

**International Covenant on
Civil and Political Rights**Distr.: General
4 December 2012

Original: English

Human Rights Committee**Communication No. 1849/2008****Decision adopted by the Committee at its 106th session
(15 October–2 November 2012)**

<i>Submitted by:</i>	M.B. (not represented by counsel)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Czech Republic
<i>Date of communication:</i>	24 April 2006 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 12 December 2008 (not issued in document form)
<i>Date of adoption of decision:</i>	29 October 2012
<i>Procedural issues:</i>	Non-exhaustion of domestic remedies; abuse of the right of submission
<i>Subject matter:</i>	Discrimination on the basis of citizenship
<i>Substantive issue:</i>	Equality before the law
<i>Article of the Covenant:</i>	26
<i>Article 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 (106th session)

concerning

Communication No. 1849/2008*

Submitted by: M.B. (not represented by counsel)
Alleged victim: The author
State party: Czech Republic
Date of communication: 24 April 2006 (initial submission)

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

Meeting on 29 October 2012,

Adopts the following:

Decision on admissibility

1. The author of the communication is M.B., a naturalized American citizen born in the former Czechoslovakia in 1933. She claims to be victim of a violation by the Czech Republic of her rights under article 26 of the International Covenant on Civil and Political Rights.¹ She is not represented.

The facts as presented by the author

2.1 The author left Czechoslovakia for political reasons in 1976 and emigrated to the United States of America, where she has since lived. In 1987, she obtained American citizenship and lost her Czechoslovakian citizenship.²

2.2 The author submits that at the time of her departure, she left behind a brick cottage in the Petrov cadastral area, with a loft and a basement. It was built with all the required comforts and plumbing, because the author's family intended to use it as their principal

* The following members of the Committee participated in the examination of the present communication: Mr. Yadh Ben Achour, Ms. Christine Chanet, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Mr. Walter Kälin, Ms. Zonke Zanele Majodina, Mr. Michael O'Flaherty, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabián Omar Salvioli, Mr. Marat Sarsembayev and Mr. Krister Thelin. Pursuant to rule 91 of the Committee's rules of procedure, Mr. Gerald Neuman did not participate in the consideration of this communication.

¹ The Optional Protocol entered into force for the Czech Republic on 1 January 1993, as a consequence of the notification by the Czech Republic of its succession to the international obligation of the Czech and Slovak Federal Republic, which had ratified the Optional Protocol in March 1991.

² On the basis of article I of the bilateral Naturalization Treaty of 16 July 1928 between the United States and Czechoslovakia.

retirement place. Due to the author's unauthorized departure, her property was confiscated by a court's decision on an unspecified date. The author estimates that the said property is currently worth about 2.5 million Czech koruny.³

2.3 On an unspecified date, pursuant to Act No. 119/1990 on Judicial Rehabilitation, the author and her husband were rehabilitated and the court decision whereby the author's property was confiscated has been abrogated.

2.4 The author took several steps to reclaim the property. First, she contacted a lawyer, and on 28 February 1991 was informed that the Federal Assembly of the Czech and Slovak Federal Republic on 21 February 1991 had passed an Act on Judicial Rehabilitation (entered into force on 1 April 1991). According to article 3 of the Act, an entitled person whose property passed to the ownership of the State was someone who was a citizen of the Czech and Slovak Federal Republic and had permanent residency on its territory. Consequently, if the author wished the return of her property, she had to meet aforementioned requirements.

2.5 Second, the author contacted the Office of the President of the Czech and Slovak Federal Republic and, on 31 October 1991, she was informed that the Federal Assembly, in an attempt to mitigate wrongs done between 1948 and 1989, had passed a number of restitution Acts, inter alia, Act No. 119/1990 on Judicial Rehabilitation, Act No. 87/1991 on Extrajudicial Rehabilitation, and Act No. 92/1991 on Transfer of State Property to Other Persons. The author was further informed that in the preambles of these restitution acts it was stated that these acts were mitigating only some wrongs and that various injustices, by which all decent citizens of the respective State were more or less affected, could never be entirely rectified and that the initiated legal proceedings were meant to rectify at least the worst injustices and to prevent the occurrence of similar wrong-doings in the future. Finally, the author was informed that Act No. 87/1991, article 3, provided that citizens of the Czech and Slovak Federal Republic who had permanent residency in the country were entitled to the restitution of their property.

