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HUMAN RIGHTS COMMITTEE
Fifty-second session

VIEWS

Communication No. 453/1991

Submitted by :	A.R. Coeriel and M.A.R. Aurik [represented by counsel]
Victims :	The authors
State party :	The Netherlands
Date of communication :	14 January 1991 (initial submission)
Documentation references :	Prior decisions - CCPR/C/WG/44/D/453/1991 (Working Group's rule 91 decision, dated 25 March 1992) - CCPR/C/48/D/453/1991 (Decision on admissibility, dated 8 July 1993)
Date of adoption of Views :	31 October 1994

On 31 October 1994, the Human Rights Committee adopted its Views under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Politi cal Rights, in respect of communication No. 453/1991. The text of the Views is appended to the present document.

[ANNEX]

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*/ Made public by decision of the Human Rights Committee.

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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
- FIFTY-SECOND SESSION -

concerning

Communication No. 453/1991

Submitted by:	A.R. Coeriel and M.A.R. Aurik [represented by counsel]
Victims:	The authors
State party:	The Netherlands
Date of communication:	14 January 1991 (initial submission)
Date of decision on admissibility:	8 July 1993

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

Meeting on 31 October 1994,

Having concluded its consideration of communication No. 453/1991 submitted to the Human Rights Committee by A.R. Coerieland M.A.R. Aurik 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 authors of the communication, their counsel and the State party,

Adopts its Views under article 5, paragraph 4, of the Optional Protocol.

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*/ The text of individual opinions from Messrs. N. Ando and K. Herndl is appended to the Views.

1. The authors of the communication are A.R. Co eriel and M.A.R. Aurik, two Dutch citizens residing in Roermond, the Netherlands. They claim to b e victims of a violation by t he Netherlands of articles 17 and 18 of the International Covenant on Civil and Political Rights.

The background :

2.1 The authors have adopted the Hindu religion and state that they want to study for Hindu priests ('pandits') in India. They requested the Roermon d District Court (Arrondissements Rechtbank) to change their first names into Hindu names, in accordance with the requirements of their religion. Thi s request was granted by the Court on 6 November 1986.

2.2 Subsequently, the authors requested the Minister of Justice to hav e their surnames changed into Hindu names. They claimed that for individual s wishing to study and practice the Hindu reli gion and to become Hindu priests, it is mandatory to adopt Hindu names. By decisions of 2 August and 14 December 1988 respectively, the Minister of Justice rejected the authors' request, on the ground that their cases did not meet the requirements set out in th e 'Gui delines for the change of surname' (Richtlijnen voo r geslachtsnaamwijziging 1976). The decision f urther stipulated that a positive decision would have been justified only by exceptional circumstances, which were not present in the authors' cases. The Minister considered that th e authors' current surnames did not constitute an obstacle to undertake studies for the Hi ndu priesthood, since the authors would be able to adopt th e religious names given to them by their Guru upon completion of their studies, if they so wished.

2.3 The authors appealed the Minister's decision to the Council of Stat e (Raad van State), t he highest administrative tribunal in the Netherlands and claimed inter alia that the refusal to allow them to change their name s violated their freedom of religion. On 17 Oc tober 1990, the Council dismissed the authors' appeals. It considered that the authors had not shown that their interests were such that it justified the changing of surnames where the law did not provide for it. In the opinion of the Council, it was not shown that the authors' surnames needed to be legally c hanged to give them the chance to become Hindu priest s; in this connection, the Council noted that the authors were free to use their Hindu surnames in public social life.

2.4 On 6 February 1991, the authors submitted a complaint to the European Commission of Human Rights. On 2 July 1992, the European Commission declared the authors' complaint under articles 9 and 14 of the Convention inadmissible as manifestly ill-founded, as they had not established that their religious studies would be impeded by the refusal to modify their surnames.

The complaint :

3. The authors claim that the refusal of the Dutch authorities to hav e their current surnames changed prevents them from furthering their st udies for the Hindu priesthoo d and therefore violates article 18 of the Covenant. They also claim that said refusal constitutes unlawful or arbitrary interference with their privacy.

The State party's observations and the authors' comments thereon :

4.1 By submission of 7 July 1991, the State party replies to the Committe e's reques t under rule 91 of the rules of procedure to provide observation s relevant to the que stion of the admissibility of the communication in so far as it might raise issues under articles 17 and 18 of the Covenant.

