



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE
Eighty-fifth session
17 October – 3 November 2005

DECISION

Communication No. 1030/2001

<u>Submitted by:</u>	Mr. Dimitar Atanasov Dimitrov (not represented by counsel)
<u>Alleged victim:</u>	The author
<u>State party:</u>	Bulgaria
<u>Date of communication:</u>	3 September 2001 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 97 decision, transmitted to the State party on 22 November 2001 (not issued in document form)
<u>Date of adoption of decision:</u>	28 October 2005

Subject matter: Refusal of administrative body to approve nomination for professorship.

Substantive issues: Qualification of application for academic title and review procedure as a 'suit at law'.

Procedural issues: Admissibility *ratione materiae*.

[ANNEX]

* Made public by decision of the Human Rights Committee

ANNEX

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

Eighty-fifth session

concerning

Communication No. 1030/2001**

Submitted by: Mr. Dimitar Atanasov Dimitrov (not
represented by counsel)

Alleged victim: The author

State party: Bulgaria

Date of communication: 3 September 2001 (initial submission)

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

Meeting on 28 October 2005,

Adopts the following:

DECISION ON ADMISSIBILITY

1.1 The author of the communication is Dimitar Dimitrov, a Bulgarian citizen. Although the author does not invoke any specific provision of the Covenant, the communication appears to raise issues under articles 2 and 14, paragraph 1, of the Covenant. He is not represented by counsel.

1.2 The Covenant and the Optional Protocol entered into force for Bulgaria on 23 March 1976 and 26 June 1992 respectively.

Factual background

2.1 The author is an associate professor of physical education at the University of Forestry in Sofia. He holds a doctoral degree and has taught extensively in Bulgaria and abroad. In May 1997, he entered a 'competition' advertised by the University for the title of

** The following members of the Committee participated in the examination of the present communication: Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Alfredo Castillero Hoyos, Mr. Maurice Glèlè Ahanhanzo, Mr. Edwin Johnson, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Mr. Michael O'Flaherty, Ms. Elisabeth Palm, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Ivan Shearer, Mr. Hipólito Solari-Yrigoyen, Ms. Ruth Wedgwood and Mr. Roman Wieruszewski.

‘Professor in the Theory and Methods of Teaching Physical Education and Athletic Training’.

2.2 The author’s application was considered by the Specialised Science Council (SSC) of the Higher Attestation Commission (HAC), which supported his candidacy and nominated him for the title of professor to the Scientific Commission of the HAC. At its meeting of 18 May 1998, the Scientific Commission supported the author’s nomination and forwarded it for confirmation to the Presidium of the HAC. The Presidium reports to the Bulgarian Council of Ministers and is authorised formally to confer academic degrees and titles of academic rank in accordance with the *Scientific Degrees and Scientific Titles Act* (Act).

2.3 On 18 June 1998, the Presidium initiated ‘control proceedings’ under article 27 of the Act, which allows the Presidium to return a nomination if it deviates significantly from the criteria established by the Presidium under article 34 of the Act. The Presidium returned the nomination to the Scientific Commission, requesting further information about the quality of the author’s work. On 5 October 1998, the Scientific Commission re-examined the case and confirmed its earlier decision to nominate the author, and again forwarded it to the Presidium for confirmation. The Presidium reinstated control proceedings, returning the nomination to the Scientific Commission, on this occasion requesting further information about the author’s course. The Scientific Commission re-examined the nomination for a third time on 30 June 1999, and again confirmed its earlier decision to support the nomination and again forwarded it to the Presidium.

2.4 On 8 July 1999, the Presidium rejected the author’s application for the title of professor, without giving reasons. Article 27 of the Act states that, where control proceedings have been reinstated, the Presidium may disregard any recommendation of the Scientific Commission and decide at its own discretion whether to award the title of professor or not.

2.5 The author contends that the Presidium’s review of his application did not comply with the Act, and that there was no basis to require the submission of further information in support of his candidacy. He urges that the Presidium failed to identify any procedural or administrative irregularities in his nomination which would have entitled it to reject the nomination. He argues that, instead of providing reasons for its decision to reject his candidacy, the Presidium chose to use the mechanism provided for under article 27 of the Act, under which it may determine the matter at its own discretion without giving reasons.

2.6 The author appealed the decision of the Presidium to the Supreme Administrative Court (the SAC). However, on 9 November 2000, the SAC struck out the claim as under article 27 of the Act, a decision of the Presidium to determine an application following the reinstatement of a control proceeding is not subject to judicial review. The author appealed to a five member panel of the SAC; however on 29 December 2000 his appeal was dismissed.

