

## SVU

### CZECHOSLOVAK SOCIETY OF ARTS AND SCIENCES

#### Restitution of Confiscated Property in the Czech Republic

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#### RESTITUTION OF CONFISCATED PROPERTY IN THE CZECH REPUBLIC

##### THE CONFISCATIONS

###### 1. Confiscations

Large-scale confiscations of property took place in Czechoslovakia after the communist coup d'état in 1948. Citizens were deprived of all real property with the exception of some small family homes. Most of the confiscations occurred in the 1950s but anytime thereafter whenever the owners of their family homes managed to escape to the West. They were convicted in absentia, among other things, to imprisonment of up to 5 years and to confiscation of all their property on the strength of the Law of October 6, 1948, on the Defense of the People's Republic, No. 231, Collection of Laws, articles 40 (Unauthorized leaving the territory of the republic) and 48 (Confiscation of property) respectively.

###### 2. The communist legal system

The democratic legal system of Czechoslovakia was reorganized according to the soviet model. The soviets kept law mainly for public appearance. The country would not be governed according to law but according to the wishes of the communist party. To this extent, lawyers were replaced by communist party administrators trained in party schools. Only one law school, the Law School of the Charles University in Prague, was left open in the Czech Republic with only a small enrolment. Graduates would be employed in strictly legal areas, like prosecutors, judges, advocates, and national enterprise lawyers. The pre-coup d'état professors were replaced by hard-line communists and their fellow-travellers and the students were taken from such families. The chief subjects were courses in marxism-leninism and the communist law was only in second place. The law was understood not as absolutely binding but as instructions and could be invoked as binding when it was supporting communist party intentions and could be completely ignored when it did not do so. The constitution and the laws were drafted with the world public opinion in mind to produce an acceptable impression abroad. However, the country was governed by unpublished communist party instructions issued by the secretariat-general of the communist party and its subordinate local secretariats. The courts were staffed by judges of the same communist provenience and were sitting with lay assessors of similar kind who would watch over them to insure party loyalty. Since all property and commerce were nationalized, and disputes between nationalized enterprises were settled by so-called "arbitration", not much business was left to the courts. They dealt mainly with criminal matters, family matters and inheritances limited chiefly to a few personal items. But even this the communist party did not leave to chance. The party decided which matters would be allowed to be considered by the courts since it would dispose of the problems administratively, if it so desired. Every court and its panels were

controlled by communist party committees which would instruct the panel how to decide and the panel then pretended to hear the case and give judgment. Under these circumstances, young male communist law graduates would look for some more challenging occupation as prosecutors, high level executives, or communist party operators in party secretariats, so that the judgeships were increasingly left to women who would gradually hold judicial positions to the highest level.

### 3. Downfall of the hard-line communist rule in 1989

In November 1989, Secretary General of the Soviet Communist party Gorbachev's perestroika reached Czechoslovakia. Under a prepared scenario, first line communists were retired as if they had worked honorably all their lives, and the second line communist party executives together with their fellow-travellers took over the power with a few exceptions. They formed new political parties which they called democratic, held elections in which their parties won all seats with the exception of the residual communist party which was not disbanded but continues business as usual, now under democratic rules. They continued in full control of the state and the economy.

### 4. State and law in the year 2002

On January 1, 1993, the country became the Czech Republic, the Czecho-Slovak Federation having been dissolved. A new constitution and a mass of new laws were enacted making the system more democratic with a view to approximation to laws of the European Union since the state works toward admission into the Union. The law school in the University of Brno was reopened and another two new law schools were established in Olomouc and Plzen respectively. Virtually no personnel changes occurred in the law school of the Charles University in Prague and the teaching personnel of pre-1989 is in place subject to retirement for old age. Similarly, changes in judicial personnel were slow to come by and a great number of the pre-1989 judges continue on the bench. The regime did not punish communist criminals and crimes nor surviving judges who persecuted the innocent, including those who committed judicial murders. All kind of subterfuge was used to protect communist criminals from accountability. To be punishable, they would have to be guilty according to the then applicable communist laws. The state and the economy is in the hands of the same interest groups which came to power in 1989.

