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HUMAN RIGHTS COMMITTEE
Ninety-seventh session
12- 30 October 2009

DECISION

Communication No. 1618/2007

Submitted by:	Frantisek Brychta (not represented by counsel)
Alleged victim:	The author
State party:	The Czech Republic
Date of communication:	20 September 2006 (initial submission)
Document references:	Special Rapporteur's rule 97 decision, transmitted to the State party on 19 November 2007 (not issued in document form)
Date of adoption of decision:	27 October 2009

* Made public by decision of the Human Rights Committee.

Subject matter: Right to a fair trial with regard to a labour law dispute

Procedural issues: Abuse of the right of submission; matter examined under another procedure of international investigation or settlement; non-substantiation of claim

Substantive issues: Right to a fair trial

Article of the Covenant: 14 (1)

Articles of the Optional Protocol: 2, 3, 5 paragraph 2 (a)

[Annex]

ANNEX

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

Ninety-seventh session

concerning

Communication No. 1618/2007[**]

Submitted by:	Frantisek Brychta (not represented by counsel)
Alleged victim:	The author
State party:	The Czech Republic
Date of communication:	20 September 2006 (initial submission)

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

Meeting on 27 October 2009,

Adopts the following:

DECISION ON ADMISSIBILITY

1. The author of the communication is Frantisek Brychta, born in 1949 in Stitary, former Czechoslovakia and residing in Moravské Budejovice, in the Czech Republic. He claims to be a victim of a violation by the Czech Republic[1] of article 14 paragraph 1 of the Covenant. The author is not represented.

[**] The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Ahmad Amin Fathalla, Mr. Yuji Iwasawa, Ms. Helen Keller, Mr. Rajsoomer Lallah, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Mr. Michael O'Flaherty, Mr. José Luis Pérez Sanchez-Cerro, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabian Omar Salvioli, Mr. Krister Thelin and Ms. Ruth Wedgwood.

[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.

Factual background[2]

2.1 The author filed an action against his former employer before the District Court of Trebic, for the payment of his salary for six days of leave which he had to use for the preparation of examinations at university, within the framework of external studies during employment. The author claimed that by denying him payment of these six days of leave, his former employer breached article 1, paragraph 2, of Decree 140/68, and article 187, paragraph 2, of the Labour Code, and also breached the International Convention concerning Paid Educational Leave[3]. The District Court of Trebic rejected the claim on 22 August 1991. The author appealed before the Regional Court of Brno, sitting as the Court of Appeal, which delivered its judgment on 18 March 1992 (File N°12 Co 452/91). The Regional Court upheld the main part of the first instance judgment, and remanded the remaining issues (related to the issue of a compensation claim of CSK 22) back to the District Court of Trebic. On 22 October 1992, the District Court of Trebic rejected the remainder of the issues. On 19 November 1992, the author filed an action with the Regional Court of Brno, by which he asked for the withdrawal of his claim regarding the remaining contentious issues. As a result, the Regional Court of Brno adopted resolution N° 12 Co 17/93, dated 29 August 1994, allowing the withdrawal of the action, quashing the judgment of the Trebic District Court of 22 October 1992, and discontinued the proceedings. The Regional Court decision became executory on 16 December 1994.

2.2 By motion of 30 August 1995[4], the author lodged an appeal before the Constitutional Court, which subsequently invited him to remedy defects in his submission, including the required legal representation. The author re-submitted his request for leave for appeal on 27 March 1996. On 25 April 1996, the Constitutional Court dismissed the appeal as having been submitted out of time.

2.3 The author claims that instead of ruling against the Judgment of the Regional Court of Brno N°12 Co. 452/92, the Constitutional Court rendered judgment N° I. US 200/95, which is a judgment against the Court ruling of the Regional Court of Brno N° 12 Co. 17/93. The author contends that he never lodged an appeal against the latter decision. He further claims that another difficulty is the fact that the judge who delivered the judgment of the Regional Court of Brno (File N°12 Co 452/91) is a Constitutional Court judge who was at that time also serving as presiding judge in the Regional Court of Brno. He contends that as a result, he experienced difficulties finding a lawyer who accepted to represent him[5], which in turn resulted in his late submission for appeal before the Constitutional Court. The author claims that there is no remedy available against decisions of the Constitutional Court.

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[2] Due to chronological and factual gaps in the author's submission, this section was drafted on the basis of the author's submission, legal decisions adopted, and State party submission.
[3] International Labour Organization Convention N° 140, 1974.
[4] While there are discrepancies on the date of initial submission, it is here referred to the date mentioned in the Constitutional Court decision of 25 April 1996.
[5] Formal representation by a lawyer is a statutory requirement to file an appeal before the Constitutional Court.

