



## International Covenant on Civil and Political Rights

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### Human Rights Committee

#### Communication No. 1526/2006

##### Decision adopted by the Committee at its 105th session (9–27 July 2012)

<i>Submitted by:</i>	V. A. (not represented by counsel)
<i>Alleged victim:</i>	The author's son, D. A.
<i>State party:</i>	The Russian Federation
<i>Date of communication:</i>	3 March 2006 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 7 May 2007 (not issued in document form)
<i>Date of adoption of decision:</i>	23 July 2012
<i>Subject matter:</i>	Refusal by the authorities to grant citizenship and issue identity documents
<i>Procedural issues:</i>	Exhaustion of the domestic remedies
<i>Articles of the Covenant:</i>	2; 8, para. 2; 9, para. 1; 12, paras. 1, 2 and 3; 14, para. 1; 16; 17; 23, paras. 1 and 2; 24, para. 3; 25 and 26
<i>Articles of the Optional Protocol:</i>	2, 3, 5, paras. 2 (a) and (b)

## Annex

### **Decision of the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political rights (105th session)**

concerning

#### **Communication No. 1526/2006\***

*Submitted by:* V. A. (not represented by counsel)  
*Alleged victim:* The author's son, D. A.  
*State party:* The Russian Federation  
*Dates of communication:* 3 March 2006 (initial submission)

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

*Meeting* on 23 July 2012,

*Adopts* the following:

#### **Decision on admissibility**

1. The author of the communication is V. A., a Russian Federation national, born in 1951. He submits the communication on behalf of his son, D.A., born in 1977, and who was stateless at the time of the communication.<sup>1</sup> He claims that his son is a victim of violations by the Russian Federation of his rights under article 2, article 8, paragraph 2, article 9, paragraph 1, article 12, paragraphs 1, 2 and 3, article 14, paragraph 1, article 16, article 17, article 23, paragraphs 1 and 2, article 24, paragraph 3, article 25 and article 26 of the International Covenant on Civil and Political Rights. The Optional Protocol entered into force for the State party on 1 January 1992. The author is unrepresented.

#### **The facts as presented by the author**

2.1 The author's son was born in 1977 in the former Uzbek Soviet Socialist Republic, and was, at birth, a citizen of the Soviet Union. He has never left the territory of the former Soviet Union (USSR). Both his parents are of Russian origin.

2.2 On an unspecified date, the author moved to Russia. According to him, his son has lived with him in Borisoglebsk City (Russian Federation) since November 1992, when he was 15 years old. In support of his case, the author submits copies of numerous documents, inter alia, copies of his son's high school and university diplomas, copy of a certificate

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\* The following members of the Committee participated in the examination of the present communication: Mr. Yadh Ben Achour, Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Mr. Walter Kälin, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Mr. Gerald L. Neuman, Mr. Michael O'Flaherty, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabián Omar Salvio, Mr. Marat Sarsembayev, Mr. Krister Thelin and Ms. Margo Waterval.

<sup>1</sup> The author has enclosed a signed authorization from his son.

issued by the Federal Migration Service of Russia stating that the author's son had the status of a forcibly displaced person, and an address registration slip.

2.3 The author claims that since 1992, as his son's legal representative, he has filed numerous applications with the Russian authorities for his son to be issued an identity document, and in particular a USSR passport. Without an identity document, his son cannot independently access the Russian courts, does not have freedom of movement within the Russian Federation, cannot work or receive medical assistance, and is deprived of a range of other rights afforded to Russian citizens and those with identity documents.

2.4 The author claims that he has filed numerous applications with the Russian authorities for his son to be granted Russian citizenship. All have been rejected. The author states that, under article 15 of the Russian Federation Law on Citizenship of 1991, his son should have been able to acquire Russian citizenship, on the basis that his parents were born in the Russian Soviet Federative Socialist Republic (RSFSR) of the former USSR.

2.5 The author explains that as he had no registered address in the RSFSR on 6 February 1992, the Law on Citizenship did not at that time recognize him as a citizen of the newly independent Russian Federation. This situation changed, following a judgment of the Constitutional Court of the Russian Federation of 1996, which found this restriction to be unconstitutional. The author's Russian citizenship was confirmed, a fact which, according to him, should also entitle his son to Russian citizenship.

2.6 A new Law on Citizenship was enacted on 31 May 2002. The author states that the provisions of the new law allowed his son to apply for Russian citizenship. In violation of the law, however, the administrative authorities have rejected his applications in this connection.

2.7 On 25 July 2002, another law was enacted relating to the legal status of foreign citizens in the Russian Federation. Article 2 of that law deems citizens of the former USSR to be "foreign citizens". The author considers this to be discriminatory and degrading for his son.

