



## Walter Obodzinsky, et al. v. Canada

Communication No. 1124/2002, U.N. Doc. CCPR/C/89/D/1124/2002 (2007)

**Country:** Canada

**Region:** Americas

**Year:** 2007

**Court:** United Nations Human Rights Committee United Nations Human Rights Committee

**Health Topics:** Aging, Chronic and noncommunicable diseases

**Human Rights:** Freedom from torture and cruel, inhuman or degrading treatment, Right to acquire nationality, Right to due process/fair trial, Right to liberty and security of person, Right to life, Right to privacy

### Facts

The author, an elderly Canadian national in poor health, alleged that citizenship revocation proceedings against him violated his rights under articles 6, 7, 9, 14, and 17 of the International Covenant on Civil and Political Rights (the "Covenant").

The author was a Polish national who came to Canada in 1946 under a government order where Canada agreed to accept 4,000 former members of the Polish Armed Forces. He became a Canadian citizen in 1955. In 1993, the Canadian Government was advised that multiple witness statements in England linked the author with the Nazi forces and criminal conduct. In 1995, the Government conducted an inquiry. The author, who was 76 years old at the time, notified the authorities that he had a heart condition. The inquiry determined that the author had entered Canada by fraudulent means and citizenship revocation proceedings began against him in 1999. A few months into the proceedings, the author suffered his second heart attack.

The author applied to the Trial Division of the Federal Court for a stay of the revocation proceedings on the grounds that, in light of his age and health, the proceedings impaired his right to life, liberty and security of person. The court dismissed the motion on the grounds that the case was not a criminal proceeding, but noted that if it were, then the author would not be fit for proceedings. The author appealed the decision, but the appeal was dismissed. The author filed two motions in 2002 to question the constitutionality of certain provisions of the Citizenship Act, but the motions were dismissed and the court chose to defer its decision on constitutionality of the provisions related to the revocation procedure.

The author died in 2004 before his citizenship had been revoked. His daughter chose to continue the claim with the Human Rights Committee.

The author claimed that the following rights were violated under the Covenant:

Article 6: that the proceedings posed a risk to his life as he was unable to bear the additional stress.

Article 7: that the proceedings could have caused a deterioration of his health, perhaps even death, and therefore violated his right to freedom from cruel, inhuman or degrading treatment or punishment.

Article 9: that the proceedings violated his right to security of the person as his life and liberty were in jeopardy.

Article 14: that his health rendered him unable to defend himself or to participate in his defense.

Article 17: that the proceedings caused arbitrary or unlawful interference with his privacy and were likely to damage his reputation.

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### Decision and Reasoning

The Committee held that the claims under articles 6, 9, 14, and 17 were inadmissible. While the article 7 claim was admissible, the Committee held that there was no violation.

With regards to the claim under article 7, the Committee found that there was not a violation. It was noted that there may be exceptional circumstances where putting an unhealthy person on trial might be sufficient to be a violation of the right to freedom from cruel, inhuman or degrading treatment or punishment. For example, the conditions might be sufficient where there was a serious health risk and the trial involved

charges for relatively minor offenses. In the present case, however, the Committee found that the charges were serious as they involved war crimes. The Committee also found that the citizenship revocation proceedings did not require the author's presence and were in fact conducted mostly in writings. Also, the medical affidavits presented by the author did not conclusively show that the impact on his health would be extensive. As a result of these factors, the Committee found that there was not a violation of article 7.

With regards to article 6, the Committee found the claim inadmissible because the author failed to substantiate the claim that his capacity was so impaired that he was unable to defend himself without endangering his health and life. The Committee noted that even though the author's capacity to defend himself might be limited, the citizenship revocation proceedings did not require his in-person participation.

With regards to article 9, the Committee found the claim inadmissible because the author failed to substantiate the claim, as the initiation of judicial proceedings against a person was insufficient to constitute a breach of security of the person and the indirect impacts on a person's health are not covered by the concept of 'security of person'.

With regards to article 14, the Committee found the claim inadmissible because a claim under article 14 can only be brought if the alleged victim can show that an act or omission of the Government party has already adversely affected them or is imminently about to affect them. As the State had never taken any decision on the author's case, that was not the case here.

With regards to article 17, the Committee found the claim inadmissible because "even if this provision did cover the notion of an arbitrary violation of privacy and reputation, this is not the sense in which it was raised by the author before the national courts." Thus, the author had not exhausted domestic remedies on this claim.

### **Decision Excerpts**

"9.2...The Committee acknowledges that there may be exceptional circumstances in which putting a person in poor health on trial may constitute treatment incompatible with article 7, for example, where relatively minor justice issues or procedural convenience are made to prevail over relatively serious health risks. No such circumstances exist in the present case, in which the citizenship revocation proceedings were provoked by serious allegations that the author participated in the gravest crimes."

"9.2...[T]he Committee notes that the citizenship revocation proceedings were conducted primarily in writing and that the author's presence was not required. Moreover, the author has not shown how the initiation and continuation of the citizenship revocation proceedings constituted treatment incompatible with article 7 since, as already mentioned, the conclusions of the medical affidavits he obtained differed on the impact of the proceedings on his health."