The complaint

3. The author contends that the Presidium refused to confer on him the academic rank of professor in a biased manner without providing any arguments or taking into consideration the views of competent professional scientific commissions. The author claims that his rights have been violated, without referring to any particular provisions of the Covenant.

The State party's observations on admissibility

4.1 By note verbale of 22 January 2002, the State Party submits that the communication is inadmissible under articles 2 and 3 of the Optional Protocol. It defends the actions of the Presidium as being entirely within its jurisdiction, as set out in the Act.

4.2 The State party points out that the author does not claim to be a victim of a violation of any right enumerated in the Covenant, and that the only provisions which might be at issue are article 2, paragraph 3(a), and article 14, paragraph 1. In relation to the latter, the State party submits that the article is inapplicable in cases which confer discretionary powers on public or judicial authorities, such as the discretion conferred on the Presidium in the present case. It notes that the decisions of the Presidium are not subject to judicial control, given its nature as an expert body. Article 14, paragraph 1, applies to the administration of justice in procedures which determine the rights and obligations of an applicant in a suit at law. In the present case, there is no such suit at law. The author had no "right" to a scientific title, nor was there any corresponding obligation on the Presidium to confer such title. In the current case, the Presidium sought further information about the author's work and course and lectures. At its meeting on 8 July 1999, since it had reinstated the control proceedings, the Presidium availed itself of its legal discretion to determine the application itself, on the basis of the information before it.

4.3 In relation to article 2, paragraph 3, the State party submits that the communication does not refer to any right enumerated in the Covenant, and that in any event article 14, paragraph 1, is inapplicable in the case. Accordingly, article 2, paragraph 3(a), which can only arise in connection with a breach of another substantive right, cannot be invoked. In the circumstances, the State party submits that the claim is unsubstantiated and incompatible with the provisions of the Covenant, and therefore inadmissible. It adds that the communication is manifestly unfounded and should also be considered inadmissible as an abuse of the right of submission, under article 3 of the Optional Protocol.

Authors' comments on the State party's observations

5.1 In his comments on the State party's submission dated 20 March 2002, the author argues that, although article 34 of the Act requires specific criteria for the award of title of professor, no such criteria have in fact been developed. According to him, rules issued under the Act state that there is a requirement simply for 'minimal pedagogical activity, as determined by the government': there is no requirement for a particular course or lectures. The rules specify that applications may be received from candidates, regardless of whether they have performed any educational-pedagogical activity. The author affirms that the quality of his work had been confirmed by three professorial reviewers. In light of the above, the author submits that the Presidium had no basis for requiring further information in relation to the quality of his work and course of lectures, or for instituting the two control proceedings. The author claims that the unmotivated refusal of the Presidium, without giving reasons, to confirm the title of professor calls into question its objectivity.

5.2 The author acknowledges that, under the Act, the Presidium may reinstitute control proceedings where the decision of the Scientific Commission deviates significantly from the established criteria. However, he contends that, as there are no published criteria, the Presidium's proper role is limited to reviewing the *procedure* for the conferral of the title of professor. The substance of the application was a matter for the SSC and the Scientific

Commission to determine, which had already nominated him for the title of professor. As the Presidium did not identify any procedural defects, there was no basis for it to initiate or to reinstate control proceedings.

5.3 The author reiterates that his “civil rights” were violated because, under the Act, the Presidium enjoyed an unlimited right to determine his application, despite the support of his candidature by the SSC and the Scientific Commission. He states that no member of the Presidium is a specialist in the field of physical education and doubts that an expert decision could have been taken in these circumstances.

5.4 The author submits that decisions of the Presidium are an administrative act and should be subjected to judicial control. He affirms that he was denied the confirmation of his professorial appointment without reasons. As to the State party’s argument that he had no ‘right’ to be confirmed as a professor, the author points to the fact that the Scientific Commission had endorsed his candidature three times.

State party’s submission on the merits

6.1 On 2 September 2002, the State party submitted its observations on the merits of the communication. It notes that, in his comments on the State party’s submission on admissibility, the author again failed to specify any relevant right guaranteed under the Covenant which he considered to have been violated: the State party reiterated its view that the communication was inadmissible under articles 2 and 3 of the Optional Protocol.

