



International Covenant on Civil and Political Rights

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Human Rights Committee

Communication No. 1803/2008

Views adopted by the Committee at its 106th session (15 October–2 November 2012)

Submitted by: Dmitriy Vladimirovich Bulgakov (not represented by counsel)

Alleged victim: The author

State party: Ukraine

Date of communication: 23 May 2008 (initial submission)

Document references: Special Rapporteur's rule 97 decision, transmitted to the State party on 15 August 2008 (not issued in document form)

Date of adoption of decision: 29 October 2012

Subject matter: Spelling of author's name according to Ukrainian orthography in identity documents

Procedural issues: None

Substantive issues: Arbitrary and unlawful interference with private life; prohibition of discrimination; protection of minorities

Articles of the Covenant: 17, 26 and 27

Article of the Optional Protocol: 2

Annex

Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights (106th session)

concerning

Communication No. 1803/2008*

Submitted by: Dmitriy Vladimirovich Bulgakov (not represented by counsel)

Alleged victim: The author

State party: Ukraine

Date of communication: 23 May 2008 (initial submission)

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

Meeting on 29 October 2012,

Having concluded its consideration of communication No. 1803/2008, submitted to the Human Rights Committee by Dmitriy Vladimirovich Bulgakov under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1. The author of the communication is Dmitriy Vladimirovich Bulgakov, a Ukrainian citizen of Russian origin, born in 1974. He claims to be a victim of violations by Ukraine of his rights under articles 17, 26 and 27 of the International Covenant on Civil and Political Rights. The Covenant and Optional Protocol to the Covenant entered into force for Ukraine on 23 March 1976 and 25 October 1991, respectively. The author is unrepresented.

The facts as presented by the author

2.1 The author was born in the former Byelorussian Soviet Socialist Republic (one of the republics of the former Soviet Union). Since 1986 he has lived in the Autonomous Republic of Crimea (Ukraine). On 21 September 1990, he received his first Soviet passport,

* 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. Gerald L. Neuman, Mr. Michael O'Flaherty, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabián Omar Salvioli, Mr. Marat Sarsembayev, Mr. Krister Thelin and Ms. Margo Waterval.

issued in Russian and Ukrainian, in which his name was transcribed as “Дмітрій Владімірович” (Dmitriy Vladimirovich).

2.2 On 24 August 1991, the date of declaration of independence of Ukraine, the author became a Ukrainian citizen. Subsequently, in the internal and external passports¹ issued to him in 1997 and 1998, respectively, his name and patronymic were changed, against his will, from “Дмітрій Владімірович” (Dmitriy Vladimirovich) to “Дмитро Володимирович” (Dmytro Volodymyrovych). According to the author, this constituted a violation of his right to integrity of his given name and patronymic and an unjustified interference with his right to respect for his private and family life, in violation of article 17 of the Covenant.

2.3 On an unspecified date, the author submitted appeals to the Passport Service of the Kiev District Department of the Simferopol City Board and to the Main Board of the Ministry of Internal Affairs of Ukraine in Crimea, asking that his given name and patronymic be restored to their original phonetic form in his identity documents. Those appeals were dismissed on 30 April 1999 and 15 May 2000, respectively. Further, on 14 July 1998 (regarding the external passport) and 13 June 2000 (regarding the internal passport), the author filed complaints before the Kiev District Court, asking that his given name and patronymic be restored to their original phonetic form. Both claims were dismissed, on 16 August 1999 (regarding the external passport) and on 7 August 2000 (regarding the internal passport). He appealed the first instance decisions before the Supreme Court of Crimea, but both appeals were dismissed, on 2 February 2000 and 30 August 2000, respectively.

2.4 On 21 July 2000, the author lodged an application (No. 59894/00) with the European Court of Human Rights for alleged violation of articles 8 and 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. On 11 September 2007, the Court dismissed his claims.

2.5 On 25 September 2007, the author lodged an application with the Civil Status Registration Department of the Kiev District of Simferopol, requesting to change his given name and patronymic, according to a specific procedure for changes of names, mentioned by the European Court of Human Rights in its judgment. However, on 14 November 2007, this application was also dismissed by the Civil Status Registration Department, and the latter in its reply underlined that the procedure for examining applications for name changes was not applicable to the author’s situation. The author maintains that he has exhausted all available domestic remedies.