4.2 The State party submits that Dutch law allows the change of surnames for adults in special c ircumstances, namely when the current surname is indecent or ridiculous, so common that it has lost its distinctive character or, i n cases of Dutch citizens who have acquired Dutch nationality by natura lization, not Dutch-sounding. The State party submits that outside these categories , change of surname is only allowed in exceptional cases, where the refusa l would threaten the applicant's mental or physical well-being.

4.3 With regard to Dutch citizens belonging to cultural or religiou s minority groups, principles have been formulated for the change of surname. One of these principles states that a surname may not be changed if th e requested new name would carry with it cultural, religious or socia l connotations.

4.4 The State party sub mits that the authors in the present case have been Dutch citizens since birth and grew up in a Dutch cultural environment. Since the authors' reques t to change their surnames had certain aspects comparable to those of religio us minorities, the Minister of Justice formally sought an opinion from the Mi nister of Internal Affairs. This opinion was unfavourable to the authors, as the new names requested by them were perceived as having religious connotations.

4.5 The State party states that the authors are free to carry any name they wish in public soci al life, as long as they do not carry a name that belongs to someone else without the latter's permiss ion. The State party submits that it respects the authors' religious convictions and that they are free t o manifest their reli gion. The State party further contends that the fact that the authors alleged ly are prevented from following further religious studies in India because of their Dutch names, cannot be attributed to the Dutc h government, but is the consequence of requirements imposed by Indian Hind u leaders.

4.6 As regards the authors' claim under article 17 of the Covenant, th e State party contends that the authors have n ot exhausted domestic remedies in this respect, since they did not argue before the Dutch authorities that the refusal to have their surnames changed constituted an unlawful or arbitrary interference with their privacy.

4.7 In conclusion, the State party argues that the communication i s inadmissible as being incompatible with the provisions of the Covenant. I t further argues that the authors have failed to advance a claim within th e meaning of article 2 of the Optional Protocol.

5.1 In their reply to the State party's submission, the authors emphasize that it is mandator y to have a Hindu surname when one wants to study for the Hindu prie sthood and that no exceptions to this rule are made. In thi s connection, they submit that if the surname is not legally changed an d appears on offi cial identification documents, they cannot become legally ordaine d priests. In support of their argument, the authors submit declarations made by two pandits in England and by the Swami in New Delhi.

5.2 One of the authors, Mr. Coeriel, further sub mits that, although a Dutch citizen by birth, he grew up in Curaçao, the United States of America an d

India, and is of Hindu origin, which should have been taken into account by the State party when deciding on his request to have his surname changed.

5.3 The authors maintain that their right to freedom of religion has been violated, because as a consequence of the State party's refusal to have their surnames changed, they are now prevented from continuing their study for the Hindu priesthood. In this context, they also claim that the State party's rejection of their request constitutes an arbitrary and unlawful interference with their privacy.

The Committee's admissibility decision:

6.1 During its 48th session, the Committee considered the admissibility of the communication. With regard to the authors' claim under article 18 of the Covenant, the Committee considered that the regulation of surnames and the change thereof was eminently a matter of public order and restrictions were therefore permissible under paragraph 3 of article 18. The Committee, moreover, considered that the State party could not be held accountable for restrictions placed upon the exercise of religious offices by religious leaders in another country. This aspect of the communication was therefore declared inadmissible.

6.2 The Committee considered that the question whether article 17 of the Covenant protects the right to choose and change one's own name and, if so, whether the State party's refusal to have the authors' surnames changed was arbitrary should be dealt with on the merits. It considered that the authors had fulfilled the requirement under article 5, paragraph 2(b), of the Optional Protocol, noting that they had appealed the matter to the highest administrative tribunal and that no other remedies remained. On 8 July 1993, the Committee therefore declared the communication admissible in so far as it might raise issues under article 17 of the Covenant.

The State party's submission on the merits and the authors' comments thereon:

7.1 The State party, by submission of 24 February 1994, argues that article 17 of the Covenant does not protect the right to choose and change one's surname. It refers to the travaux préparatoires, in which no indication can be found that article 17 should be given such a broad interpretation, but on the basis of which it appears that States should be given considerable freedom to determine how the principles of article 17 should be applied. The State party also refers to the Committee's General Comment on article 17, in which it is stated that the protection of privacy is necessarily relative. Finally, the State party refers to the Committee's prior jurisprudence [1] and submits that, whenever the intervention of authorities was legitimate according to domestic legislation, the Committee has only found a violation of article 17 when the intervention was also in violation of another provision of the Covenant.

