



International Covenant on Civil and Political Rights

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Human Rights Committee

Communication No. 1844/2008

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

<i>Submitted by:</i>	B. K. (not represented by counsel)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Czech Republic
<i>Date of communication:</i>	30 April 2008
<i>Document references:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 17 December 2008 (not issued in document form)
<i>Date of adoption of decision:</i>	23 July 2012
<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
<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>	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. 1844/2008*

Submitted by: B. K. (not represented by counsel)
Alleged victim: The author
State party: The Czech Republic
Date of communication: 30 April 2008

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 author of the communication, dated 30 April 2008, is Ms. B. K., a naturalized American citizen residing in the United States of America and born on 9 November 1928 in the city of Prague in former Czechoslovakia. She claims to be a victim of a violation by the Czech Republic of article 26 of the International Covenant on Civil and Political Rights.¹ She is not represented by counsel.

The facts as submitted by the author

2.1 The author submits that she left Czechoslovakia in May 1950 with her mother and arrived in New Zealand, where her brother was residing at a time. She moved to the United States of America in 1954 and became a naturalized citizen in 1960.

2.2 The author submits that on her family's departure, their property was confiscated by the State party because they left the country without permission.

* 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 L. Neuman did not participate in the adoption of the present decision.

¹ The Optional Protocol entered into force for the State party on 22 February 1993.

2.3 The author claims that her mother died in the United States on 12 February 1973 and that she is an heir to her mother's property. She submits that in accordance with her inheritance, she has a claim to two-thirds of each of three properties: a building at 8 Bozdechova Street, a building at 4 Bozdechova Street, and a building at 23 Nadrazni Street in Prague.

2.4 The author submits that her brother, K. S., who lives in New Zealand and never lost his Czech citizenship, received 5.5 million Czech crowns from the State party for his third of the properties owned by her family.

2.5 The author claims that on 17 August 1999, her application for compensation was rejected by the Prague District Court No. 5. The court stated in its decision that according to Act No. 87/1991, she was not entitled to compensation, because she was not a Czech citizen when the said law became effective.²

2.6 The author also submits that by a decision dated 16 January 2002, the Prague Municipal Court separated her claim into an independent matter from her brother's court proceedings.

2.7 The author contends that no domestic remedies are available for the restitution of her property, referring to a decision of the Constitutional Court 33/96-41, which upheld the constitutionality of Act No. 87/1991.³

The complaint

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

State party's observations on the admissibility and merits of the communication

4.1 On 21 May 2009, the State party submits its observations on the admissibility and merits. It refers to the applicable law, namely Act No. 119/1990 on Judicial Rehabilitation, and Law No. 87/1991 on Extra-Judicial Rehabilitation. The relevant section of Act No. 87/1991 gives a definition for persons entitled to compensation if property has been transferred to the State. It states that such person must be a citizen of the Czech Republic or the Slovak Federal Republic.

4.2 The State party submits that the author's complaint is inadmissible and ill-founded. The State party argues that the author has failed to exhaust domestic remedies, as required by article 5, paragraph 2 (b) of the Optional Protocol to the Covenant. The State party submits that the author did not appeal the decision of the District Court. The decision of the Prague Municipal Court concerns only the claim filed by the author's brother, and has no bearings on the author herself.

4.3 The State party further 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 does not constitute an abuse of the right of submission. The State party submits that the final decision of the domestic court became final on 18 December 1999. The State party argues that the author has not presented any reasonable justification

² The law became effective on 1 April 1991.

³ Constitutional Court of the Czech Republic, Pl. ÚS. 33/96-41, 4 June 1997.

for the delay and therefore considers that the communication should be declared inadmissible by the Committee.⁴

4.4 The State party further submits that the property was confiscated in 1957, long before the Czechoslovak Socialist Republic ratified the Optional Protocol, and therefore the complaint should be considered inadmissible *ratione temporis*.

4.5 On the merits, the State party argues that the Committee's jurisprudence demonstrates that not all differences of treatment are discriminatory, and that differentiation based on reasonable and objective criteria does not amount to prohibited discrimination.⁵ The State party argues that the text of article 26 of the Covenant in no way suggests any obligation on the part of the State party to compensate any injustice that occurred under the previous regime, and that it is at the discretion of the legislator to decide whether or not to provide such compensation or restitution. The State party argues that the author failed to comply with the legal citizenship requirement and recalls its earlier submissions in similar cases which clarify the rationale and historic reasons for the legal scheme adopted with regard to property restitution. In conclusion, it states that the Committee should declare the communication inadmissible under article 3 of the Optional Protocol, or, in the alternative, find it ill-founded under article 26 of the Covenant.