The complaint

3.1 With regard to article 17 of the Covenant, the author claims that, by unilaterally changing his given name and patronymic and by precluding him from restoring their original phonetic form in his identity documents, the State party violated his natural right to preserve his name and violated article 17 of the Covenant, i.e. his right to respect for family and private life. He further claims that the State party’s domestic courts did not provide any justification as to why the “Ukrainianization” of his names would be necessary to protect the rights and freedoms of others and therefore the interference with his right to private and family life did not pursue a legitimate aim. He also submits that the change of his names resulted in numerous misunderstandings, since the Ukrainian pronunciation of his names sounded “rough and ridiculous” in Russian and he was often subjected to “mockeries” by Russian-speaking fellow citizens in Crimea, where there were “anti-Ukrainian sentiments”.

¹ Two types of passports are issued by the Ukrainian authorities, commonly known as the internal passport (the main domestic identification document) and external/international passport for international travel.

3.2 In this connection, the author draws attention to the fact that a law that would provide for the change of original names into Ukrainian names does not exist in the State party. On the contrary, the Council of Europe Framework Convention for the Protection of National Minorities of 1 February 1995 (ratified by Ukraine on 26 January 1998), the Ukrainian Law on Languages of 28 October 1989, the Law on National Minorities of 25 June 1992 and the Civil Code of Ukraine of 16 January 2003 all provide for the spelling and the use of the original names of citizens of Ukraine in their respective original phonetic form.

3.3 In this context, the author contends that the practice of the “Ukrainianization” of the given names of individuals belonging to the two other nations of the Eastern Slavic group (Russians and Belarusians) cannot be imposed on individuals against their will, since it contradicts national laws. He maintains that the Ukrainian authorities implement such a practice, which, according to the author, is aimed at the assimilation of the Russian national minority in Ukraine.

3.4 The author notes that while the Russian minority in Ukraine constitutes about 40 per cent of the total population of Ukraine, Russians constitute around 70 per cent of the Crimean peninsula’s total population. Moreover, Crimea is an autonomous republic within the State party. Article 11 of the Constitution of the Autonomous Republic of Crimea provides that in the Autonomous Republic of Crimea official documents certifying the status of a citizen shall be issued in both Ukrainian and Russian. However, all official documents issued by the authorities to the author are in the Ukrainian language only. The author maintains, with regard to article 27 of the Covenant, that since the original name of a person is an essential element of his or her ethnic, cultural and linguistic identity, Ukrainian authorities violated his right to enjoy his own culture and use his own language.

3.5 The author considers himself a victim of discrimination prohibited under article 26 of the Covenant read together with article 17, based on his national origin. He claims that the fact that only the given names and patronymics of Russian origin are subject to “Ukrainianization” and that the domestic courts and other Ukrainian bodies dismissed his request to restore his given name and patronymic to their original phonetic form implies that only individuals of Russian origin are deprived of the possibility to preserve their original given names and patronymics.

State party’s observations

4.1 On 10 February 2009, the State party reiterated the facts relating to the issuance of the author’s identity documents and his attempts to revert to his original names through the courts. The State party further submits that the author complained to the European Court of Human Rights regarding violations of his rights under articles 8 and 14 of the European Convention on Human Rights and that his application was rejected with the following motivation. Firstly, the procedure foreseen by the Ukrainian legislation for changing one’s name was not particularly complicated, with no excessive burden placed on the author, but the latter never used this procedure. The refusal of the domestic courts to order the issuing of new passports reflecting a particular form and spelling of the applicant’s name, when he could have sought its change under the specific procedure, could not “be deemed to have been unreasonable or arbitrary”. Accordingly, the Court found no violation of article 8 of the Convention. Secondly, the Court considered that there existed differences regarding the translation of certain names, which, however, were not related to the ethnic origin of the individual. The Court recognized the right of the Contracting State to establish a rule, in accordance with the longstanding and generally accepted tradition of using two different forms of the same name in Russian and Ukrainian, which rule applied in the absence of any clearly expressed wish of the person concerned to the contrary. The Court also noted that it had not been shown that the author could not obtain a departure from that rule if he were to follow the procedure for a change of name. Accordingly, the Court found no violation of article 14 of the Convention.