7.2 Subsidiarily, the State party argues that the refusal to grant the authors a formal change of surname was neither unlawful nor arbitrary. The State party refers to its submission on admissibility and submits that the decision was taken in accordance with the relevant Guidelines, which were published in the Government Gazette of 9 May 1990 and based on the provisions of the Civil Code. The decision not to grant the authors a change of surname was thus pursuant to domestic legislation and regulations.

7.3 As to a possible arbitrariness of the decision, the State party observes that the regulations referred to in the previous paragraph were issued precisely to prevent arbitrariness and to maintain the necessary stability in this field. The State party contends that it would create unnecessary uncertainty and confusion, in both a social and administrative sense, if a formal change of name could be effected too easily. In this connection, the

[1] See the Committee's Views with regard to communications No. 35/1978 (Aumeeruddy-Cziffra v. Mauritius, Views adopted on 9 April 1981) and No. 74/1980 (Estrella v. Uruguay, Views adopted on 29 March 1983).

State party invokes an obligation to protect the interests of others. The State party submits that in the present case, the authors failed to meet the criteria that would allow a change in their surname and that they wished to adopt names which have a special significance in Indian society. "Granting a request of this kind would therefore be at odds with the policy of the Netherlands Government of refraining from any action that could be construed as interference with the internal affairs of other cultures". The State party concludes that, taking into account all interests involved, it cannot be said that the decision not to grant the change of name was arbitrary.

8. In their comments on the State party's submission, the authors contest the State party's view that article 17 does not protect their right to choose and change their own surnames. They argue that the rejection of their request to have their surnames changed, deeply affects their private life, since it prevents them from practising as Hindu-priests. They claim that the State party should have provided in its legislation for the change of name in situations similar to that of the authors, and that the State party should have taken into account the consequences of the rejection of their request.

9.1 During its 51st session, the Committee began its examination of the merits of the communication and decided to request clarifications from the State party with respect to the regulations governing the change of names. The State party, by submission of 3 October 1994, explains that the Dutch Civil Code provides that anyone desiring a change of surname can file a request with the Minister of Justice. The Code does not specify in what cases such a request should be granted. The ministerial policy has been that a change of surname can only be allowed in exceptional cases. In principle, a person should keep the name which (s)he acquires at birth, in order to maintain legal and social stability.

9.2 To prevent arbitrariness, the policy with respect to the change of surname has been made public by issuing 'Guidelines for the change of surname'. The State party recalls that the guidelines indicate that a change of surname will be granted when the current surname is indecent or ridiculous, so common that it has lost its distinctive character, or not Dutch-sounding. In exceptional cases, the change of surname can be authorized outside these categories, for instance in cases where the denial of the change of surname would threaten the applicant's mental or physical well-being. A change of surname could also be allowed if it would be unreasonable to refuse the request, taking into account the interests of both the applicant and the State. The State party emphasizes that a restrictive policy with regard to the change of surname is necessary in order to maintain stability in society.

9.3 The Guidelines also contain rules for the new name which an applicant will carry after a change of surname has been allowed. In principle, a new name should resemble the old name as much as possible. If a completely new name is chosen, it should be a name which is not yet in use, which sounds Dutch and which does not give rise to undesirable associations (for instance, a person would not be allowed to choose a surname which would falsely give the impression that he belongs to the nobility). As regards foreign surnames, the Government's policy is that it does not wish to interfere with the law of names in other countries, nor does it wish to appear to interfere with cultural affairs of another country. This means that the new name must not give the false impression that the person carrying the name belongs to a certain cultural, religious or social group. In this sense, the policy with regard to foreign names is similar to the policy with regard to Dutch names.

9.4 The State party submits that the applicant's request is heard by the Minister of Justice, who then adopts his decision in the matter. If the decision is negative, the applicant can appeal to the independent judiciary.

All decisions are being taken in accordance to the policy as laid down in the Guidelines. This policy is departed from in rare cases only, in order to prevent arbitrariness.