## THE RESTITUTION OF PROPERTY

### 1. The initial phase

Restitution of confiscated property was made possible by the Law of April 23, 1990, on Judicial Rehabilitation, No. 119, Collection of Laws, which in article 2 (1) (b) declared null and void all judgments, convictions and confiscations, referred to under 1. above, on the date on which they were pronounced, and consequently, the rightful owners were considered owners of their properties without interruption. The mechanism for actual restitution would be provided in further laws which could not detract from the above mentioned principle. The first law of restitution was the Law on Mitigation of Some Property Injustices of October 2, 1990, No. 403, Collection of Laws, which set up the mechanism for restitution but dealt only with specifically delimited property. Within this scope it provided for restitution without any limitations and kept thus within the mandate of the Law on Judicial Rehabilitation. In all restitution phases, subject

to restitution were property injustices and confiscations done by the hard-line communist regime which occurred from February 25, 1948 to January 1, 1990.

It is understood that movables, bank accounts and other assets were stolen by the communists and their restitution was illusory, so that the main subject of restitution would be family homes, apartment buildings, and building and agricultural land. Their restitution was not smooth, however, since the organizations in possession and the courts placed obstacles to recovery and the individual managers of the property, in many cases, made determined attempts to acquire the properties for themselves.

## 2. The second phase

It opened by the enactment of the Law on Extra-Judicial Rehabilitation of February 21, 1991, No. 87, Collection of Laws, and the Law on Regulation of Property in Land and Other Agricultural Property of May 21, 1991, No. 229, Collection of Laws. Both required permanent residence and Czech citizenship for restitution. Applications under the first had to be made by October 1, 1991, and a court action had to be brought by April 1, 1992, and under the second by August 24, 1991, and a court action had to be brought by December 31, 1992. Failure to do so extinguished the right to restitution. The matter was further complicated by the enactment of the Law on the Conditions for the Transfer of State Property to other Persons (Privatisation Law) of February 26, 1991, No. 92, Collection of Laws. It provided that if property subject to restitution under the above laws was included in a privatisation project, failure to request its restitution and exclusion from privatisation within six months from April 1, 1991 would extinguish the right to restitution under the above laws. This provision was successfully used by managers of state property to privatise choice property, like family homes to themselves and defraud the true owners.

A further hurdle to recovery was introduced by the above referred to Law on Regulation of Property in Land and Other Agricultural Property of May 21, 1991, No. 229, Collection of Laws which in art. 8 provided that if the property was transferred by the state to private persons, it was to be restituted only if the transferee obtained it in breach of the then applicable provisions or if he obtained it due to illegal preferential treatment. The courts not only extended the requirement to all properties but also put the burden of proof on the claimant. It must have been known to the draftsmen of the law that to recover under these circumstances was almost an impossibility since records of property transactions would not provide any information on provisions under which the property was acquired, and to show preferential treatment was also almost impossible since the value of the property was reduced to a pittance by communist valuers.

All the three newly established requirements for recovery, i.e. permanent residence in the Czech Republic, Czech citizenship, and proof that transferred property was obtained in breach of the then applicable provisions or due to illegal preferential treatment, were patently illegal. Not only were they in breach of the enabling law, the Law on Judicial Rehabilitation by which owners of property were considered owners of their properties without interruption, but also in breach of the Constitution which in art. 7 provided that ownership of property was

protected by the state.<sup>1</sup> These provisions legally amounted to a new confiscation of the property. In all cases the regime introduced these requirements to protect their own interest groups in possession of stolen property.

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<sup>1</sup> Constitutional Law of April 18, 1990, No. 100, Collection of Laws, which amends the Constitution, No. 100/1960, Collection of Laws.

The requirements of permanent residence and of Czech citizenship were designed to exclude those who escaped from the communist state and resided in and/or acquired citizenship in a foreign country from recovery. This testifies to the animosity of the regime displayed from the beginning against those who succeeded in escaping and avoided thus being annihilated by the communists. Another feature is the apprehension of the regime to face those of them who would return and enter politics as they, in contrast to them, were not former communists and their fellow-travellers. They will not come if we do not return their property, thought the regime. As virtually no one came to enter politics, the regime agreed to drop the requirement since the requirement of Czech citizenship was equally effective. The requirement of permanent residence was then declared unconstitutional by the Constitutional court in response to a petition by 53 members of Parliament.<sup>2</sup> The decision took effect on November 1, 1994. The requirement of Czech citizenship, however, still stands, although it is equally unconstitutional. By the Czech citizenship law, no Czech citizen who escaped lost his citizenship by acquiring the citizenship of any other country in the world, with the only exception of the United States of America, because of the Treaty of Naturalization of 1928 between the United States and Czechoslovakia.<sup>3</sup> However, the potential of the Treaty to be used as a means of discrimination against Czech refugees who acquired U.S. citizenship was discovered only by the post-1989 Czech regime.