2.6 On an unspecified date, the author requested the Czech Office for Survey, Mapping and Cadastre in Prague-West to transfer the respective property ownership to her. However, on 10 October 1995 she was informed that in order to regain her property rights, she had to comply with the preconditions set by Act No. 87/1991.

2.7 On an unspecified date, the author applied for the renewal of her Czech citizenship, which she was granted on 22 January 2002, i.e. after the deadline for submitting applications for restitution of properties pursuant to Act No. 87/1991.

2.8 The author contends that in any event, no effective remedies were available to her and, referring to the decision of the Constitutional Court of 4 June 1997 approving the nationality requirement encompassed under Act No. 87/1991 as compatible with the Czech Constitution, contends that she has no effective remedies to exhaust.

The complaint

3. The author claims that she is a victim of discrimination, and argues that the requirement of citizenship for restitution of her property under Act No. 87/1991 is in violation of article 26 of the Covenant.

³ About 100,000 euros.

State party's observations on admissibility and merits

4.1 By note verbale of 21 May 2009, the State party presented its observations on the admissibility and the merits of the communication. It notes that the author emigrated from Czechoslovakia and settled abroad. The author became a citizen of the United States on 10 July 1987 and, as a consequence, lost her Czechoslovakian citizenship under the Naturalization Treaty of 16 July 1928 between Czechoslovakia and the United States. She reacquired Czech citizenship on 22 January 2002.

4.2 The State party requested information from the Czech Office for Survey, Mapping and Cadastre in Prague-West on the author's former property—recreational chalet No. 1167 in the Petrov cadastral area. However, the Office explained that the respective property was not registered in the Land Register of the Petrov cadastral area.

4.3 The State party further notes that the author did not exhaust domestic remedies with regard to the restitution proceedings, as she has never initiated court proceedings for the purpose of reinstating her ownership of the property in question. It recalls that under article 5, paragraph 2 (b), of the Optional Protocol to the Covenant, the Committee is precluded from considering any individual communications unless it has ascertained that available domestic remedies have been exhausted.

4.4 In this regard, the State party submits that there exists in the Czech Republic a court system composed of several levels, with the Constitutional Court at the top. The State party notes that the author of the present communication mentions only the absolute minimum information about the allegedly confiscated property. Consequently, since the author did not resort to domestic remedies available within the national court system, including by submitting a complaint to the Constitutional Court, some significant facts relating to the circumstances of her communication were not verified at the national level and the Czech courts were not given an opportunity to examine the merits of the author's discrimination claims within the meaning of article 26 of the Covenant.⁴

4.5 The State party emphasizes that a letter to a counsel, to the President of the Republic or to the cadastral office cannot be considered as a use of a remedy; only an action for the surrender of a thing brought with a competent court may be considered as such. Accordingly, the State party believes that the author's communication therefore should be regarded as inadmissible pursuant to article 5, paragraph 2 (b), of the Optional Protocol to the Covenant.

4.6 The State party further contends that the communication should be declared inadmissible as constituting an abuse of the right of submission under article 3 of the Optional Protocol. It notes that the Optional Protocol does not set forth any fixed time limits for submitting a communication and that a mere delay in submitting a communication in itself does not present an abuse of the right of its submission. At the same time, however, the State party believes that when authors approach the Committee after a time period that is clearly unreasonable and without any reasonable justification for such a delay it can constitute an abuse of the right of submission of a communication to the Committee.⁵

⁴ The State party refers to the Committee's jurisprudence in communication No. 1515/2006, *Schmidl v. Czech Republic*, decision of inadmissibility adopted on 1 April 2008, para. 6.2.

⁵ The State party makes reference, inter alia, to the Committee's decisions in communications No. 1434/2005, *Fillacier v. France*, decision of inadmissibility adopted on 27 March 2006, para. 4.3; No. 787/1997, *Gobin v. Mauritius*, decision of inadmissibility adopted on 16 July 2001, para. 6.3; and No. 1452/2006, *Chytil v. Czech Republic*, decision of inadmissibility adopted on 24 July 2007, para. 6.2.

4.7 The State party notes that the Covenant provides neither for the right to peaceful enjoyment of property nor for the right to compensation for past injustices, but the author directs her criticism towards the restitution law. The State party believes that in the absence of any decision of domestic courts in the author's case, it should be concluded that the latest legally relevant fact is, in this respect, the moment of expiry of the time limit granted by the restitution laws for delivering the request to the liable person currently possessing the object in dispute. In fact, at the moment when such time limit elapsed, restitution laws ceased to be applicable, and if these laws discriminated against her, as she alleges, the situation of discrimination ended. The State party further notes that it is scarcely possible to base one's thinking on a hope that the laws will be changed; such hope is not an expectation protected by law.