4.2 The State party submits that, on 25 September 2007, the author submitted to the Civil Status Registration Department of the Kiev District of Simferopol a request to change his given name and patronymic. On 9 October 2007, his request was rejected, with the explanation that the Procedure for Considering Applications for Change of Name of a Natural Person, approved by Ordinance No. 915 of the Council of Ministers of 11 November 2007, does not foresee the registration of the change of name and patronymic with indication of particular transcription, and he was recommended to make a notarized translation (with transcription) of the names contained in his birth certificate. Rather than filing a second application to the Civil Status Registration Department supplementing it with the above notarized translation, the author proceeded to file a request for a new passport with the Department of Citizenship, Immigration and Registration of Natural Persons of the Kiev District Department of the Simferopol Division of the Ministry of the Interior. The latter rejected his request on 14 November 2007, stating that a birth certificate can be used by citizens as the basis for the issuance of a passport only when they first reach the age of 16. The State party maintains that the author was supposed to file a second request for name change to the Civil Status Registration Department and apply for a passport after being issued a certificate for a name change, based on Ordinance No. 915.

4.3 In addition, the State party submits that in the Eastern Slavic countries (Ukraine, Belarus and the Russian Federation), in accordance with the established practice, names and patronymics, when translated from one language into another, are not transcribed but are “replaced by the corresponding, historically established, equivalent”. The rules for that replacement are reflected in the Ukrainian grammar book *Ukrainian Spelling*. The State party states that the above rules were also applicable in 1990.

Author's comments on the State party's observations

5.1 On 14 April 2009, the author submitted that on 25 September 2007, he had indeed filed a request with the Civil Status Registration Department of the Kiev District of Simferopol to change his given name and patronymic. On 9 October 2007, his request was rejected, with the explanation that the Procedure for Considering Applications for Change of Name of a Natural Person, approved by Ordinance No. 915 of the Council of Ministers of 11 November 2007, does not foresee the registration of the change of name and patronymic with indication of particular transcription. It was recommended he use the procedure provided for under article 294 of the Civil Code of Ukraine,² and make a notarized translation (with transcription) of the names contained in his birth certificate.

5.2 On 16 October 2007, the author obtained a notarized translation (with transcription) of the names contained in his birth certificate. He submits that, according to point 16 of the Regulation Regarding the Passport of the Ukrainian Citizen, approved by the Supreme Council of Ukraine on 2 September 1993: “A replacement of a passport shall be effectuated in case of: 1. Change in the family name, the patronymic or the name; 2. Establishment of a discrepancy in the records; 3. Unsuitability for usage.”³ On 18 October 2007, the author applied to the Head of the Department of Citizenship, Immigration and Registration of Natural Persons of the Kiev District Department of the Simferopol Division of the Ministry of Interior to replace his internal passport, taking into consideration the established discrepancies between his names in the birth certificate and the passport, based on point 16,

² Article 294 of the Ukraine Civil Code reads as follows (unofficial translation):

Right to a Name

- 1. A natural person has the right to a name.
- 2. A natural person is entitled to a transcribed record of his first and last name in accordance with his/her national traditions.
- 3. In the case of distortion of a natural person's name it must be corrected. If the distortion of the name was carried out in a document, such document is subject to replacement. [...]

³ Unofficial translation.

paragraph 2, of the Regulation Regarding the Passport of the Ukrainian Citizen. On 14 November 2007, his application was rejected, with the explanation that they could only issue a passport based on the birth certificate when a person reached the age of 16. The author maintains that the above explanation contradicts the Ukrainian legislation, in particular because point 7 of the above Regulation reads: “In cases of replacement of passports of citizens, the latter should submit the passport, subject to replacement, and in cases [...] when discrepancies in the records are established, also [...] the documentation confirming the above circumstances.”⁴ The author maintains that he should be able to apply for a replacement of his passport in case of discrepancy in the records and that he submitted, as documentation evidencing the discrepancy in the records, the official translation of his birth certificate. Further, article 294, paragraph 3, of the Civil Code prescribes that if the “distortion of the name was carried out in a document”, such document must be replaced, and the author maintains that the internal passport issued to him was the first document, where his names were distorted.⁵