The hard-line communist regime kept silent in regard to the Treaty for good reasons. Since the 1970ies, the regime became aware of the desire of Czech refugees all over the world to come for a visit to see their ailing parents. This could be exploited to the regime's financial advantage. In response to enquiries, the embassies and consulates stated that an applicant for a visa would have first to apply for a release from Czech citizenship<sup>4</sup> for which he would have to pay an administrative fee and simultaneously for a short visit visa. The size of the fee was regulated by a regulation.<sup>5</sup> The fee was assessed with a view to the financial ability of the applicant and frequently amounted to thousands of dollars in the respective currencies. The applicant was always released from his Czech citizenship without which he would not have obtained a visa, for he was allowed to come only as a foreigner, but having paid the fee, the visa was in many cases denied. This could have been expected since communists have never been known for their honesty. Also, as it can be seen, to claim that Czech refugees who acquired U.S. citizenship lost their Czech citizenship would have been counterproductive to the regime's money raising effort.

### 3. Discrimination against Czech citizens who acquired U.S. citizenship

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<sup>2</sup> Decision of July 12, 1994, No. 164, Collection of Laws.

<sup>3</sup> Treaty of Naturalization. Signed in Prague July 16, 1928; entered into force Nov. 14, 1929. 46 Stat. 2424; TS 804; 6 Bevans 1266; 96 LNTS 301; No. 169 (1929) Collection of Laws.

<sup>4</sup> Release from Czechoslovak citizenship could be obtained upon application in accordance with art. 14, Law of April 29, 1969, on the Acquisition and Loss of State Citizenship of the Czech Socialist Republic, No. 39, Collection of Laws.

<sup>5</sup> Regulation of the Ministry of Finance of December 20, 1976, on Administrative Fees, No. 162, Collection of Laws. Item 17 set the fee for the release from Czechoslovak citizenship as from 15 to 500 Crowns, the upper limit of which could have been raised 25 times.

The post-1989 Czech regime misuses the 1928 Naturalization Treaty to discriminate against Czech citizens who acquired U.S. citizenship. The Treaty was concluded at the U.S. initiative and is one of 26 such treaties concluded by the U.S.<sup>6</sup> The constitutionality of the treaties was in doubt since they provided

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<sup>6</sup> These treaties are known as Bancroft treaties after George Bancroft (1800-1891), a historian, who was the U.S. minister in Berlin, Prussia, in 1867, where he negotiated the first such treaty with the Prussian Chancellor Bismarck. It was signed at Berlin February 22, 1868 and entered into force May 9, 1868. The object was to prevent Prussia from calling to military duty young Prussians who became U.S. citizens, went to Prussia for a visit and were forcibly inducted in the Prussian army. The Treaty provided for an automatic loss of Prussian citizenship upon the acquisition of U.S. citizenship and vice versa, and the automatic loss of the acquired U.S. citizenship upon return to Prussia without intent to return to the United States and vice versa. The intent not to return would exist when the person would reside for two years in the other country. There were 26 such treaties concluded by the U.S., the Treaty with Czechoslovakia was one of the last. Many such treaties, including the one with Czechoslovakia, provided that they would not apply when either party was at war.

for an automatic loss of U.S. citizenship. Starting with the 1950s, U.S. Supreme Court rulings cast doubt on the principles underlying the provisions of the Bancroft Treaties for the automatic loss of U.S. citizenship upon return to the home country or regaining of its nationality.<sup>7</sup> The 1967 decision made the provisions on automatic loss of U.S. citizenship unenforceable, and after the 1980 decision, the U.S. Department of State took steps to terminate all remaining Bancroft Treaties still in force. Since 1989, the U.S. tried to terminate the 1928 Treaty with Czechoslovakia, and after six years of unsuccessful attempts to terminate it by agreement with immediate effect, the U.S. Department of State gave notice to the Czech government on September 19, 1996 to terminate the Treaty unilaterally and it would have terminated at midnight September 18, 1997. The Czech government then agreed to terminate the Treaty upon exchange of diplomatic notes as of August 20, 1997.<sup>8</sup>

The termination of the Treaty operates only prospectively and has no effect on the Law on Extra-Judicial Rehabilitation.