4.8 In the present case, the time limit for delivering the request to the liable person to surrender the contested property expired under Act No. 87/1991 on 1 April 1995. However, the author submitted her case to the Committee only on 24 April 2006, with a delay of more than 11 years after the expiry of the normal time limits for steps to be taken when using restitution laws.

4.9 In the light of the above, the State party suggests that the Committee adopt the approach of the European Court of Human Rights, which rejects any application if it has been submitted outside the six-month time limit following the final domestic courts' decision, in accordance with article 35, paragraph 1, of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

4.10 Further, in the State party's opinion it is appropriate to require the author to provide, in respect of the delay, a reasonable explanation that has an objective basis and that is also sustainable. The lack of abuse of the right of submission, in other words, the observance of the obligation to attend to one's rights, known in a number of legal orders, cannot be dependent only on the extent to which the author, ex post facto, believes subjectively that he/she had an opportunity to approach the Committee only after a long period of time.⁶

4.11 The State party further submits that the Committee's conclusions on the admissibility of various communications as regards the length of the time period seem to be rather inconsistent and far from legal certainty.

4.12 In the light of the above, the State party reiterates that, by approaching the Committee many years after 1 April 1995 (see para. 4.8 above) without providing any objective and reasonable explanation, the author has abused her right to submit a communication to the Committee.

4.13 On the merits, the State party notes that the author has failed to demonstrate, both at the domestic level and in the present communication, that she was the owner of the property which was passed to the State's ownership under the conditions stipulated in the Act on Extrajudicial Rehabilitation. The State party reiterates that, according to the information provided by its competent authorities in cadastral matters, the property specified by the author is not in the registry. According to the State party, if the author cannot demonstrate that she owned the specific property that had been passed to the State's ownership, then it cannot be concluded that she was not given equal protection by the national law and that she was discriminated against because of the impossibility to get the alleged property back. Consequently, the State party maintains that the author's communication should be declared unsubstantiated and manifestly ill-founded.

⁶ In this regard, the State party makes reference to the Committee's jurisprudence in communication No. 1533/2006, *Ondracka and Ondracka v. Czech Republic*, Views adopted on 31 October 2007.

4.14 In any case, the State party notes that the right protected by article 26 of the Covenant, invoked by the author, is an autonomous one, independent of any other right guaranteed by the Covenant. It recalls that in its jurisprudence, the Committee has reiterated that not all differences of treatment are discriminatory, and that a differentiation based on reasonable and objective grounds does not amount to a violation of article 26.⁷

4.15 According to the State party, article 26 does not imply that a State would be obliged to set right injustices of the past, especially considering the fact that the Covenant was not applicable at the time in the former Czechoslovakia. Referring to its previous observations in similar cases, the State party reiterates that it was not feasible to remedy all injustices of the past, and that as part of its legitimate prerogatives, the legislator, using its margin of appreciation, had to decide over which factual areas and in which way it would legislate, so as to mitigate damages. The State party concludes that no violation of article 26 occurred in the present case.

4.16 Despite the Committee's decision-making practice, the State party still believes that in stipulating the conditions under which certain injustices committed in the past would be partially redressed or mitigated, the legislator possessed a margin of appreciation within which it could also lay down the citizenship requirement on the part of the applicants requesting the surrender of property. However, it does not wish to reiterate all the arguments in support of this assertion, contained in a number of its previous observations on the admissibility and merits of the communications submitted to the Committee, as well as in the constructive dialogue with the Committee that has taken place when discussing the State party's periodic reports on the fulfilment of its obligations under the Covenant.

Author's comments on the State party's observations

5.1 On 6 September 2009, the author enclosed a number of documents certifying that the contested property on Stepanka Street 1 – 11000, Prague, belonged to her husband, Mr. B., or to both of them, Mr. and Ms. B. Ms B. explains that Mr. B. died on 3 May 1993 and ever since she had been trying to regain the ownership of their property on her own.

5.2 The author further explains that following the political changes in 1989, the author and her husband travelled a number of times to Prague in an effort to regain their ownership of the contested property; however, they were informed by several counsels that they did not have the right to regain ownership of the respective property. They then sought advice from the Chancellor in Prague and from the Office of the President of the Czech and Slovak Federal Republic, in vain.