9.5 As regards the present case, the State party explains that the authors' request for a change of surname was refused, because it was found that no reasons existed to allow an exceptional change of surname outside the criteria laid down in the Guidelines. In this context, the State party argues that it has not been established that the authors cannot follow the desired religious education without a change of surname. Moreover, the State party argues that, even if a change of surname would be required, this condition is primarily a consequence of rules established by the Hindu-religion, and not a consequence of the application of the Dutch law of names. The State party also indicates that the desired names would identify the authors as members of a specific group in Indian society, and are therefore contrary to the policy that a new name should not give rise to cultural, religious or social associations. According to the State party, the names also conflict with the policy that new names should be Dutch-sounding.

Issues and proceedings before the Committee:

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

10.2 The first issue to be determined by the Committee is whether article 17 of the Covenant protects the right to choose and change one's own name. The Committee observes that article 17 provides, inter alia, that no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence. The Committee considers 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 is of the view 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. For instance, if a State were to compel all foreigners to change their surnames, this would constitute interference in contravention of article 17. The question arises whether the refusal of the authorities to recognize a change of surname is also beyond the threshold of permissible interference within the meaning of article 17.

10.3 The Committee now proceeds to examine whether in the circumstances of the present case the State party's dismissal of the authors' request to have their surnames changed amounted to arbitrary or unlawful interference with their privacy. It notes that the State party's decision was based on the law and regulations in force in the Netherlands, and that the interference can therefore not be regarded as unlawful. It remains to be considered whether it is arbitrary.

10.4 The Committee notes that the circumstances in which a change of surname will be recognised are defined narrowly in the Guidelines and that the exercise of discretion in other cases is restricted to exceptional cases. The Committee recalls its General Comment on article 17, in which it observed that the notion of arbitrariness "is intended to guarantee that even interference provided for by law should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances". Thus, the request to have one's change of name recognised can only be refused on grounds that are reasonable in the specific

circumstances of the case.

10.5 In the present case, the authors' request for recognition of the change of their first names to Hindu names in order to pursue their religious studies had been granted in 1986. The State party based its refusal of the request also to change their surnames on the grounds that the authors had not shown that the changes sought were essential to pursue their studies, that the names had religious connotations and that they were not 'Dutch sounding'. The Committee finds the grounds for so limiting the authors' rights under article 17 not to be reasonable. In the circumstances of the instant case the refusal of the authors' request was therefore arbitrary within the meaning of article 17, paragraph 1, of the Covenant.

11. 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.

12. Pursuant to article 2 of the Covenant, the State party is under an obligation to provide Mr. Aurik and Mr. Coeriel with an appropriate remedy and to adopt such measures as may be necessary to ensure that similar violations do not occur in the future.

13. The Committee would wish to receive information, within 90 days, on any relevant measures taken by the State party in respect of the Committee's Views.

APPENDIX

INDIVIDUAL OPINIONS CONCERNING THE COMMITTEE'S VIEWS

1. Individual opinion by Mr. Nisuke Ando (dissenting)

I do not share the State party's contention that, in examining a request to change one's family name, elements such as the name's "religious connotations" or "non-Dutch sounding" intonation should be taken into consideration. However, I am unable to concur with the Committee's Views on this case for the following three reasons:

(1) Despite the authors ' allegation that the requested change of the authors' family name is an essential condition for them to practice as Hindu priest, the State party argues that it has not been established that the authors cannot follow the desired religious education without the change of surname (see paragraph 9.5), and apparently, on the basis of that argument, the authors' claim has been rejected by the European Commission of Human Rights. Since the Committee is not in the possession of any information other than the authors' allegation for the purpose of ascertaining the relevant facts, I cannot conclude that the change of their family names is an essential condition for them to practice as Hindu priests.

(2) Article 18 of the Covenant protects the right to freedom of religion and article 17 guarantees everyone's right to the protection of the law against "arbitrary or unlawful interference with his privacy". However, in my opinion, it may be doubted whether the right to the protection of one's privacy combined with the freedom of religion automatically entails " the right to change one's family name". Surnames carry important social and legal functions to ascertain one's identity for various purposes such as social security, insurance, license, marriage, inheritance, election and voting, passport, tax, police and public records, and so on. In fact, the Committee recognizes that "the regulation of surnames and the change thereof was essentially a matter of public order and restrictions were therefore permissible under paragraph 3 of article 18" (see paragraph 6.1). Moreover, it is not impossible to argue that the request to change one's family name is a form of manifestation of one's religion, which is subject to the restrictions enumerated in paragraph 3 of article 18.

