United Nations CERD/C/101/D/64/2018

International Convention on the Elimination of All Forms of Racial Discrimination

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Committee on the Elimination of Racial Discrimination

Decision adopted by the Committee under article 14 of the Convention, concerning communication No. 64/2018*, **

Communication submitted by:	M.T.
Alleged victim:	The petitioner
State party:	Estonia
Date of communication:	2 August 2018 (initial submission)
Date of adoption of decision:	6 August 2020
Subject matter:	Racial discrimination due to non-inclusion of patronym in identification document
Procedural issues:	Admissibility; exhaustion of domestic remedies; inadmissibility *ratione materiae*; non-substantiation of claims
Substantive issue:	Discrimination on the grounds of national or ethnic origin
Article of the Convention:	2 (2)

1. The petitioner is M.T., an Estonian national of Russian ethnicity, born in 1981. He claims that the State party violated his rights under article 2 (2) of the Convention. Estonia acceded to the Convention on 21 October 1991 and made the declaration under article 14 on 21 July 2010.

Facts as submitted by the petitioner

2.1 On 27 July 2016, the petitioner applied for a new identity card with the Police and Border Guard Board of Estonia. He requested that his patronym be included in the newly issued identity card. On 31 August 2016, the Police and Border Guard Board decided to issue the new identity card without including the patronym of the petitioner. The reason for the refusal of the petitioner's request was the domestic legal provisions, which provide for the inclusion of first and last names in identification documents. Inclusion of a patronym is not provided for.

* Adopted by the Committee at its 101st session (4–7 August 2020).

** The following members of the Committee participated in the examination of the communication: Silvio José Albuquerque e Silva, Sheikha Abdulla Ali Al-Misnad, Marc Bossuyt, Chinsung Chung, Bakari Sidiki Diaby, Ibrahima Guissé, Rita Izsák-Ndiaye, Ko Keiko, Gun Kut, Li Yanduan, Mehrdad Payandeh, Verene Albertha Shepherd, Stamatia Stavrinaki, Faith Dikeledi Pansy Tlakula, Eduardo Ernesto Vega Luna and Yeung Kam John Yeung Sik Yuen.

2.2 On 20 September 2016, the petitioner appealed to the Tallinn Administrative Court, asking it to require the Police and Border Guard Board to issue an identity card with his patronym, citing the State party's obligations under article 11 of the Framework Convention for the Protection of National Minorities of the Council of Europe,[1] as well as concluding observations issued by the Committee.[2] On 23 February 2017, the Tallinn Administrative Court rejected the complaint. On 10 March 2017, the petitioner appealed against the judgment of the Tallinn Administrative Court at the Tallinn Circuit Court. On 15 November 2017, the Tallinn Circuit Court rejected the appeal. The reasoning of both courts was based on the following: domestic law, the Names Act and the Identity Documents Act in particular, does not provide for the possibility of including a patronym in an identification card; the Framework Convention is not directly applicable by the courts and applies only to the extent that it does not contradict domestic laws; and the recommendations of the Committee are not binding and the authorities decide which recommendations to implement. On 27 November 2017, the petitioner appealed to the Supreme Court, which rejected the appeal on 12 February 2018.

2.3 The petitioner claims that his ancestors were Russian Old Believers who settled in the territory of modern Estonia in the seventeenth century. For the past 300 years they had been preserving their language and national culture without being assimilated into the Estonian population. For these people, a full name without a patronym destroys their national identity and offends their national dignity. According to Russian traditions, the lack of a patronym in a full name is considered to be a sign of disrespect; it can imply that the person belongs to a lower social class and/or that his or her father is unknown.

Complaint

3. In his submission before the Committee, the petitioner claims that his rights under article 2 (2) of the Convention were violated by the refusal of the State party to record his patronym in his identification document.

State party's observations on admissibility

4.1 On 12 April 2019, the State party submitted its observations on admissibility, asserting that the communication should be declared inadmissible on the basis of rule 91, subparagraphs (b), (c) and (e), of the Committee's rules of procedure.

4.2 Referring to rule 91, subparagraphs (b) and (c), the State party argues that the petitioner cannot be considered as a victim of a violation of any rights under the Convention and that the submission itself is not compatible with the provisions of the Convention. While alleging a violation of his rights under article 2 (2) of the Convention, and claiming that the failure to indicate his patronym on his identification card violates his right to his personal identity, the petitioner fails to make reference to any material provision of the Convention guaranteeing such right. The State party notes that the Convention does not set out a specific right to have a patronym included in an identification card.

