

## HUMAN RIGHTS COMMITTEE

### Corierl and Aurik v. Netherlands

Communication No. 453/1991

8 July 1993

CCPR/C/48/D/453/1991\*

### ADMISSIBILITY

*Submitted by:* A.R. Corierl and M.A.R. Aurik [represented by counsel]

*Alleged victim:* The authors

*State party:* The Netherlands

*Date of communication:* 14 January 1991

*Documentation references:* Prior decisions - CCPR/C/WG/44/D/453/1991 (Working Group's rule 91 decision, dated 25 March 1992)

*Date of present decision:* 8 July 1993

The Human Rights Committee, acting through its Working Group pursuant to rule 87, paragraph 2, of the Committee's rules of procedure, adopts the following decision on admissibility.

#### **Decision on admissibility**

1. The authors of the communication are A.R. Coeriel and M.A.R. Aurik, two Dutch citizens residing in Roermond, the Netherlands. They claim to be victims of a violation by the 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 Roermond District Court (*Arrondissements Rechtbank*) to change their first names into Hindu names, in accordance with the requirements of their religion. This request was granted by the Court on 6 November 1986.

2.2 Subsequently, the authors requested the Minister of Justice to have their surnames changed into Hindu names. They claimed that for individuals wishing to study and practice the Hindu religion 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 the 'Guidelines for the change of surname' (*Richtlijnen voor geslachtsnaamwijziging* 1976). The decision further 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 the authors' current surnames did not constitute an obstacle to undertake studies for the Hindu priesthood, since the authors would be able to adopt the 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 State (*Raad van State*), the highest administrative tribunal in the Netherlands and claimed inter alia that the refusal to allow them to change their names violated their freedom of religion. On 17 October 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 changed to give them the chance to become Hindu priests; 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 inadmissible as manifestly ill-founded.

### The complaint

3. The authors claim that the refusal of the Dutch authorities to have their surnames changed prevents them from further their studies for the Hindu priesthood and therefore violates article 18 of the Covenant. They also claim that said refusal constitutes unlawful or arbitrary interference with their privacy.

### State party's observations and authors' comments thereon

4.1 By submission of 7 July 1991, the State party replies to the Committee's request under rule 91 of the rules of procedure to provide observations relevant to the question 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 circumstances, namely when the current surname is indecent or ridiculous, so common that it has lost its distinctive character or, in cases of Dutch citizens who have acquired Dutch nationality by naturalization, not Dutch-sounding. The State party submits that outside these categories, change of surname is only allowed in exceptional cases, where the refusal would threaten the applicant's mental or physical well-being.

4.3 With regard to Dutch citizens belonging to cultural or religious minority groups, principles have been formulated for the change of surname. One of these principles states that a surname may not

be changed if the requested new name would carry with it cultural, religious or social pretensions.

4.4 The State party submits that the authors in the present case have been Dutch citizens since birth and grew up in a Dutch cultural environment. Since the authors' request to change their surnames had certain aspects comparable to those of religious minorities, the Minister of Justice formally sought an opinion from the Minister of Internal Affairs. This opinion was unfavourable to the authors, as the new names requested by them were perceived as pretentious.

4.5 The State party states that the authors are free to carry any name they wish in public social life, as long as they do not carry a name that belongs to someone else without the latter's permission. The State party submits that it respects the authors' religious convictions and that they are free to manifest their religion. The State party further contends that the fact that the authors allegedly are prevented from following further religious studies in India because of their Dutch names, cannot be attributed to the Dutch government, but is the consequence of requirements imposed by Indian Hindu leaders.

4.6 As regards the authors' claim under article 17 of the Covenant, the State party contends that the authors have not 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 is inadmissible as being incompatible with the provisions of the Covenant. It further argues that the authors have failed to advance a claim within the 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 mandatory to have a Hindu surname when one wants to study for the Hindu priesthood and that no exceptions to this rule are made. In this connection, they submit that if the surname is not legally changed and appears on official identification documents, they cannot become legally ordained priests. In support of their argument, the authors submit declarations made by two pandits in England and by the Swami of New Delhi.

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

#### Issues and proceedings before the Committee

6.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not it is admissible

under the Optional Protocol to the Covenant.

6.2 The authors invoke a right to change their surnames. The Committee observes that no provision of the Covenant establishes or protects such a right. Nevertheless the Committee proceeds to consider whether the facts as submitted raise any issues under articles 17 and 18 of the Covenant, as claimed by the authors.

6.3 The Committee notes that the issue raised under article 18 in the present communication is whether the application of the State party's laws and regulations concerning surnames indirectly affects the authors' desire to manifest their religion by adopting a Hindu surname and by living as Hindu priests. The Committee observes that the limitation clause in article 18, paragraph 3, specifically allows restrictions on the freedom to manifest one's religion or beliefs as are prescribed by law and are necessary, *inter alia*, for reasons of public order. In this connection, the Committee notes that the regulation of surnames and the change thereof is eminently a matter of public order and thus permissible under paragraph 3 of article 18. The Committee therefore concludes that the authors have failed to advance a claim within the meaning of article 2 of the Optional Protocol.

6.4 In this context, the Committee observes that it is not so much the State party that prevents the authors from studying for the Hindu priesthood, but the regulations enforced by the Indian religious Hindu authorities that prevent them from becoming Hindu priests without an official change of surname. The Committee considers that the State party cannot be held accountable for restrictions placed upon the exercise of religious offices by religious leaders in another country. In this aspect, the communication is therefore inadmissible under article 1 of the Optional Protocol.

6.5 As regards the authors' claim under article 17 of the Covenant, the Committee has noted the State party's argument that domestic remedies have not been exhausted in this respect. The Committee notes that the authors have appealed the refusal to have their surnames changed to the *Raad van State*, the highest administrative tribunal in the Netherlands and that no other remedies remain. The State party has argued that the authors have not raised the question of interference with their privacy during the domestic proceedings. The Committee refers to its prior jurisprudence <sup>1/</sup> that it is not necessary for an author to explicitly invoke the articles of the Covenant while exhausting domestic remedies, when the facts as submitted appear to raise issues under the substantive rights of the Covenant. In the circumstances of the present case, the Committee considers that the authors have fulfilled the requirement under article 5, paragraph 2 (b), of the Optional Protocol.

6.6 The Committee considers 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 dismissal of the authors' request to have their surnames changed was arbitrary should be dealt with on the merits.

7. The Human Rights Committee therefore decides:

(a) that the communication is admissible in as much as it appears to raise issues under article 17 of the Covenant;

(b) that, in accordance with article 4, paragraph 2, of the Optional Protocol, the State party shall be

requested to submit to the Committee, within six months of the date of transmittal to it of this decision, written explanations or statements clarifying the matter and the measures, if any, that may have been taken by it;

(c) that any explanations or statements received from the State party shall be communicated by the Secretary-General under rule 93, paragraph 3, of the rules of procedure to the authors and their counsel, with the request that any comments which they may wish to make should reach the Human Rights Committee, in care of the Centre for Human Rights, United Nations Office at Geneva, within six weeks of the date of the transmittal;

(d) that this decision shall be communicated to the State party, to the authors and to their counsel.

---

\*/ All persons handling this document are requested to respect and observe its confidential nature.

1/ Communication No. 305/1988, Hugo van Alphen v. the Netherlands, Views adopted on 23 July 1990.