



**International covenant
on civil and political
rights**

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HUMAN RIGHTS COMMITTEE
Ninety-second session
17 March – 4 April 2008

DECISION

Communication No. 1515/2006

<u>Submitted by:</u>	Herbert Schmidl (not represented by counsel)
<u>Alleged victims:</u>	The author
<u>State party:</u>	The Czech Republic
<u>Date of communication:</u>	4 January 2002 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 97 decision transmitted to the State party on 22 November 2006 (not issued in document form).
<u>Date of adoption of decision:</u>	1 April 2008

* Made public by decision of the Human Rights Committee.

Subject matter: Discrimination on the basis of Sudeten German descent with respect to the restitution of property

Procedural issues: Non-exhaustion of domestic remedies

Substantive issues: Equality before the law and equal protection of the law, access to courts

Articles of the Covenant: 2, 26, 14

Article of the Optional Protocol: 5, 2(b)

[ANNEX]

ANNEX

DECISION OF THE HUMAN RIGHTS COMMITTEE UNDER
THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT
ON CIVIL AND POLITICAL RIGHTS

Ninety-second session

concerning

Communication No. 1515/2006*

Submitted by: Herbert Schmidl (not represented by counsel)
Alleged victims: The author
State party: The Czech Republic
Date of communication: 4 January 2002 (initial submission)

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

Meeting on 1 April 2008,

Adopts the following:

DECISION ON ADMISSIBILITY

1. The author of the communication is Herbert Schmidl, born in 1923 in the former Czechoslovakia, now residing in Germany. He claims to be a victim of a violation by the Czech Republic¹ of articles 2, 14, paragraph 1, and 26 of the Covenant. The author is not represented.

Facts as presented by the author

2.1 The author's uncle and aunt owned an agricultural estate in the region of the Sudetenland, which was incorporated into the territory of the German Reich between 1938 and 1945. In May 1945, the estate was occupied by the Red Army and subsequently confiscated by the post-war Czechoslovak administration. In 1946, the author and his family were expelled from

* 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. Yuji Iwasawa, Mr. Edwin Johnson, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Ms. Elisabeth Palm, Mr. Rafael Rivas Posada, Sir Nigel Rodley and Mr. Ivan Shearer.

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 of the international obligation of Czechoslovakia, which had ratified the Optional Protocol in March 1991.

Czechoslovakia. The property in question is alleged to have been confiscated prior to the Presidential Decree No. 12/1945 (the “Beněš Decree”) and thus was illegal. No compensation was paid for the property in question, for which the author claims to be the sole heir.

2.2 The author wrote to the Czech Minister of Finance (“the Minister”) on three occasions, 18 February and 26 April 1992, and 2 August 1998, requesting the return of his property. On 25 August 1998, the Minister informed the author that the restitution law in place² applied only to property confiscated between 1948 and 1989, that similar restitution claims to property owned by Germans had been rejected in the past, and that the State authorities would not reply to any further correspondence on the matter. In the same letter (responding to the author’s letter of 2 August 2007) it was also stated that as the will upon which the land in question was allegedly devolved, was invalid, the author had never become the legal owner of the property.

2.3 According to the author, both the Czech Supreme Court and Constitutional Court declared the failure to compensate for the expropriation of property owned by Germans and Hungarians prior to 1948 as lawful and legitimate”. He submits that Sudeten Germans could be compensated if they could prove their fidelity to the Czech Republic, which was not the case for Czech nationals requesting compensation. He alleges that the former Prime Minister Klaus has stated that, although the restitution to German and Hungarian victims might be possible by virtue of law, it was *politically* unacceptable.

The complaint

3.1 The author argues that domestic remedies were inaccessible to him and ineffective in his case. The Minister failed to respond to his requests to be informed of applicable procedures to challenge the view that his case did not comply with the law on restitution and refused to transfer the author’s complaint to the competent court. In this way, the Czech authorities prevented him from judicially pursuing the restitution of his property. In addition, by failing to respond to the author between 1992 and 1998, the Minister is responsible for unduly prolonging exhaustion of domestic remedies. Without knowing the competent court in which to make his application, the author alleges he would have been unable to secure counsel to represent him. In addition, he adds that the exhaustion of remedies would have been ineffective given the decisions of the Supreme Court and the Constitutional Court, which declared the restitution act lawful.

