



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE
Ninety-sixth session
13 to 31 July 2009

DECISION

Communication No. 1582/2007

<u>Submitted by:</u>	Ms. Vera Kudrna (not represented by counsel)
<u>Alleged victim:</u>	The author
<u>State party:</u>	The Czech Republic
<u>Date of communication:</u>	23 December 2006 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 97 decision, transmitted to the State party on 20 November 2006 (not issued in document form)
<u>Date of adoption of decision:</u>	21 July 2009

* 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 the right of submission

Substantive issues: Equality before the law; equal protection of the law without any discrimination

Article of the Covenant: 26

Articles of the Optional Protocol: 3

[Annex]

ANNEX

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

concerning

Communication No. 1582/2007*

<u>Submitted by:</u>	Ms. Vera Kudrna (not represented by counsel)
<u>Alleged victim:</u>	The author
<u>State party:</u>	The Czech Republic
<u>Date of communication:</u>	23 December 2006 (initial submission)

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

Meeting on 21 July 2009,

Adopts the following:

DECISION ON ADMISSIBILITY

1. The author of the communication is Mrs. Vera Kudrna, a United States citizen and former citizen of Czechoslovakia, born in 1934, currently residing in the United States. She claims to be a victim of a violation by the Czech Republic of article 26 of the International Covenant on Civil and Political Rights¹. 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, Mr. Lazhari Bouzid, Ms. Christine Chanet, 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 and Mr. Krister Thelin.

The text of an individual opinion signed by Committee member Mr. Rafael Rivas Posada is appended to the present decision

¹ The Optional Protocol to the International Covenant on Civil and Political Rights entered into force for the Czech Republic on 1 January 1993.

The facts as submitted by the author

2.1 The author left Czechoslovakia with her husband in September 1965. On 12 March 1976 she lost her Czechoslovak citizenship, and on 30 April 1976 she obtained citizenship of the United States.

2.2 The author owned one half of a villa in Prague. Her part of the villa was confiscated after she left the country and is now owned by the municipality. The author was rehabilitated by law 119/1990, but her property was never returned, as she did not fulfill the citizenship criteria.

2.3 On 17 October 1995, the author brought an action before the Praha 6 District Court, which rejected her complaint on the grounds that she had confirmed that she did not meet the precondition of citizenship envisaged in Act. No. 87/1991. She appealed this decision to the Prague Municipal Court, which dismissed her complaint on 16 June 1998. She then made an appeal to the Supreme Court, which was rejected on 18 December 1998, on the grounds that she had obtained American citizenship and had lost her Czechoslovak citizenship, and thus does not meet the requirements of restitution law 87/1991. She then made an application before the Constitutional Court, which was rejected on 15 November 1999, on the same grounds.

The complaint

3. The author claims that the State party's refusal to proceed with the restitution of her property for failure to meet the citizenship criteria constitutes discrimination on grounds of nationality, in violation of article 26 of Covenant.

The State party's submission on admissibility and merits

4.1 On 4 February 2008, the State party commented on the admissibility and merits of the communication.

4.2 On admissibility, the State party submits that the case is inadmissible for abuse of the right of submission, due to the fact that the author waited for over seven years after the decision of the Constitutional Court of 15 November 1999 before submitting her case to the Committee. While acknowledging that there is no explicit time limit for the submission of communications to the Committee, the State party refers to the limitation period of other international instances, notably the Committee on the Elimination of Racial Discrimination (CERD) - six months following exhaustion of domestic remedies - to demonstrate the unreasonable length of time the authors waited in this case. Even if the State party were to tolerate a slight deviation in the application of such a rule, it would not consider a period of more than one year to be reasonable. It argues that the author has failed to provide a reasonable objective explanation, which could include the provision of new facts, justifying the delay in her submission. The State party agrees with Mr. Amor's dissenting opinion in

*Zdenek Ondracka v. the Czech Republic*², and notes that the Committee's jurisprudence in this area is rather inconsistent.

4.3 The State party also submits that the communication is inadmissible *ratione temporis* given that the author's property was forfeited in 1966, a long time prior to the ratification of the Covenant and Optional Protocol by the Czechoslovak Socialist Republic.

4.4 On the merits, the State party refers to its earlier submissions in similar cases, and indicates that its restitution laws, including Act No. 87/1991, were part of two-fold efforts: to mitigate the consequences of injustices committed during the Communist rule, on one hand, and to carry out a comprehensive economic reform with the objective of introducing a well-functioning market economy, on the other. Since it was not possible to redress all injustices committed earlier, the restrictive preconditions were put in place, including that of citizenship, its main objective being to encourage owners to take good care of the property in the process of privatisation. The State party does not wish to reiterate its arguments in support of its policy contained in a number of earlier Czech property communications.

The Author's comments

5. On 2 July 2008, the author commented on the State party's submission, reiterating arguments previously made and explaining that she did not submit her complaint to the Committee immediately after the Constitutional Court decision, as she was waiting for an amendment in the law, which had happened before, and which would have prevented her from having to submit a communication to the Committee.