2.8 On 14 February 2005, the author's son complained to the Borisoglebsk City Court, asking it to confirm that he had been a permanent resident in the Russian Federation since November 1992. He stated as the motive for his request, his intention to apply for a USSR passport with the indication that he was not a Russian national. On 11 May 2005, the court rejected his application and informed him that USSR passports were no longer issued by the Russian authorities and that he had failed to prove that he has been residing in the Russian Federation since 1992. The Court explained, however, that according to the legislation in force, he could apply and obtain a Russian passport, but prior to this, he had to have a "residence permit" and Russian citizenship. A cassation appeal against that decision before the Voronezh Regional Court was rejected on 5 July 2005.

2.9 On an unspecified date, the author's son applied for a Russian Federation passport to the Passport and Visa Department. His application was rejected, and on 14 July 2005, the author filed an appeal to the Borisoglebsk Regional Court against the refusal of the administrative authorities to grant his son Russian citizenship and issue him an identity document. On 6 October 2005, the Court rejected his appeal. The Court found that in order to acquire a Russian citizenship, an applicant had to provide sufficient documentation to establish his or her identity, such as a passport or a residence permit and that the author's son had not complied with the above requirement. The Court concluded that the authorities had duly explained to the author and his son the processes for obtaining a residence permit.

2.10 The author filed a cassation appeal against the decision in the Voronezh Regional Court. On 15 December 2005, the Court rejected the appeal on the basis that it was not filed

with due authorization from the author's son. A further cassation appeal was dismissed because it was filed after the expiration of the statutory filing deadline.

2.11 The author's petition to the Voronezh Regional Court for a supervisory review of the decision of the Borisoglebsk City Court was dismissed on 21 June 2006, because the Court found no basis to doubt the accuracy of the decision. The author's two appeals to the Supreme Court of the Russian Federation for further supervisory review remained, according to him, unanswered.

2.12 The author submits that on 20 January 2003, he filed an application to the European Court of Human Rights on behalf of his son. The application was registered as No. 1889/03 and rejected on an unspecified date as being incompatible with the requirements of articles 34 and 35 of the European Convention on Human Rights.

### **The complaint**

3. The author claims that the Russian authorities' refusal to provide his son with an identity document violates his son's rights under the Covenant, in particular under article 16, but also under article 2, article 8, paragraph 2, article 9, paragraph 1, article 12, paragraphs 1, 2 and 3, article 14, paragraph 1, article 17, article 23, paragraphs 1 and 2, article 24, paragraph 3, article 25 and article 26.

### **State party's observations on admissibility**

4. On 15 July 2011, the State party submits that according to the Federal Migration Service of the Russian Federation, the author's son was granted Russian Federation citizenship on 26 June 2008 and that he was issued a passport (Series 2008 No. 980470). Accordingly the State party maintains that the author's communication is inadmissible since the situation that he claims violated his son's rights has been resolved.

### **Author's comments on the State party's observations**

5.1 On 17 September 2011, the author submits that the State party's assertion that by issuing a passport to his son his rights had been restored contradicts the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.<sup>2</sup> He submits that, even though his son was eventually granted citizenship and issued a passport, it occurred after a delay of 14 years and following an additional "illegal requirement" to present a certificate stating that he did not hold Uzbekistan citizenship. The author maintains that by imposing such a requirement on his son, he was treated not as a "full subject", but as "an object of the activity" of two "illegally formed states", namely Russia and Uzbekistan. He further submits that by issuing a passport to his son, the State party recognized that the court judgement that failed to recognize the legal personality of the applicant was "obviously unjust". The author further submits that the decisions of the cassation and the supervisory instances "involuntarily define the fact that the complainant is a victim". He maintains that the courts have established "the prejudice to the complainant", since he did not have an identity document and therefore could not personally address the courts or appoint a representative, and accordingly his rights under article 14, paragraph 1, of the Covenant were violated.

5.2 The author further submits that the State party failed to comply with several of the principles regarding the right to a remedy and reparation for victims of human rights violations.

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<sup>2</sup> General Assembly resolution 60/147, annex.

5.3 The author maintains that “the official statements of high-level State officials regarding their want of jurisdiction”, without taking into consideration article 19 of the Constitution of the Russian Federation, are null and void.

5.4 The author reiterates that his son’s rights under article 8, paragraph 2, article 12, paragraphs 1, 2 and 3, article 14, paragraph 1, article 16, paragraph 2, article 23, paragraphs 1 and 2, article 24, paragraph 3, article 25 and article 26 of the Covenant were violated, and provides a detailed calculation of the monetary value of the material and moral damages that, according to him, were inflicted on him and his son as a result of the failure to issue his son a passport.