5.3 In 1992 the author and her husband again travelled to Prague to apply for Czech citizenship in order to be eligible to reclaim their property. However, they were told that they had to wait, as at the material time the authorities were reinstating citizenship only to those who were moving back to Czechoslovakia.

5.4 After the author regained her Czech citizenship on 22 January 2002, she was told by the legal counsels and State authorities that it was too late to regain her property in accordance with Act No. 87/1991, as all the deadlines had passed.

⁷ The State party refers to the Committee's jurisprudence in communication No. 182/1984, *Zwaan-de Vries v. Netherlands*, Views adopted on 9 April 1987, para. 13.

Additional submissions by the State party

6.1 On 7 January 2010, on the basis of additional information presented by the author, the State party acknowledges that before her emigration from Czechoslovakia the author had owned with her husband recreational chalet No. 1167 in the Petrov cadastral area.

6.2 The State party submits that the author's allegations that she was not able to acquire Czech citizenship in 1991 (or even before) are unfounded. On the contrary, despite the Naturalization Treaty concluded between Czechoslovakia and the United States, inter alia, applicants for recovery of property could acquire Czech citizenship from 1990 on the basis of an application and also within the time limit for submitting restitution claims. The Ministry of the Interior of the former Czech and Slovak Federal Republic granted all the applications for Czech citizenship, which were submitted in 1990 to 1992 by former Czech (or Czechoslovakian) citizens who had acquired American citizenship. The State party notes, as an example, that in 1991 72 persons became Czech citizens this way.

6.3 Finally, the State party reiterates that the present communication should be declared inadmissible due to the non-exhaustion of domestic remedies or/and due to the abuse of the right of submission and partially inadmissible *ratione temporis*. Or, in any event, the Committee should declare that in the instant case the Czech Republic has not violated article 26 of the Covenant.

Issues and proceedings before the Committee

7.1 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.

7.2 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.

7.3 The Committee has noted the State party's argument that the communication should be considered inadmissible on the ground of non-exhaustion of domestic remedies. The Committee refers to its established jurisprudence that, for purposes of the Optional Protocol, the author of a communication need not exhaust domestic remedies when these remedies are known to be ineffective. The Committee notes that because of the preconditions of Act No. 87/1991, the author could not claim restitution because at the time concerned she did not have Czech citizenship. In this context, the Committee notes that other claimants have unsuccessfully challenged the constitutionality of the law in question; that earlier Views of the Committee in similar cases remain unimplemented and that despite those complaints, the Constitutional Court upheld the constitutionality of the Act on Extrajudicial Rehabilitation. The Committee therefore concludes that the author was not obliged to exhaust any remedies at the national level.⁸

7.4 The Committee has also noted the State party's argument that the communication amounts to an abuse of the right of submission under article 3 of the Optional Protocol. In the consideration of the present communication, the Committee applies its jurisprudence which allows for finding an abuse where an exceptionally long period of time has elapsed before the presentation of the communication, without sufficient justification.⁹ In this connection the Committee notes that the author approached the Committee with the present

⁸ The Committee reached a similar conclusion in communication No. 1497/2006, *Preiss v. Czech Republic*, Views adopted on 17 July 2008, para. 6.5.

⁹ See communication No. 1615/2007, *Zavrel v. Czech Republic*, Views adopted on 27 July 2010, para. 8.6.

communication almost 15 years after the contested Act No. 87/1991 entered into force and almost 11 years after the said Act expired. The Committee observes that the author has not provided any explanation for such a delay other than the mere statement that at that time she was unable to regain her Czech citizenship. In this instance, although the State party raised the issue that the delay amounts to an abuse of the right of petition, the author has not explained or justified why she waited for nearly 15 years before submitting her communication to the Committee. In the light of these elements, read as a whole, and taking into account the fact that the *Simunek* decision of this Committee¹⁰ was rendered in 1995 (the first communication decided by the Committee with regard to property matters in the Czech Republic), the Committee thus regards the delay to be so unreasonable and excessive as to amount to an abuse of the right of submission. Accordingly, it declares, in the particular circumstances of the present case, the communication inadmissible pursuant to article 3 of the Optional Protocol.

7.5 The Human Rights 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 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. 516/1992, *Simunek et al. v. Czech Republic*, Views adopted on 19 July 1995.