Author's comments on the State party's observations

5.1 On 3 August 2009, the author submits her comments on the State party's observations on the admissibility and merits. The author argues that she did not receive any compensation for the demolished property only because of the discriminatory nature of the Czech law which requires Czech citizenship.

5.2 With regard to her belated submission of the present communication, the author submits that she was told by her lawyer that the decision of the Prague Municipal Court was final and that there was no way of appealing it. The author also submits that she became aware of the possibility of filing a complaint with the Committee only after she had seen an advertisement by "Czech Coordinating Office" in Canada.

5.3 Concerning the merits, the author reiterates the discriminatory nature of the citizenship requirement contained in Act No. 87/1991, in breach of her rights under article 26 of the Covenant.

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.

⁴ The State party refers to communications No. 1434/2005, *Fillacier v. France*, decision of inadmissibility of 27 March 2006, para. 4.3; No. 787/1997, *Gobin v. Mauritius*, decision of inadmissibility of 16 July 2001, para. 6.3; and No. 1452/2006, *Chytil v. Czech Republic*, decision of inadmissibility of 24 July 2007, para. 6.2.

⁵ The State party refers to communication No. 182/1984, *Zwaan-de Vries v. the Netherlands*, Views adopted on 9 April 1987, paras. 12.1 to 13.

6.3 The Committee observes that the author has not exhausted all available domestic remedies, as she could have appealed the decision of the Prague District Court No. 5 dated 17 August 1999. The Committee nevertheless recalls that the author of a communication need not exhaust domestic remedies when these remedies are known to be ineffective. It observes that other claimants have unsuccessfully challenged the constitutionality of the law in question; earlier Views in similar cases remain unimplemented and the Constitutional Court has upheld the constitutionality of the Restitution Law⁶ despite the Committee's Views. Recalling its previous jurisprudence,⁷ the Committee is of the view that any further appeal by the author would have been futile, and that no further effective remedies were available to her.

6.4 The Committee further notes the State party's objection to the admissibility of the present communication *ratione temporis*. The Committee recalls its previous jurisprudence and considers that although the confiscations took place before the entry into force of the Covenant and the Optional Protocol for the Czech Republic, the legislation that excludes claimants 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 of article 26 of the Covenant.⁸

6.5 As to the State party's argument that the submission of the communication to the Committee amounts to an abuse of the right of submission under article 3 of the Optional Protocol, the Committee notes that the most recent and only decision referred to by the author is the one delivered by the Prague District Court No. 5, dated 17 August 1999, which rejected the authors' application as manifestly ill-founded. The Committee further notes that contrary to the author's claim, the decision by the Prague Municipal Court dated 16 January 2002, only deals with the merits of a similar complaint by her brother, K. S.. The same decision separates Ms. K.'s claim into an independent matter, which the author has not pursued. Therefore, a period of 8 years and 256 days passed before the author submitted her communication to the Committee for consideration on 30 April 2008.

6.6 In the consideration of the present communication, the Committee applies its jurisprudence which allows for an abuse to be found where an exceptionally long period of time has elapsed before the submission of a communication without sufficient justification.⁹ In this regard, the Committee observes that the author submitted her communication to the Committee for consideration on 30 April 2008, that is, 8 years and 256 days after the date of the decision by the Prague District Court No. 5. The Committee observes that it is up to the author to diligently pursue her claim. The Committee notes the author's argument regarding the delay in submission and considers that, in the present case, the author has not provided any reasonable justification for the delay in submitting her communication to the Committee. The Committee, therefore, regards the delay as being unreasonable and excessive, amounting to an abuse of the right of submission, which renders the communication inadmissible under article 3 of the Optional Protocol.

7. The Human Rights Committee therefore decides that:

- (a) The communication is inadmissible under article 3 of the Optional Protocol;

⁶ See communication No. 1497/2006, *Preiss v. Czech Republic*, Views adopted on 17 July 2008, para. 6.5.

⁷ See, inter alia, communication No. 1742/2007, *Gschwind v. Czech Republic*, Views adopted on 27 July 2010, para. 6.4.

⁸ See communication No. 1615/2007, *Zavrel v. Czech Republic*, Views adopted on 27 July 2010, paragraph 8.6.

⁹ *Ibid.*

(b) 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.]