As the U.S. could not enforce the Treaty since at least 1967, the objective of the Treaty became unattainable and the Czech government should not have treated it as valid unilaterally. Facts show, however, that the post-1989 Czech regime has been using it in bad faith to prevent the restitution of property to Czech citizens who acquired U.S. citizenship. The regime recognizes that the Treaty did not apply when either party was at war. It claims that Czechoslovakia was at war from September 17, 1938, to May 7, 1957, both dates included, and consequently, Czech citizens who were naturalized in the United States before May 8, 1957, did not lose Czech citizenship but all those who were naturalized on that day and later had lost it. Since virtually all Czech refugees from communism who were admitted to the United States

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<sup>7</sup> The decisions are: *Kawakita v. US*, 75 S.Ct.950, (1952); *Afroyim v. Rusk*, 387 US 253, (1967); and *Vance v. Terrazas*, 444 US 252, (1980).

<sup>8</sup> Announcement of the Ministry of External Affairs, No. 229 of 1997, Collection of Laws. By exchange of notes of July 28, 1997, and August 20, 1997, the Treaty of Naturalization between Czechoslovakia and the United States of America made in Prague on July 16, 1928, was terminated.

were naturalized after that date, they lost Czech citizenship. As a result, Czech refugees from communism who acquired the citizenship of any country in the world can recover their property in the Czech Republic except those who were naturalized in the United States.

#### 4. International censure of the Czech Republic

This problem was noted by the United Nations Human Rights Committee, Geneva/New York, which in *Simunek et al. v. the Czech Republic*, held that citizenship as a precondition to restitution of confiscated property was incompatible with the nondiscrimination requirement of article 26 of the International Covenant on Civil and Political Rights. The Committee asked the Czech Republic to correct the legislation and inform it within ninety days of the measures taken to give effect to the Committee's views, but the Czech Government has ignored the request. Similar decision was given by the Committee in *Josef Frank Adam v. The Czech Republic*. The Committee reaffirmed these decisions in *Miroslav Blazek, George A. Hartman and George Krizek v. The Czech Republic*.<sup>9</sup>

The Czech Republic also ignores the request of the U.S. Commission on Security and Cooperation in Europe (Helsinki Commission) to end the discrimination. The Commission at its hearing in Washington on May 13, 1997, under the chairmanship of Senator Alfonse D'Amato and Congressman Christopher H. Smith, censured the Czech Republic in this respect and strongly demanded correction of the present conduct of the Czech government.

#### 5. Restitution cases in Czech courts

The claims of Czech citizens who acquired U.S. citizenship to restitution of their properties in the Czech Republic were denied on the ground that by acquiring U.S. citizenship they automatically lost their Czech citizenship and therefore could not obtain restitution of their properties. Decisions of courts of appeal in these cases carry the statement that no further appeal was admissible and that the decision was final. Since the restitution laws require claimants

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<sup>9</sup> *Simunek et al. v. The Czech Republic*, Communication No. 516/1992. Decision of the U.N. Human Rights Committee, Geneva/New York, of July 19, 1995. *Josef Frank Adam v. The Czech Republic*, Communication No. 586/1994. Decision of the U.N. Human Rights Committee, Geneva/New York, of July 23, 1996. *Miroslav Blazek, George A. Hartman and George Krizek v. The Czech Republic*, Communication No. 857/1999. Decision of the U.N. Human Rights Committee, Geneva/New York, of July 12, 2001.

to have Czech citizenship, no Czech court can hold for the claimant. Claimants have thus exhausted their local remedies.

Prior to the creation of the Constitutional Court in the Czech Republic in July 1993, even an extraordinary remedy on the ground of breach of a constitutionally guaranteed right was not available to restitution claimants. All claimants who had their claims denied in 1992 and 1993 prior to the establishment of the Court were denied this extraordinary remedy since the petition to the Court must be made within 60 days from the final decision of the Czech courts.