4.3 The State party underlines that the Framework Convention for the Protection of National Minorities referred to by the petitioner does not fall within the scope of the Convention or the competence of the Committee. As to the Committee's concluding observations mentioned above, it cannot be concluded from the formulation of the recommendation on facilitating the use of patronyms that the Committee has made a specific recommendation to adopt legislation that provides for the inclusion of patronyms in identification cards. The Committee refers to the facilitation of use of patronyms, inter alia through appropriate administrative measures. The State party notes that there is a difference

[1] The Framework Convention for the Protection of National Minorities, in article 11 (1), provides that the parties undertake to recognize that every person belonging to a national minority has the right to use his or her surname (patronym) and first names in the minority language and the right to official recognition of them, according to modalities provided for in their legal system.

[2] In paragraph 9 of the concluding observations on the combined tenth and eleventh periodic reports of Estonia (CERD/C/EST/CO/10-11), the Committee recommended that the State party address the minorities' need for self-identification by facilitating, inter alia, the use of patronyms, through appropriate administrative measures.

between the Committee's reporting procedure and the consideration of individual complaints. It reiterates that there is no specific right in the Convention, even in article 5, which lists, among others, political and civil rights, that would serve as grounds for the petitioner's request for special positive measures under article 2 (2) of the Convention. Therefore, the communication should be declared inadmissible *ratione materiae*.

4.4 The State party further submits that the petitioner has not exhausted all effective domestic remedies available to him. Since he challenges in essence the lawfulness of the Names Act and the Identity Documents Act, on the basis of which his request for patronym was rejected, rather than their interpretation by the courts, he had an opportunity to make use of the constitutional review mechanism in respect of his claim. Such right is provided for in article 15 of the Constitution, which states that everyone is entitled to petition the court that hears his or her case to declare unconstitutional any law, other legislative instrument, administrative decision or measure which is relevant in the case. Such review is carried out by the Constitutional Review Chamber of the Supreme Court.

4.5 In its ruling of 6 June 2017 in case No. 3-4-1-7-17, the Supreme Court found that, pursuant to the second sentence of article 15 of the Constitution, a petition to initiate a constitutional review procedure regarding an applicable law or lack of regulation, submitted in the course of a pending proceedings, constituted a sufficiently effective remedy for the protection of fundamental rights. In its ruling of 8 March 2010 in case No. 3-3-1-98-09, the Supreme Court found that a court was obliged to take a decision on a party's petition to verify the constitutionality of a relevant legal provision. The jurisprudence of the Supreme Court indicates that if a party to a pending litigation submits a petition for the verification of the constitutionality of a relevant legal provision, the court cannot ignore the petition.

4.6 The State party explains the procedure of the constitutional review and clarifies that there are two ways in which it can be initiated. Under article 15 of the Constitution, it can be initiated by a party in the proceedings. Pursuant to article 9, paragraphs (1) and (2), of the Constitutional Review Court Procedure Act, if the court of first instance or the court of appeal, when adjudicating a case, set aside any legislative or regulatory act or international agreement relevant in the case and declare that act or agreement to be in conflict with the Constitution, that court shall transmit the corresponding judgment or order to the Supreme Court. The State party notes that between 2010 and 2017 the Supreme Court has declared legal provisions or lack of regulation unconstitutional in 117 court cases, which clearly indicates that the constitutional review mechanism is an available and effective remedy, which the petitioner failed to exhaust.

Petitioner's comments on the State party's observations

5.1 On 9 May 2019, the petitioner submitted his comments on the State party's observations. He notes that in his communication he has pointed out the violation of his own rights. He is not representing anyone or defending the interests of a group in a matter that does not directly affect him (*actio popularis*). Therefore, the State party's claim that the communication contradicts rule 91, subparagraph (b), is unreasonable.

5.2 Regarding the State party's argument that the communication contradicts rule 91, subparagraph (c), the petitioner submits that he invokes a violation of article 2 (2) of the Convention. He disagrees with the State party's claim that this provision does not give a right to a full national name, including a patronym. In its tenth and eleventh periodic reports, submitted to the Committee in 2012, the State party described how it was complying with article 2 of the Convention, including by indicating that it had ratified and was implementing the Framework Convention for the Protection of National Minorities.[3] From that it can be assumed that article 2 of the Convention covers the rights specified in the Framework Convention, including the right to a patronym. It is impossible to list the full range of rights provided for in the Convention, but article 2 (2) sets out a framework of such rights.

5.3 The petitioner states that the Committee would not have made a recommendation in its concluding observations on the implementation of the Convention by Estonia concerning

[3] CERD/C/EST/10-11, para. 10.

the facilitation of the use of patronyms by minorities if it was not in its competence. The fact that such a recommendation was made leads to an absolute conclusion that the petitioner has a right to file a communication under article 2 (2) of the Convention.