3.2 The author claims that his complaint is admissible *ratione temporis*, because his complaint is not about the actual confiscation of property in 1945, but about the State party’s refusal to return it. He argues that the State party’s denial of compensation was not confirmed until the Minister’s letter of 25 August 1998, which was after the entry into force of the Optional Protocol. Prior to that date, restitution was not excluded in principle, but depended on “intergovernmental agreements”³ between the Czech Republic and Germany.

3.3 The author claims a violation of article 2, as the State party has not paid him adequate compensation for the loss of his property.⁴ He claims that the denial of his right to access to the

² It is assumed that the author is referring to Law No. 87/1991.

³ It is not specified which “intergovernmental agreements” the author refers to.

⁴ The author refers to the Committee’s jurisprudence in Communication No. 747/1997, *Des Fours Walderode v Czech Republic*, Views adopted on 30 October 2001.

courts violates article 14. He also alleges that proceedings have been unduly delayed within the meaning of article 5, paragraph 2 (b), of the Optional Protocol, as his efforts over several years to obtain clarification concerning applicable remedies have not led to a response from the Czech authorities.

3.4 The author alleges a violation of his right to non-discrimination, under article 26, as the restitution laws currently in force in the Czech Republic discriminate against him on the basis of his Sudeten German descent. He claims that the restitution law excludes Sudeten Germans from restitution claims due to a) the fact that the law only considers confiscations that were made between 1948 and 1989, and b) the condition that only Czech nationals may claim such compensation. The author further alleges discrimination with respect to the necessity for German citizens to “prove their loyalty”⁵, a condition which is not necessary for Czech nationals. Further, German and Hungarian nationals have to bring evidence of continuous Czech citizenship from the end of the war to 1990, whereas Czech nationals only have to prove their citizenship at the date of their application. The fact that other groups of victims have obtained adequate compensation constitutes discrimination against the Sudeten Germans as a group.

3.5 The author claims that the property in question was confiscated illegally and that for this reason he, as sole beneficiary of his uncle’s and aunt’s estate, remains the owner of the property in question. According to Governmental Decree No.8/1928 GBI, any confiscation had to be preceded by the delivery of “an individual notice”. The author claims that no such notice was delivered with respect to the property in question. He claims that the confiscation occurred prior to the entry into force of the Beněš Decree, which was alleged to have constituted the legal basis for the confiscation. Even if the confiscation is considered to have taken place in light of the decree, it remains illegal as the original owner was antifascist and employed Czech citizens on his farm, against the will of the Nazis. According to subsection 2 of the Presidential Decree, land from any persons of German or Hungarian nationality who actively participated in the fight to preserve the integrity and liberation of Czechoslovakia should not have been confiscated. Finally, he argues that the confiscation was illegal as it coincided with the crime of genocide – which he claims arose from the expulsion of the Sudeten Germans.

The State party’s submission on admissibility and merits

4.1 On 17 May 2007, the State party commented on the admissibility and merits of the communication. It submits that the communication is inadmissible for: non-exhaustion of domestic remedies; *ratione temporis*; an abuse of the right of submission; and incompatibility *ratione materiae*. As to non-exhaustion, it submits that the author never raised any of these claims before the competent authorities. It assumes that the confiscation of the property in question is alleged to have taken place under Presidential Decree No. 12/1945, which entered into force on 23 June 1945. However, as the Covenant did not enter into force until 23 March 1976, it submits that the communication is *ratione temporis*.

4.2 The State party invokes to the jurisprudence⁶ of the Committee by arguing that the submission of the communication is an abuse of the right of submission. The author’s initial

⁵ The author does not provide further detail on this point.