The Constitutional Court held back petitions of unconstitutionality in these cases but finally rendered a decision in the Jan Dlouhy case on June 4, 1997.<sup>10</sup> Dlouhy argued that the requirement of Czech citizenship in Laws 87/1991 and 229/1991 violated article 1 of the Czech Constitution which declares the Republic a state of law based on respect for the rights and freedoms of the individual; article 1 of the Charter of Fundamental Rights and Freedoms guaranteeing everyone equality of rights; article 3(1) of the Charter prohibiting discrimination in the area of fundamental rights and freedoms; and article 11(1) of the Charter which declares that everybody has the right to own property and that the right of all owners has the same statutory content and the same protection. The Constitutional Court denied the petition, one judge dissenting, on the ground that the referred to laws were properly enacted and that the Czech state was not required to correct all injustices and abuses of law. It completely avoided the issues of breach of the constitution raised in the petition. It is obvious that the court's delaying tactics and the avoidance of the issues which clearly demonstrated unconstitutionality were in line with the discrimination carried on by the Czech government against the claimants. Judge Iva Brozova, however, filed a dissenting opinion in which she agreed in full with the claims of unconstitutionality raised in the petition.

#### 6. Attempts by members of parliament to remove the requirement of citizenship from the Law on Extra-Judicial Rehabilitation

A sizable number of members of parliament under the leadership of Dr. Jiri Karas and Pavel Tollner of the People's Party, introduced draft laws to remove the requirement of citizenship from the Law on Extra-Judicial Rehabilitation in 1997 and again in 1998, but in both cases the amendments were rejected by the government so that they were not enacted. Thereupon, 51 members of parliament under the leadership of the above mentioned members filed on April 2, 1999, a petition in the Constitutional Court to have the requirement of citizenship declared unconstitutional. In its decision of October 6, 1999,<sup>11</sup> the Constitutional Court denied the petition following its above referred to decision in the Jan Dlouhy case. This time it gave unpersuasive reasons, paraphrasing the government statement rejecting the amendments presented earlier by the same members. Yet, up to 7 out of the 15 Constitutional Court judges held in favor of the petition and declared the obvious - the unconstitutionality of the requirement of citizenship in the Law. The government position was backed only by the

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<sup>10</sup> Jan Dlouhy Case, decided on June 4, 1997, No. Pl. US 33/96-41, also No. 185/1997 Collection of Laws.

<sup>11</sup> Decision of the Constitutional Court of October 6, 1999, No. 289, Collection of Laws.

narrowest margin. The decision casts a cloud on the judges of the majority whose judicial independence is very much in doubt.

#### 7. The Law on the Citizenship of Some Former Czechoslovak Citizens<sup>12</sup>

The Law is designed to enable those Czech citizens, who according to the Czech regime lost their Czech citizenship by acquiring that of the United States of America, to regain Czech citizenship. The citizenship would be obtained upon application to the Czech embassy and consulates in the United States or pertinent offices in the Czech Republic. A great number of documents must be produced in support of the application, certifying original Czech citizenship. Also, the U.S. Certificate of Naturalization must be produced. It must be certified by the U.S. Department of Justice and the Authentication Office of the U.S. State Department. The documents must be translated into the Czech language and again certified. The application itself is a demanding document requiring considerable effort. If an applicant is eventually granted Czech citizenship, it will operate from the day of the grant, and consequently will have no effect on the requirement of Czech citizenship in the Law on Extra-Judicial Rehabilitation and the Law on Regulation of Property in Land and Other Agricultural Property.

The question arises, who needs Czech citizenship if he is a United States citizen. The question of citizenship was introduced by the Czech post-1989 regime by requiring Czech citizenship for restitution of property and claiming that by acquiring U.S. citizenship Czech citizens lost their Czech citizenship. This very assertion appears to be in breach of the Czech Constitution but this is of no concern to the regime. Czech citizens who acquired U.S. citizenship are demanding the restitution of their property in the Czech Republic and not of the Czech citizenship of which they were deprived by the Czech regime. Also the difficult process demanded by the Law seems to indicate the intent of the Czech regime to dissuade anyone from applying.

It appears that the whole purpose of the Law is to confuse the U.S. Helsinki Commission which repeatedly demanded the restitution of property to Czech citizens who acquired U.S. citizenship by an offer to allow them to regain their Czech citizenship. This the regime gives out as a great concession by confusing the question of citizenship with that of restitution of property.