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. It also notes that the author has exhausted domestic remedies.

6.3. The Committee has noted the State party's argument that the communication should be declared inadmissible as an abuse of the right of submission because of the long delay between the final judicial decision in the case and the submission of the communication to the Committee. The Committee notes that the Optional Protocol does not establish time limits within which a communication must be submitted. It is only in exceptional circumstances that the delay in

² *Zdenek Ondracka v. the Czech Republic*, Views adopted on 31 October 2007.

submitting a communication can lead to the inadmissibility of a communication³. In this regard, it observes that the author waited over seven years after the date of the Constitutional Court judgment before submitting her complaint to the Committee. To justify the delay, the author simply argues that she was anticipating an amendment to the law with respect to the citizenship criteria, which would have averted the need to submit a communication to the Committee. However, she has failed to provide any clarification on the basis for her belief that such an amendment would be adopted. Nor has she demonstrated that the legislature was even considering such an amendment. In the particular circumstances of the present case, the Committee regards the delay to be so unreasonable and excessive as to amount to an abuse of the right of submission, which renders the communication inadmissible under article 3 of the Optional Protocol.

7. The Committee therefore decides:

- (a) that the communication is inadmissible under article 3 of the Optional Protocol;
- (b) that this decision shall be communicated to the author and to the State party.

[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.]

³ See Communication No. 1434/2005, *Fillacier v. France*, para. 4.3; and Communication No. 787/1997, *Gobin v. Mauritius*, para. 6.3.

APPENDIX

Individual opinion of Committee member Mr. Rafael Rivas Posada (dissenting)

The Human Rights Committee found the complaint submitted by Ms. Vera Kudrna against the Czech Republic to be inadmissible for abuse of the right of submission, on account of what it considered the “unreasonable and excessive” delay in submitting her complaint to the Committee. I disagree with this decision for two fundamental reasons.

The first concerns a problem often encountered by the Committee when it has to decide what constitutes an excessive delay in the submission of communications, which has so far been the only reason for applying the concept of abuse of the right to submission and consequently declaring a complaint inadmissible. It is common knowledge that neither the Optional Protocol to the International Covenant on Civil and Political Rights nor the Committee’s rules of procedure set a time limit for the submission of communications, but the Optional Protocol does identify abuse of the right of submission - though without specifying what it consists of - as grounds for finding a communication inadmissible. As the Optional Protocol makes no mention of permissible time limits, the debate has focused on the importance of setting out some criterion for the rejection of communications for excessive delay and, at the same time, on the relationship between excessive delay and abuse of the right to submission as grounds for inadmissibility. The Committee has not yet found a formula for setting a time limit for the submission of complaints, which has given rise to never-ending debates on the issue and to inconsistent and erratic jurisprudence, with the result that decisions are often contradictory and in many cases arbitrary. In the past, communications have been found admissible after delays of three, four, five or even seven years, in some cases without taking account of possible reasons for such delays or, in other cases - including complaints of alleged violations of article 26 of the Covenant by the Czech Republic - the particular circumstances in the State party that might explain the delays in sending communications to the Committee.

In the decision that concerns us here, the Committee set aside the majority of cases in which it had found communications submitted after a considerable lapse of time to be admissible, and considered that there was no acceptable justification in this case. However, in a number of earlier cases concerning possible violations of article 26 of the Covenant by the Czech Republic, the Committee had adjudged complaints submitted several years after the author had exhausted domestic remedies to be admissible, regardless of any reasons the complainant might have given for the delay. The Committee’s conclusion in the present case seems to me unjustified as it applies a different criterion to that used in the past to resolve similar cases.

The second reason for my dissent concerns the discriminatory nature of the Committee’s decision. In deciding to justify it on the grounds of excessive delay, for which the author has given

no satisfactory explanation, the Committee has treated her differently from previous complainants alleging violations of article 26, who received favourable treatment in that their communications were deemed admissible and the Czech Republic was found to have violated article 26, notwithstanding the delay in submission. Ms. Kudrna has therefore been unfairly discriminated against, which is a rather curious act of discrimination by the Committee itself, in finding inadmissible a case of alleged discrimination by the State party.

As long as the current vagueness persists over an acceptable time limit for the submission of communications, and over a definition of abuse of the right of submission as grounds for inadmissibility, the difficulties the Committee has encountered in deciding on cases like this one will also persist, with negative consequences for the necessary consistency of this treaty body's jurisprudence.

For the reasons given, I consider that the Committee should have found communication No. 1582/2007 admissible, although this opinion cannot be considered as prejudging the merits of the case, that is, whether or not the State party's conduct constituted a violation.

[*Signed*]: Mr. Rafael Rivas Posada

[Done in English, French and Spanish, the Spanish text being the original version. Subsequently to be issued in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]