#### **Further submissions from the State party**

6.1 On 19 December 2011, the State party reiterates the facts regarding the author’s son’s application for Russian citizenship, the refusal of the Passport and Visa Department to issue one, since he had failed to present the documents required by law with his application, and the subsequent confirmation of that decision by the Borisoglebsk City Court, on 6 October 2005. The State party notes that the author’s son did not put forward any reasons as to why he did not or could not obtain a residence permit, which was a precondition for his application for citizenship. The State party refers to articles 2 and 3 of the Covenant and notes in that context that, the court decision rejecting his appeal against the refusal of the Passport and Visa Department to issue a passport to the author’s son, did not preclude him from applying again and including the necessary documents.

6.2 The State party submits that the author’s son preferred instead to file further appeals before higher courts. It notes that on 15 December 2005, the Voronezh District Court issued a ruling dismissing the court case initiated following the cassation appeal filed by the author, because the latter had failed to enclose a power of attorney (letter of authorization) from his son. On 12 January 2006, the Borisoglebsk City Court issued a ruling stating that it would not hear the author’s cassation appeal, which was filed on behalf of his son, also because no power of attorney was enclosed. On 25 January 2006, the Borisoglebsk City Court issued a ruling, refusing to hear the author’s cassation appeal, because it was filed after the statutory deadline for appeal and it did not contain an application for the restoration of the deadline. The Presidium of the Voronezh Regional Court heard the author’s cassation appeal against the Borisoglebsk City Court’s decision of 6 October 2005 and, by a ruling dated 21 March 2006, rejected it.

6.3 The State party maintains that the communication should be declared inadmissible on two grounds: first, in accordance with article 2 of the Optional Protocol, because the author’s son had failed to exhaust available domestic remedies; and second, in accordance with article 3 of the Optional Protocol, because the information put forward by the author regarding the exhaustion of the domestic remedies did not correspond to the reality and therefore the communication constitutes an abuse of the right of submission.

6.4 The State party further notes that in his applications, the author’s son pointed out that obtaining Russian Federation citizenship in itself was not necessary for him, but rather that he needed identification documents, such as a USSR passport with the indication that he was not a Russian Federation citizen.

6.5 Lastly, the State party submits that the claims related to rights violations resulting from a geopolitical process – namely the disintegration of the USSR, which had some negative consequences for the author’s son – are incompatible with the provisions of the Covenant and therefore are inadmissible under article 3 of the Optional Protocol.

## Issues and proceedings before the Committee

### *Consideration of admissibility*

7.1 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 the case is admissible under the Optional Protocol to the Covenant.

7.2 The Committee must first establish whether the same matter is not being examined under another procedure of international investigation or settlement, as required by article 5, paragraph 2 (a), of the Covenant. The Committee notes that the author submitted a similar complaint to the European Court of Human Rights, which was registered on 20 January 2003 as Application No. 1889/03, and declared inadmissible on 20 February 2004. The Committee also notes that upon accession to the Optional Protocol, the State party made a declaration,<sup>3</sup> which, however, does not preclude the Committee from considering communications where the same matter has been the subject of another international procedure. Accordingly, the Committee considers that it is not precluded, for purposes of admissibility, by article 5, paragraph 2 (a), of the Optional Protocol from examining the communication.

7.3 The Committee takes note of the State party's challenge of the admissibility of the communication on the grounds of non-exhaustion of domestic remedies, namely the author's failure to first provide proper authorization from his son, then to file within the statutory deadlines a cassation appeal against the 6 October 2005 decision of the Borisoglebsk Regional Court with regard to the refusal of the administrative authorities to grant his son Russian citizenship. The Committee observes that the author has not advanced reasons for his failure to pursue this remedy in respect to his claims. In the circumstances, the Committee considers that the author has failed to exhaust the available domestic remedies and declares the communication inadmissible under article 5, paragraph 2 (b), of the Optional Protocol.

8 Therefore, the Human Rights Committee decides that:

(a) the communication is inadmissible pursuant to article 5, paragraph 2 (b), of the Optional Protocol; and

(b) the present decision shall be communicated to the author and to the State party, for information.

[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.]

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<sup>3</sup> The declaration reads as follows: "The Soviet Union also proceeds from the understanding that the Committee shall not consider any communications unless it has been ascertained that the same matter is not being examined under another procedure of international investigation or settlement and that the individual in question has exhausted all available domestic remedies".