#### 8. Further attempt by members of parliament to provide restitution of property to Czech citizens

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<sup>12</sup> Law on the Citizenship of Some Former Czechoslovak Citizens of July 29, 1999, No. 193, Collection of Laws.

who acquired U.S. citizenship

The above mentioned Law on the Citizenship of Some Former Czechoslovak Citizens gave members of parliament a welcome opportunity to present a draft amendment to the Law for the extension of the deadline for restitution of property in the Law on Extra-Judicial Rehabilitation so that all those who allegedly lost their Czech citizenship by the acquisition of U. S. citizenship and reacquired Czech citizenship since the presently existing deadline could obtain restitution. The draft amendment presented by members Dr. Karas and Pavel Tollner was by law submitted to the government which in its session of December 22, 1999, declared its disagreement with the proposed amendment and would ask the parliamentary majority to vote it down when it comes for discussion in parliament. This actually occurred and the draft amendment was voted down by the parliamentary majority on April 5, 2000, Resolution No. 912.

9. The Czech Republic is in breach of a number of international provisions

a. The Universal Declaration of Human Rights<sup>13</sup>

Article 17.

1. Everyone has the right to own property alone as well as in association with others.
2. No one shall be arbitrarily deprived of his property.

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<sup>13</sup> G.A. Resolution 217A, U.N. Doc. A/810 (1948)

b. European Convention for the Protection of Human Rights and Fundamental Freedoms<sup>14</sup> and First Protocol to the Convention<sup>15</sup>

Article 1

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

c. International Covenant on Civil and Political Rights<sup>16</sup>

Article 14 (6)

When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

d. Final Act of the Conference on Security and Co-operation in Europe<sup>17</sup>

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<sup>14</sup> Signed at Rome on 4 November 1950, European Treaty Series No. 5.

<sup>15</sup> Signed at Paris on 20 March 1952, European Treaty Series No. 9. Announcement of the Czech Ministry of Foreign Affairs, No. 209/1992, Collection of Laws. According to article 10 of the Constitution of the Czech Republic of December 16, 1992, No. 1 of 1993, Collection of Laws, ratified and promulgated international agreements on human rights and fundamental freedoms, which are binding on the Czech Republic, are directly applicable and take precedence over national law. The fact that the Czech regime ignores the provisions of the Convention and the Protocol is also in breach of the Czech Constitution.

<sup>16</sup> Done at New York December 16, 1966. 999 U.N.T.S. 171.

<sup>17</sup> Signed and Adopted in Helsinki on August 1, 1975, European Yearbook, Vol. XXIII, (The Hague, Martinus Nijhoff, 1977), 211,217.

VII. Respect for human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief.

VIII. Equal rights and self-determination of peoples.

e. Conference on Security and Co-operation in Europe: Charter of Paris For a New Europe and Supplementary Document to Give Effect to Certain Provisions of the Charter<sup>18</sup>

Democracy, with its representative and pluralist character, entails accountability to the electorate, the obligation of public authorities to comply with the law and justice administered impartially. No one will be above the law.

We affirm that, without discrimination, everyone has the right: to own property alone or in association and to exercise individual enterprise, to enjoy his economic, social and cultural rights.

10. The Czech Republic is in breach of its own constitution

Apart from the breach of the several articles of the Constitution enumerated in the Jan Dlouhy case referred to under 5. above, the Czech Republic is in breach of the several international agreements on human rights referred to under 9. above.

According to article 10 of the Constitution of the Czech Republic of December 16, 1992, No. 1 of 1993, Collection of Laws, ratified and promulgated international agreements on human rights and fundamental freedoms, which are binding on the Czech Republic, are directly applicable and take precedence over national law. By refusing to reconstitute confiscated property to Czech citizens who acquired U.S. citizenship, the Czech republic is in breach of not only the human rights agreements enumerated under 9. above, but also of article 10 of its own constitution. As the provisions of the human rights agreements are directly applicable and take precedence over national law, the Czech courts should have applied them without regard to the regime's refusal to reconstitute the property. The actual practice of refusal to reconstitute such property testifies to the lack of independence of Czech courts and/or their subsisting communist ideology to protect communist offenders against claims of their victims.

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<sup>18</sup> Done at Paris, November 21, 1990, 30 International Legal Materials 190, 194.