2.4 After the Constitutional Court verdict, the author also submitted an application to the European Court of Human Rights, which was declared inadmissible on 8 December 1997.

The complaint

3. The author claims that by ruling on the basis of the wrong decision, the Constitutional Court violated his right to a fair trial, guaranteed by article 14 paragraph 1 of the Covenant.

State party's submission on admissibility and merits

4.1 On 19 May 2008, the State party commented on the admissibility and merits of the communication. On admissibility, it contends that the author's communication was submitted too late, and should therefore be declared inadmissible for abuse of the right of petition, under the meaning of article 3 of the Optional Protocol: The State party notes that the last domestic decision was adopted on 25 April 1996, and the decision of the European Court of Human Rights was taken on 8 December 1997. The author's initial submission to the Committee was on 20 November 2006. Therefore, more than 10 and a half years elapsed since the last domestic decision. In the State party's opinion, this delay, in the absence of any reasonable justification from the author, should be considered as abusive by the Committee[6].

4.2 Subsidiarily, on the merits, the State party contends that the author's communication under article 14 of the Covenant is manifestly ill-founded. It notes that article 14 paragraph 1 does not provide detailed rules pertaining to the domestic judicial systems with regard to private law disputes. Therefore, it considers that States parties should enjoy a margin of discretion on how they implement article 14, including the issue of review of judicial decisions in private law disputes. It is moreover for domestic courts to interpret and apply domestic law, *a fortiori* where it pertains to the interpretation of rules of procedure. The Committee is only competent to review domestic decisions where a violation of the Covenant may have resulted from a domestic decision.

4.3 On the issue of the identity of the decision reviewed by the Constitutional Court, and the alleged prejudice suffered by the author as a result, the State party claims that if there are any doubts as to the identity of the decision reviewed, they are solely attributable to the author. His first submission to the Constitutional Court was presented on 30 August 1995, and its wording clearly suggested that it was meant as an appeal against the decision of the Regional Court of Brno N° 12 Co. 17/93 of 29 August 1994. The author specifically referred to this decision in his submission, and only referred to the decision N° 12 Co. 452/91 as part of numerous pieces of supporting evidence. In his second submission of 27 January 1996 to the Constitutional Court, the author also clearly referred to the quashing of decision N° 12 Co. 17/93, which is obvious from the title of the

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[6] The State party refers to the Committee's Communications N° 1434/2005, *Fillacier* v. *France* (inadmissibility decision adopted on 27 March 2006), N°787/1997, *Gobin* v. *Mauritius,* inadmissibility decision adopted on 16 July 2001, N° 1452/2006, *Chytil* v. *Czech Republic,* inadmissibility decision adopted on 24 July 2007, and N° 1533/2006, *Ondracka* v. *Czech Republic,* Views adopted on 31 October 2007.

submission, and the fact that the submission omits any mention of decision N° 12 Co. 452/91. It was not until the third submission of 27 March 1996 that the author introduced a motion to quash decision N° 12 Co. 452/91. Therefore, the Constitutional Court correctly maintained the initial identification of the decision of the Regional Court of Brno against which the constitutional appeal was filed, i.e. decision N° 12 Co. 17/93 of 29 August 1994.

4.4 The State party further notes that the Constitutional appeal was rejected on formal grounds, as the author failed to file his appeal within the statutory limit of 60 days since the day the Regional Court decision became final. Decision N° 12 Co. 17/93 became final on 16 December 1994, and the author's last submission to the Constitutional Court was made on 27 March 1996, i.e. well beyond the statutory limit of 60 days. The State party notes that if the author failed to meet the time limit with respect to the former decision, he would have been *a fortiori* beyond the statutory delay with regard to earlier decision N° 12 Co. 452/91 of 18 March 1992, and the outcome of his Constitutional Court appeal would in any event have been identical, i.e. would have been rejected on formal grounds.

4.5. On the question of the issuance of the Regional Court of Brno judgment (File N°12 Co 452/91) by a Constitutional Court judge, the State party contends that the author suffered no prejudice, as the judge in question did not take part in the Constitutional Court proceedings the author initiated. In addition, as the author's appeal was rejected on formal grounds, a judge's subjective appreciation would in any event have had no bearing on such a ruling. The State party claims that in light of these facts, there was no violation of article 14 of the Covenant.

Authors' comments

5.1 In his comments, the author maintains that his communication should be declared admissible by the Committee. On the issue of delay, he states that he only approached the Committee when he received a negative decision from the former European Commission of Human Rights, which declared his communication inadmissible on 8 December 1997. He claims that he first approached the Committee in October 1999, but that he did not receive an answer. The author later tried to file an appeal with the European Court of Human Rights, an attempt which was rejected on 22 October 2004. He then approached the Committee on 20 September and 20 November 2006.