⁶ Communication No. 787/1997, *Gobin v. Mauritius*, decision of 16 July 2001, para. 6.3.

letter to the Committee was dated 4 January 2002, i.e. 9 years after the Optional Protocol entered into force, which is an unacceptable length of time to wait before addressing the Committee. It also submits that the right to property is not guaranteed under the Covenant, let alone its recovery and that the communication is thus, inadmissible *ratione materiae* with the provisions of the Covenant.

4.3 On the merits, the State party submits that the communication is “ill-founded”, as the will upon which the author is alleged to have become the owner of the property was made on 9 March 1956. Given that the property is alleged to have been confiscated in 1945, it claims that he could not have become the rightful owner of the property. It also submits that said will was invalid *ab initio*, as according to section 535 of the then Civil Code, only an individual testator could have made such a disposition. Two individuals could not have made a will jointly as occurred in this case.

The authors' comments

5.1 On 12 November 2007, the author reiterates that the expropriation took place at the beginning of May 1945, prior to the entry into force of Presidential Decree No. 12/1945. According to a report dated 8 August 1945 from the author's uncle, a Czech administrator appeared together with Czech militia men to seize his estate. The author disputes the claim that he made no effort to request restitution of his property and points to the letters written to the Minister (see para.2.2). He reiterates his claim that the restitution laws discriminate against him under article 26 for the reasons set out in paragraph 3.4 above.

5.2 The author reiterates his arguments on the admissibility of the communication *ratione temporis*, and that the confiscation of the property was not legitimate and that the Minister's refusal to return his property on 25 August 1998 dates after the entry into force of the Optional Protocol. In this context, he invokes the Committee's jurisprudence⁷ to the effect that the violations complained of continued after the entry into force of the Optional Protocol and are thus *ratione temporis*. As to the State party's arguments on abuse, he submits that apart from his efforts to exhaust domestic remedies through his correspondence with the Ministry, he attempted to resolve the issue by initiatives taken in Germany, including his attempts to seek “diplomatic protection”⁸ through various applications through the administrative courts⁹ which were all very time consuming.

5.3 As to the State party's arguments on the merits, he reiterates that the confiscation in question was invalid and thus his uncle and aunt remained the rightful owners until their death. As to the will, the author disputes the State party's argument that it is invalid, and refers to the legitimacy of German certificates of inheritance dated 17 January 1997 and 12 March 1998,

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

⁸ The author did not specify what he meant by “diplomatic protection”.

⁹ Communication No. 1516/2006, *Schmidl v. Germany*, decision of 31 October 2007.

pursuant to which the author was designated as the sole heir to his uncle's and aunt's estate. He also states that, under German law, spouses are allowed to make their will jointly.

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 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 State party has argued that the communication is inadmissible, *inter alia*, for non-exhaustion of domestic remedies. It also notes that the State party contests the author's claim that he was the lawful beneficiary of his aunt and uncle's estate, as the will upon which he relies was considered invalid. The Committee notes that the only efforts made by the author to exhaust domestic remedies in the State party were several letters addressed to the Czech Ministry of Finance, in which he requested the Ministry to forward his complaint to the competent court. The Committee observes that the author has failed to raise any of the claims made in the present communication before any court in the State party. As to the claim that the exhaustion of remedies would have been ineffective, the Committee notes that the pursuit of a court action would have, *inter alia*, clarified the contested facts in the author's case, upon which the Committee is not in a position to evaluate, notably, the actual ownership of the land in question and whether the author was the lawful beneficiary of his aunt and uncle's estate. It recalls that article 5, paragraph 2 (b) of the Optional Protocol, by referring to "all available domestic remedies", refers in the first place to judicial remedies¹⁰. The Committee considers that it was the author's own duty to take all reasonable steps to identify the court with the appropriate jurisdiction or to demonstrate the absence of such a court. Accordingly, the Committee concludes that the communication is inadmissible under article 5, paragraph 2 (b), of the Optional Protocol for failure to exhaust domestic remedies.

6.3 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.]

¹⁰ Communication No. 262/1987, *R.T. v France*, decision of 30 March 1989.