of the right of submission of communications within the meaning of article 3 of the Optional Protocol. While acknowledging that the Optional Protocol does not set forth any fixed time limits for submitting a communication to the Committee, the State party invokes the Committee's jurisprudence in *Gobin v. Mauritius*³, where the Committee declared inadmissible a communication submitted five years after the alleged violation of the Covenant, as the author did not provide a “convincing explanation” to justify this delay. In the present case, the State party argues that the author petitioned the Committee in February 2006, i.e. seven years and two months after the Brno Regional Court decision of 8 December 1998 or at least 3 years and almost 5 months after the decision of the European Court of Human Rights of 10 September 2002, without offering any explanation to justify such an unreasonable delay. In this respect, the State party refers to the six-month time limit for submitting an application to the European Court of Human Rights (article 35, paragraph 1, of the European Convention on Human Rights). It further argues that the author's specific interest in this case cannot be deemed important enough to outweigh the generally accepted interest in maintaining the principle of legal certainty, all the more so because the author has already submitted earlier in the past a complaint to a different international body established for the protection of human rights and freedoms.

¹ Communication No. 945/2000, *Marik v. Czech Republic*, Views adopted on 26 July 2005.

² Communication No. 1054/2002, *Kriz v. Czech Republic*, Views adopted on 1 November 2005.

³ Communication No. 787/1997; inadmissibility decision of 16 July 2001, para. 6.3.

4.5 On the merits, the State party refers to its earlier observations submitted to the Committee in similar cases⁴, in which it outlined the political circumstances and legal conditions pertaining to restitutions laws, including Act No. 87/1991 on Extra-Judicial Rehabilitation. The State party underlines that it was aware at the time of the passing of those laws that it was not feasible to eliminate all the injustices committed during the Communist regime, and that the Constitutional Court has repeatedly considered and dismissed the question of whether the precondition of citizenship violated the Constitution and fundamental rights and freedoms (for example Judgment No. 185/1997). It further explains that restitution laws were adopted as part of a two-fold approach. First, in an effort to mitigate, to a certain degree, some of the injustices committed earlier; and second, in an effort to carry out a speedy and comprehensive economic reform, with a view to introducing a market economy. Restitution laws were among those whose objective was the transformation of the whole society, and it appeared adequate to put in place restrictive preconditions, including that of citizenship, which was envisaged to ensure that due professional diligence would be devoted to returned property.

4.6 The State party further notes that it became possible for potential restitution claimants to reacquire Czech citizenship from 29 March 1990 to 31 December 1993. It refers in this regard to the Brno Regional Court decision according to which “the national law thereby created sufficient room for raising restitution claims under the law on extra-judicial rehabilitations also for persons who did not satisfy the precondition of citizenship. It notes that Brno Regional Court was not compelled to and in fact did not consider, for reasons of procedural economy, other preconditions for restitution. It therefore argues that it is not possible to speculate whether the author’s action would have been successful if she had met the precondition of the country’s citizenship.

Authors’ comments on the State party’s observations

5.1 On 28 September 2006, the author commented on the State party’s response. She argues that they escaped from communist Czechoslovakia in 1981, and that the Jihlava District Court’s judgment of 23 February 1982 violated article 12, paragraph 2, of the Covenant. With regard to Act No. 119/1990 on Judicial Rehabilitation, she contends that it did not spell out any condition of citizenship for persons rehabilitated and that such conditions have been incorporated into Act No. 87/1991 on Extra-Judicial Rehabilitation, enacted 14 months later.

5.2 Regarding the argument that the submission of her communication amounts to an abuse of the right of submission, the author denies the existence of such an abuse and recalls that there is no deadline for submitting a communication specified in the Optional Protocol. She was crushed by the miscarriage of justice in the court judgments, and was exhausted emotionally and financially. She filed her complaint before the Committee as soon as she had been notified of the Committee’s Views in Communications No. 945/2000, *Marik v. Czech Republic*, Views adopted on 26 July 2005; and No. 1054/2002, *Kriz v. Czech Republic*, Views adopted on 1 November 2005.

⁴ Communication No. 587/1994, *Adam v. Czech Republic*, Views adopted on 23 July 1996.

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 a similar complaint submitted by the author was declared inadmissible as manifestly ill-founded by a Committee of three judges of the European Court for Human Rights on 10 September 2002 (application No. 58716/00). Article 5, paragraph 2(a), however, does not preclude the Committee from examining the present communication as the issue is no longer being examined by the European Court and the State party has formulated no reservation under article 5, paragraph 2(a) of the Optional Protocol.

6.3 With regard to the author's claim that the Jihlava District Court's judgment of 23 February 1982 violated article 12, paragraph 2, of the Covenant, the Committee notes that the claim was not part of the original communication upon which the State party submitted comments. The Committee considers that the author has not sufficiently substantiated her allegations under article 12 for the purposes of admissibility and finds this part of the communication inadmissible under article 2 of the Optional Protocol.

6.4 The Committee notes also the State party's argument that the communication should be considered inadmissible as constituting an abuse of the right to submit communications under article 3 of the Optional Protocol, in view of the delay in submitting the communication to the Committee. The State party recalls that the author waited three years and five months after the decision of the European Court of Human Rights before submitting her complaint to the Committee. In the instant case, and having regard to the reasons given by the author, the Committee does not consider the delay to amount to an abuse of the right of submission.⁵ It 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 is whether the application to the author of Act No. 87/1991 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

⁵ See Communication No. 1305/2004, *Victor Villamon Ventura v. Spain*, Views of 31 October 2006, para. 6.4, Communication No. 1101/2002, *Alba Cabriada v. Spain*, Views of 1 November 2004, para. 6.3.

Covenant and is based on objective and reasonable grounds does not amount to prohibited discrimination within the meaning of article 26.⁶

7.3 The Committee recalls its Views in the cases of *Adam, Blazek, Marik, Kriz, Gratzinger* and *Ondracka*⁷ where it held that article 26 had been violated, and that it would be incompatible with the Covenant to require the authors to meet the condition of Czech citizenship for the restitution of their property or alternatively for its compensation. The Committee considers that the principle established in these cases also applies in the case of the author of the present communication, and that the application by the domestic courts of the citizenship requirement violated her 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 compensation if the property 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.]

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

⁷ Communication No. 586/1994, *Adam v. Czech Republic*, Views adopted on 23 July 1996, paragraph 12.6; Communication No. 857/1999, *Blazek v. Czech Republic*, Views adopted on 12 July 2001, paragraph 5.8; Communication No. 945/2000, *Marik v. Czech Republic*, Views adopted on 26 July 2005, paragraph 6.4; Communication No. 1054/2002, *Kriz v. Czech Republic*, Views adopted on 1 November 2005, paragraph 7.3; Communication 1463/2006, *Gratzinger v. Czech Republic*, Views adopted on 25 October 2007, paragraph 7.5; and Communication No. 1533/2006, *Ondracka v. Czech Republic*, Views adopted on 2 November 2007, paragraph 7.3.