5.4 Concerning the State party's observation that he has failed to exhaust domestic remedies as required under rule 91, subparagraph (e), the petitioner submits that a possibility to submit a petition for constitutional review to the Supreme Court is envisaged only in the Constitution. It is not regulated in procedural codes, including the Code of Administrative Court Procedure, which sets out a mechanism for filing a complaint. Moreover, the State party did not point to the provision of the Constitution that the Names Act contradicts. The Constitution does not provide a right to a patronym.

5.5 The petitioner further submits that in case No. 3-4-1-7-17, referred to by the State party, the Supreme Court indicates that it does not accept individual complaints in cases where another legal process is available to protect constitutional rights, even where a person has not made use of that other process. The Supreme Court does not review adopted court decisions for compliance with the Constitution and does not interfere in ongoing court proceedings. The Supreme Court dismissed the petition in case No. 3-4-1-7-17 on the basis that ultimately the applicant would have the possibility of appealing to the Supreme Court as a higher court. The petitioner claims that his own petition for constitutional review would thus not be accepted.

5.6 The petitioner submits that, under article 152 of the Constitution, a constitutional review is initiated by the court that considers the case. In the case of the petitioner, the courts did not initiate such a procedure. Neither did the courts inform him of the possibility to submit a petition for constitutional review. The State party, therefore, is trying to blame the petitioner for mistakes made by the courts of the first and second instance, which instead of applying the Constitution and international treaties have applied laws that contradict them.

5.7 The petitioner argues that the case law of the Supreme Court referred to by the State party does not provide a single example where a constitutional review was initiated by an individual. It can be concluded, contrary to the State party's submission, that individual petitions for constitutional review are not accepted. The initiator of the process for the constitutional review can only be a court, but in the petitioner's case the courts did not show such initiative, which was the ground for submitting the present communication to the Committee.

5.8 The petitioner notes the State party's reference to the Supreme Court case law concerning the direct application of the Constitution and international treaties by the courts. In this regard he questions the need for a constitutional review petition as a remedy to be exhausted, if the courts could have directly applied the Constitution or the Framework Convention. He claims to have invoked in the courts an international treaty, and also claims that the courts did not object to the direct application of the Framework Convention, but rather they misinterpreted it.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Committee must decide, pursuant to article 14 (7) (a) of the Convention, whether the communication is admissible.

6.2 The Committee notes the State party's argument under rule 91, subparagraph (b), of the Committee's rules of procedure that the petitioner has not claimed violation of any material provision of the Convention and therefore lacks victim status. It also notes the State party's arguments under rule 91, subparagraph (c), of the rules of procedure that the communication is inadmissible *ratione materiae*, and its arguments under rule 91, subparagraph (e), that the petitioner failed to exhaust domestic remedies. The Committee also notes the petitioner's arguments in disagreement with the observations of the State party and his claim that the impossibility to include his patronym in the identification document amounts to racial discrimination.

6.3 The Committee notes that the definition of racial discrimination in article 1 (1) of the Convention clearly states that a fundamental element of such discrimination is that it has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights or fundamental freedoms in the political, economic, social, cultural or any other field of public life. It is therefore necessary to establish whether the rights of the petitioner in the field of public life have been affected, and if so, which rights and/or freedoms are violated by the impossibility to include his patronym in the identification card. This brings the Committee to the State party's first argument, under rule 91, subparagraph (b), of the rules of procedure, namely, that the petitioner has failed to indicate exactly which right protected by the Convention was violated in his case.

6.4 The Committee notes that the petitioner belongs to Russian minority, specifically, Russian Old Believers, to whom a patronym constitutes an essential part of the name. The Committee notes the petitioner's claim that by not including his patronym in the identification document, the State party destroys his national identity and offends his national dignity, as part of the Old Believers community. At the same time, the Committee notes that, beyond this general claim, the petitioner did not furnish any concrete example whereby the lack of patronym in the identification card put him in an unequal position with respect to enjoying his rights in the field of public life, compared with other nationals of the State party. Neither has the petitioner provided concrete examples of negative effects that the lack of a patronym in the official identification document have had on his private relations within the Russian minority and in particular, the Russian Old Believers community.

6.5 In light of the above, the Committee finds that the petitioner has not presented sufficient indications to demonstrate that he was a victim of racial discrimination. The Committee considers that the petitioner has failed to sufficiently substantiate which rights under the Convention were violated in his regard, as required by rule 91, subparagraph (b), of its rules of procedure. Accordingly, it declares the communication inadmissible under article 14 (1) of the Convention. In light of this conclusion, the Committee decides that it is not necessary to examine any other inadmissibility ground invoked by the State party.

7. The Committee on the Elimination of Racial Discrimination therefore decides:

(a) That the communication is inadmissible;

(b) That the present decision shall be communicated to the State party and to the petitioner.