(3) I do not consider that a family name belongs to an individual person <u>alone</u>, whose privacy is protected under article 17. In the Western society a family name may be regarded only as an element to ascertain one's identity, thus replaceable with other means of identification such as a number or a cipher. However, in other parts of the world, names have a variety of social, historical and cultural implications, and people do attach certain values to their names. This is particularly true with family names. Thus, if a member of a family changes his or her family name, it is likely to affect other members of the family as well as values attached thereto. Therefore, it is difficult for me to conclude that the family name of a person belongs to the exclusive sphere of privacy which is protected under article 17.

Nisuke Ando

2. Individual opinion by Mr. Kurt Herndl (dissenting)

I regret that I am unable to concur in the Committee's finding that by refusing to grant the authors a change of surname, the Dutch authorities breached article 17 of the Covenant.

(a) The States party's action seen from the general content and scope of article 17

Article 17 is one of the more enigmatic provisions of the Covenant. In particular, the term "privacy" would seem to be open to interpretation. What does privacy really mean?

In his essay on "Global protection of Human Rights - Civil Rights" Lillich calls privacy "a concept to date so amorphous as to preclude its acceptance into customary international law". [2] He adds, however, that in determining the meaning of privacy stricto sensu limited help can be obtained from European Convention practice. And there he mentions that i.a. "the use of name" was suggested as being part of the concept of privacy. This is, by the way, a quote taken from Jacobs, who with reference to the similar provision of the European Convention (article 8) asserts that "the organs of the Convention have not developed the concept of privacy". [3]

What is true for the European Convention is equally true for the Covenant. In his commentary on the Covenant Nowak states that article 17 was the subject of virtually no debate during its drafting and that the case law on individual communications is of no assistance in ascertaining the exact meaning of the word. [4]

It is therefore not without reason that the State party argues that article 17 would not necessarily cover the right to change one's surname (see para. 7.1 of the Views).

The Committee itself has not really clarified the notion of privacy either in its General Comment on article 17 where it actually refrains from defining that notion. In its General Comment the Committee attempts to define all the other terms used in article 17 such as "family", "home", "unlawful" and "arbitrary". It further refers to the protection of personal "honour" and "reputation" also mentioned in article 17, but it leaves open the definition of the main right enshrined in that article, i.e. the right to "privacy". While it is true that the Committee, in its General Comment, refers in various instances to "private life" and gives examples of cases in which States must refrain from interfering with specific aspects of private life, the question whether the name of a person is indeed protected by article 17 and, in particular, whether in addition there is a right to change one's name, is not brought up at all in the General Comment.

I raise the above issues to demonstrate that the Committee is not really on safe legal ground in interpretating article 17 as it does in the present

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[2] Richard B. Lillich, Civil Rights, in: Human Rights in International Law, Legal and Policy Issues, ed. Th. Meron (1984), p. 148.

[3] Francis G. Jacobs, The European Convention on Human Rights (1975), p. 126.

[4] Nowak, CCPR Commentary (1993), p.294, section 15.

decision. I do, however, concur with the view that one's name is an important part of one's identity, the protection of which is central to article 17. Nowak is therefore correct in saying that privacy protects the special, individual qualities of human existence and a person's identity. Identity obviously includes one's name. [5]

What is, therefore, protected by article 17, is an individual's name and not necessarily the individual's desire to change his/her name at whim. The Committee recognizes this, albeit indirectly, in its own decision. The example it refers to in order to illustrate a possible case of State interference with individuals' rights under article 17 in contravention of that article is: "... if a State were to compel all foreigners to change their surnames.... " (see para. 10.2 of the Views). This view is correct, but obviously cannot have a bearing on a case where a State - for reasons of generally applied public policy and in order to protect the existing name of individuals - refuses to allow a change of name requested by an individual.