5.3 The author notes the State party’s submission that he was supposed to file a second request for name change to the Civil Status Registration Department and apply for a passport after being issued a certificate for a name change based on Ordinance No. 915, but he submits that the rejection letter of 9 October 2007 did not contain any notification that he should follow such procedure. On the contrary, the letter explicitly stated that the Procedure for Considering Applications for Change of Name of a Natural Person did not foresee the registration of the change of name and patronymic with indication of particular transcription. Despite that, on 27 March 2009, wishing to settle the dispute, the author filed with the Civil Status Registration Department a second request to amend/restore his original names in his identity documents, accompanied with the certified translation of his birth certificate, in accordance with the State party’s submission of 10 February 2009. The above request was once again rejected on 10 April 2009. He further submits that the domestic legislation of the State party does not appear to foresee a procedure suitable to remedy his situation, because all procedures are oriented towards correcting or amending an individual’s birth certificate, but in his case the latter is the only document where his names are transcribed correctly. He submits that of the final decisions of all the courts that reviewed his complaints and appeals, none mentioned a procedure that the author could follow to correct his name and patronymic in his identity documents.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claims 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.

6.2 The Committee has ascertained, as required under article 5, paragraph 2 (a), of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

6.3 The Committee further notes the State party’s submission that the author could have filed a second request for the name change with the Civil Status Registration Department and applied for a passport after being issued a certificate for a name change, based on Ordinance No. 915. The Committee, however, observes that the author attempted to use the above procedure in order to restore his original names, by filing on 27 March 2009 a second request to the Civil Status Registration Department and that the above request was once

⁴ Unofficial translation.

⁵ The author further makes references to cases similar to his, in which the national courts had ruled in favour of the applicants.

again rejected on 10 April 2009. The Committee accordingly finds that the remedy suggested by the State party was not an adequate mechanism for dealing with the author's allegations and concludes that the domestic remedies had been exhausted.

6.4 The Committee considers that the author's claims under articles 17, 26 and 27 of the Covenant are sufficiently substantiated, for purposes of admissibility, and proceeds to their examination on the merits.

Consideration of the merits

7.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it, as provided under article 5, paragraph 1, of the Optional Protocol.

7.2 Regarding the alleged violation of article 17, the Committee has taken note of the author's argument that the imposition of a Ukrainian spelling for his first name and patronymic in his identity documents resulted in him being subjected to frequent mockery and generated a feeling of deprivation and arbitrariness, since it sounded ridiculous to Russian speakers. The Committee recalls that the notion of privacy refers to the sphere of a person's life in which he or she can freely express his or her identity, be it by entering into relationships with others or alone. The Committee further recalls that a person's surname constitutes an important component of one's identity, and that the protection against arbitrary or unlawful interference with one's privacy includes the protection against arbitrary or unlawful interference with the right to choose and change one's own name.⁶ The Committee notes the State party's submission that in Ukraine names and patronymics when translated from one language into another are not transcribed, but are "replaced by the corresponding, historically established, equivalent" and that the author's name was modified so as to comply with the Ukrainian naming tradition.

7.3 The Committee further observes that the legal basis for the modification of the author's name and patronymic remains unclear and that the State party has not disputed the author's claim that such modification actually violates the domestic laws of the State, and, therefore, finds that the interference at stake is unlawful. The Committee takes account of its previous jurisprudence,⁷ where it held that the protection offered by article 17 encompassed the right to choose and change one's own name and considered that that protection a fortiori protected persons from having a name change being imposed upon them by the State party. In this regard the Committee further observes that in the present case the State party went beyond transcribing the name and patronymic of the author and actually changed them on the basis of the rules contained in a Ukrainian grammar book. The Committee therefore considers that the State party's unilateral modification of the author's name and patronymic on official documents is not reasonable, and amounts to unlawful and arbitrary interference with his privacy, in violation of article 17 of the Covenant.

7.4 Having found a violation of article 17, with respect to the unilateral change of the author's name and patronymic by the State party, the Committee decides not to examine separately the claims under articles 26 and 27 of the Covenant.

8. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it disclose a violation of article 17 of the Covenant.

9. Pursuant to article 2 of the Covenant, the State party is under an obligation to provide Mr. Bulgakov with an effective remedy, including to restore the original phonetic

⁶ Communication No. 453/1991, *Coeriel and Aurik v. Netherlands*, para. 10.2.

⁷ Communication No. 1621/2007, *Raihman v. Latvia*, paras. 8.3–8.5.

form in his identity documents and to adopt such measures as may be necessary to ensure that similar violations do not occur in the future.

10. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy in the event that a violation is established, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views and have them translated into Ukrainian and widely disseminated in Ukrainian and Russian in 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.]
