

Ms. Constance Ragan Salgado v UK (Communication No. 11/2006)

1) Reference Details

Jurisdiction: United Nations Committee on the Elimination of Discrimination against Women

Date of Decision: 22 January 2007

Link to full case:

<http://daccessdds.un.org/doc/UNDOC/GEN/N07/232/47/PDF/N0723247.pdf?OpenElement>

2) Facts

The author of the communication, Constance Ragan Salgado, was a British citizen born who resided in Bogotá, Colombia, at the time of the communication's submission. Her eldest son, Alvaro John Salgado, was born in Colombia in 1954 of a Colombian father. At that time, the author made an application to the UK Consulate to obtain British nationality for her son and was told that the entitlement to British nationality came through the paternal line; as his father was Colombian, her son was considered an alien.

The British Nationality Act 1981 ("the 1981 Act"), which entered into force in 1983, amended previous nationality legislation and conferred equal rights to women and men in respect of the nationality of their children under the age of 18. The author was told that her son still did not qualify for British citizenship under the 1981 Act. The author protested by letter to the British Consul and to the Home Office, claiming that, had her son claimed British nationality through a British father instead of through her, no age limit would have applied to him.

British nationality legislation again changed when the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act") entered into force on 30 April 2003 and added s. 4C to the 1981 Act ("Acquisition by Registration: Certain persons born between 1961 and 1983"). Children — by now adults — born abroad between 7 February 1961 and 1 January 1983 of British mothers would now be eligible to register as British nationals if they satisfied certain other conditions. In early 2003, the British Consul in Bogotá contacted the author to enquire as to whether she had any children born after 7 February 1961. She replied that her youngest son was born in 1966 and had acquired British nationality, but that her eldest son still had not. She was told that he did not qualify due to the fact that he was born before the cut-off date established under the 2002 Act.

3) Law

- UN Convention on the Elimination of All Forms of Discrimination against Women, articles 1, 2(f) and 9(2)

4) Legal Arguments

The Author

The author alleged that she has suffered sex-based discrimination on account of the British Nationality Act 1948 ("the 1948 Act"), under which she was unable to register her son as a

British national because the 1948 Act provided for citizenship by descent from a father but not from a mother. She claimed that the discrimination had been continuous because it was neither eliminated under the 1981 Act nor under the 2002 Act and her son remained ineligible to acquire British nationality by registration on account of his age. On this basis the author maintained that discrimination against women had only been partially corrected through legislation, and that she has continued to be unable to transmit her citizenship to any children born abroad “on equal terms with men”, because children who were already adults before 1981 are not covered under current legislation.

She maintained that the 2002 Act discriminates against her and other British mothers whose children, having foreign fathers, were born abroad before 7 February 1961. As regards the exhaustion of all available domestic remedies, the author claimed that, by making repeated applications for the citizenship of her eldest son since his birth through the British Consulate, the Home Office, correspondence with government officials and legal advisers, she has exhausted all those remedies available to her, and in order to obtain the justice she sought, the law had to be changed. She maintained that the avenue of judicial procedure constituted an enormous and impossible task far beyond her capabilities and energies.

State

The State party argued that the communication was inadmissible on several grounds. It submitted that domestic remedies had not been exhausted as there was no evidence to suggest that the author has ever sought to challenge any of the decisions relating to her son’s citizenship through the English courts; changes in the law aimed at remedying any previous discrimination were brought into effect before the Convention or Optional Protocol entered into force; the author ceased to be a “victim” on the date that her son achieved the age of majority; and the communication was manifestly ill-founded due to the reservation entered by the UK in relation to article 9 upon ratification of the Convention which allowed the UK to maintain certain “temporary and transitional provisions” contained in the 1981 Act.

5) Decision

The Committee found the communication to be inadmissible *ratione temporis*. It considered that the alleged discrimination complained of originated at the time of the birth of the author’s eldest son (16 September 1954), well before the Optional Protocol or even the Convention were adopted, and that such discrimination against the author and other women stopped on 7 February 1979 with the new government policy, which also both preceded the entry into force of the Optional Protocol. The Committee also found that all domestic remedies had not been exhausted as the issue had not been raised in substance before the domestic courts.