Nevertheless, it can be argued that it would be appropriate to assume that the term "privacy" inasmuch as it covers, for the purpose of appropriate protection, an individual's name as part of his/her identity, also covers the right to change that name. In that regard one must have a closer look at the "Guidelines for the change of surname" published in the Netherlands Government Gazette in 1990 and applied in the Netherlands as common policy. The Dutch policy is, as a matter of principle, based on the premise that a person should keep the name which he/she acquires at birth in order to maintain legal and social stability (see para. 9.1, last sentence, of the Views). As such, this policy can hardly be seen as violating article 17. On the contrary, it is protective of acquired rights, such as the right to a certain name, and would seem to be very much in line with the precepts of article 17.

A change of name, according to the Guidelines, will be granted when the current name is a) indecent, b) ridiculous, c) so common that it has lost its distinctive character and d) not Dutch sounding. None of these grounds was invoked by the authors when they asked for authorization to change their surnames.

In accordance with the Guidelines a change of name can also be granted "in exceptional cases", for instance "in cases where the denial of the change of surname would threaten the applicant's mental or physical well-being" or "in cases where the denial would be unreasonable, taking into account the interests of both the applicant and the State" (see para. 9.2 of the Views). As the authors apparently could not show such "exceptional circumstances" in the course of the proceedings before the national authorities, their request was denied. Their assertion that they needed the name-change to become Hindu priests was apparently not substantiated (see the reasoning given by the Council of State in its decision of 17 October 1990, para. 2.3, last sentence, of the Views; see also the inadmissibility decision of the European Commission of Human Rights of 2 July 1992, where the European Commission held that the authors had not established that their religious studies would be impeded by the refusal to modify their surnames; para. 2.4, last sentence, of the Views). Nor can requirements imposed by Indian Hindu leaders be attributed to the Dutch authorities, as confirmed by the Committee in the present case in the framework of its decision on admissibility. There it examined the present communication under the angle of article 18 of the Covenant and came to the conclusion that "a State party to the Covenant cannot be held accountable for

[5] Nowak, loc. cit., p. 294, section 17.

restri ctions placed upon the exercise of religious offices by religiou s leaders in another country" (see para. 6.1 of the Views).

The request for a change of name was, therefore, legitimately turne d down as the authors could not show the Dutch authorities "exceptiona l circumstances" as r equired by law. The refusal cannot be seen as a violation of article 17. To hold otherwise would be tantamount to recognizing that an indivi dual has an almost absolute right to have his/her name changed o n request and at whim. For such a view, in my opinion, one can find no basis in the Covenant.

(b) The State party's a ction seen from the viewpoint of the criteria for permissible (State) interference in rights protected b y article 17.

On the assumption that there exists a right of the individual to change his/her name, the question of the extent to which "interference" with tha t right is still perm issible, has to be examined (and is, indeed, addressed by the Committee in the present Views).

What then are the criteria laid down for (St ate) interference? They are two and only two. Article 17 prohibits arbitrary or unlawful interfer ence with one's privacy.

It is obvious that the decision of the Dutch authorities not to grant a change of name cannot per se be regarded as constituting "arbitrary o r unlawful" interference with the authors' rights under article 17. The decision is based on the law applicable in the Netherlands. Hence it is not unlawful . The Committee itself says so (see para. 10.3 of the Views). The condition s under which a change of name will be authorized in the Netherlands are laid down in generally applicable and published "Guidelines for the change o f surname" which, in themselves, are not manif estly arbitrary. These Guidelines have been applied in the present case, and there is no indication that they were applied in a discriminatory fashion. Hence it is equally difficult t o call the decision arbitrary . The Committee does so, however, "in th e circumstances of the present case" (see para. 10.5 of the Views). To arrive at that finding the Committee introduces a new notion - that o f "reasonableness". It finds "the grounds for limiting the authors' rig hts under article 17 not to be reasonable " (see para. 10.5 of the Views).

The Committee thus attempts to expand the sc ope of article 17 by adding an element which is not part of that article . The only argument the Committee can adduce in this context is a simple reference (renvoi) to its own General Comment on article 17 where it stated that " even interference provided by law ... should be , in a ny event, reasonable in the particular circumstances". It is difficult for me to go along with this argumentation and to base on such argumentation a finding that a State party violated this specific provision of the Covenant.

Kurt Herndl

[Done in English, French and Spanish, the English text being the origina l version. Subsequently to be issued also in Arabic, Chinese and Russia n as part of the Committee's annual report to the General Assembly.]

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