6.2 The State party contests the author’s argument that there are no specific requirements against which the Presidium could review the nomination for the title of professor. Article 14 of the Act explicitly provides that the academic title of professor may only be conferred if the candidate has a defined minimum of pedagogic activity, the length of which is to be determined by regulations. According to the State party, the relevant minimum was specified as a permanent course of lectures of 45 hours per academic year, given to specialists: however, the author had in fact been giving courses of lectures to non-specialists. Accordingly, he did not fulfil one of the legal criteria for conferring on him the academic title of professor. The State party adds that, under the relevant rule, advertisements for a professorship are open to all candidates regardless of *when*, not regardless of *whether*, they have conducted pedagogic activities.

6.3 The State party refutes the author’s argument that neither the Act nor the Presidium lack defined criteria. The Act itself contains a range of criteria, which the Presidium applied. Further, article 34(b) of the Act states that the Presidium is to “concretise the criteria for the conferring of academic degrees and titles in the different fields of science”. The Presidium does not have an obligation to develop and to publish criteria, but simply to specify in every concrete field of science the parameters of application of the general criteria established by the Act and its rules.

6.4 The State party disputes the author’s submission that, because the decisions of the Presidium are administrative, they should be subject to a right of challenge before the SAC. Under article 120 of the Constitution of Bulgaria, individuals may challenge all administrative acts affecting their legal interests, with the exception of those for which the law expressly provides otherwise. Such an exception is provided for in article 27 of the Act, which is entirely justified in view of the specific competence with which the Presidium is

endowed under the law. The Presidium is a collective scientific administrative body exercising power in respect of the conferring or refusal of academic degrees and titles. Courts do not possess the relevant specialised knowledge to supervise this process; accordingly, it would be inappropriate for such decisions to be subjected to judicial review.

6.5 Finally, the State party notes that the SAC has established that the Presidium is not under an obligation to issue reasons for its decision. Even if reasons were required to be issued, the Court would not be in a position to evaluate them.

Author's comments on the State party's merits submissions

7.1 On 20 January 2003, the author points out that the Scientific Commission in fact comprised the most relevant educated specialists in his field, rather than the Presidium, and reiterates that his nomination for the title of professor was not affected by any procedural error which would have warranted the Presidium rejecting his nomination. He states that he remains unaware why the Presidium ignored the decisions of the Scientific Commission and took a negative view of his case, when, in his view, all relevant requirements had been met.

7.2 The author affirms that proceedings before the Presidium are conducted behind closed doors, without the right of representation. He did have the right to appear before the SAC, but the court refused to deal with his case in substance. He contests the State party's claim that there are in fact current and valid requirements in relation to the minimum number of lecturing hours, and contends that those referred to by the State party are no longer valid.

Issues and proceedings before the Committee

8.1 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.

8.2 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. It further considers that all available domestic remedies have been exhausted.

8.3 To the extent that the author's communication raises issues under article 14, paragraph 1, the Committee recalls its jurisprudence that the concept of "suit at law" is based on the nature of the relevant right in question. The Committee has noted the State party's submission that the author has not identified which rights in a suit at law he claims to have been infringed. It recalls its views in the case of *Kolanowski v Poland*, where it considered that the author's unsuccessful bid to be appointed to a civil servant position and his efforts to contest the rejection of his bid for promotion did not constitute determination of rights and obligations in a suit at law. In the present case, the author does not seek promotion, but merely conferral of an academic title. His application was assessed in accordance with the relevant procedures laid down under Bulgarian law, namely, the Scientific Degrees and Scientific Titles Act and the highest administrative body vested with discretion to determine the merits of the application rejected. There is no information before the Committee to show that the author had any right to have the title of professor conferred on him or that the Presidium was under any obligation to endorse his candidature. In these circumstances, and in the absence of any other information as to the effect of the Presidium's decision on the

author, the Committee concludes that the refusal of the Presidium to confer the title of professor on him did not constitute a determination of any of his rights in a suit at law. Consequently, the claim made by the author in the communication under article 14, paragraph 1, is inadmissible *ratione materiae*, under article 3 of the Optional Protocol.

8.4 The Committee has noted that the State party has invoked article 2, in its observations. The Committee recalls its constant jurisprudence that this article operates only in conjunction with other substantive provisions in the Covenant. In light of the above conclusions relating to the applicability of article 14, paragraph 1, a claim under article 2, paragraph 3, cannot be sustained and is thus inadmissible.

9. The Human Rights Committee therefore decides:

(a) the communication is inadmissible under articles 2 and 3 of the Optional Protocol;

(b) this decision shall be transmitted 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.]