5.2 On the issue of the rejection of his appeal by the Constitutional Court on formal grounds, the author refers to a letter of 8 March 1996 of the Constitutional Court, which extended the deadline for the removal of defects until 31 March 1996. As such, his submission of 27 March 1996 was introduced within the delay granted. His appeal should therefore have been formally accepted, and the Constitutional Court should have ruled against the Regional Court of Brno decision N° 12 Co. 452/91. By failing to do so, it has violated article 14 paragraph 1 of the Covenant in his regard.

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 the complaint is admissible under the Optional Protocol to the Covenant.

6.2 The Committee notes that this matter was already considered by the European Court of Human Rights on 8 December 1997. However, it recalls its jurisprudence[7] that it is only where the same matter *is being* examined under another procedure of international investigation or settlement that the Committee has no competence to deal with a communication under article 5, paragraph 2 (a), of the Optional Protocol. Thus, article 5 paragraph 2(a), does not bar the Committee from considering the present communication.

6.3 The Committee has noted the State party's argument that the submission of the communication amounts to an abuse of the right of submission under article 3 of the Optional Protocol, since the author waited almost nine years since the final European Commission of Human Rights decision, and more than ten and a half-year since the last domestic decision in the case before submitting his complaint to the Committee. The Committee reiterates that the Optional Protocol does not establish any deadline for the submission of communications, and that the period of time elapsing before doing so, other than in exceptional cases, does not in itself constitute an abuse of the right to submit a communication. The author argues that he first approached the Committee in 1999, after his complaint was considered inadmissible by the former European Commission, but that he did not receive an answer. Further to the European Commission's decision of 8 December 1997, declaring his communication inadmissible, the author tried to file another appeal with the European Court of Human Rights, but was informed on 22 October 2004 that the inadmissibility decision was final and not subject to appeal. Taking account of these particular circumstances, the Committee does not consider the delay of nine years since the inadmissibility decision of the former European Commission of Human Rights to amount to an abuse of the right of submission.[8]

6.4 With regard to the author's contention that his right to a fair trial, guaranteed under article 14 paragraph 1 of the Covenant has been violated, the Committee noted the State party's claim that the author is at the origin of the confusion in the identity of the decision which was to be reviewed by the Constitutional Court. The author did not contest this. The Committee also noted the State party's argument that the author failed to introduce his appeal before the Constitutional Court within the statutory delay, and its contention that the author's appeal would have been rejected on the same

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[7] See Communication, No. 824/1998, *N.M. Nicolov v. Bulgaria*, decision adopted on 24 March 2000, and N° 1193/2003*, Teun Sanders* v. *The Netherlands*, inadmissibility decision of 25 July 2005.

[8] See, for example, Communication No. 1463/2006, *Gratzinger* v. *Czech Republic,* Views adopted on 25 October 2007, para. 6.3; Communication N°1479/2006, *Persan* v. *Czech Republic,* Views adopted on 24 March 2009, para. 6.3.

formal grounds by the Constitutional Court had the decision appealed been the Regional Court of Brno File N° 12 Co. 452/91 of 18 March 1992.

6.5 The Committee wishes to recall that while article 14 paragraph 1 guarantees procedural equality and fairness, it cannot be interpreted as ensuring the absence of any error on the part of the competent tribunal[9]. The Committee further reiterates that it is generally for the courts of States parties to the Covenant to review facts and evidence, or the application of domestic legislation in a particular case, unless it can be shown that such evaluation or application was clearly arbitrary or amounted to a manifest error or denial of justice, or that the court otherwise violated its obligation of independence and impartiality[10]. The material before the Committee does not show that the judicial process in question suffered from any such defects, and the author failed to present sufficient arguments substantiating, for the purposes of admissibility, that his trial was unfair, within the meaning of article 14 paragraph 1 of the Covenant. As such, this part of the communication is inadmissible under article 2 of the Optional Protocol.

6.6 As for the author's contention that his case was complicated by the fact that the judgment of the Regional Court of Brno File N° 12 Co. 452/91 was delivered by a judge of the Constitutional Court of the Czech Republic, the Committee notes that he did not substantiate, for the purposes of admissibility, that the presence of this judge before the Constitutional Court bench violated his rights guaranteed under the Covenant, including article 14 paragraph 1. As such, this part of the communication is also inadmissible under article 2 of the Optional Protocol.

6.7 The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under 2 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.]

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[9] *See* General Comment 32 [90], adopted on 24 July 2007, para. 26, and Communication No. 273/1988, *B.d.B. v. The Netherlands*, para. 6.3; No. 1097/2002, *Martinez Mercader et al v. Spain*, para. 6.3.

[10] *See* General Comment 32 [90], para. 26, and Communication N°541/1993, *Errol Simms* v. *Jamaica,* inadmissibility decision adopted on 3 April 1995, para. 6.2.