
1) Reference Details

Jurisdiction: UN Human Rights Committee, Eighty-first session
Date of Decision: 26 July 2004

2) Facts

From 1962 to 1967, the author attended the Sevastopol Higher Navy College. After graduation, he served in Kamchatka until 1976 and thereafter in Tallinn as head of a military factory until 1986. On 10 November 1986, the author was released from service with rank of captain due to illness. The author worked, since 1988, as a head of department in a private company, and he was married to a naturalized Estonian woman. In 1991, Estonia achieved independence.

On 28 February 1994, the author applied for Estonian citizenship. In 1994, an agreement between Estonia and the Russian Federation entered into force which concerned the withdrawal of troops stationed on the former's territory (the 1994 treaty). In 1995, the author obtained an Estonian residence permit, pursuant to the Aliens Act's provisions concerning persons who had settled in Estonia prior to 1990. In 1996, an agreement between Estonia and the Russian Federation entered into force, concerning "regulation of issues of social guarantees of retired officers of the armed forces of the Russian Federation in the territory of the Republic of Estonia" (the 1996 treaty). Following delays arising from defective archive materials, on 29 September 1998, the Estonian Government, by Order No. 931-k, refused the author's citizenship application. The refusal was based on s. 8 of the Citizenship Act of 1938, as well as s. 32 of the Citizenship Act of 1995 which precluded citizenship for a career military officer in the armed forces of a foreign country who had been discharged or retired there from.

3) Law

National Law

- Sections 8 and 32 of the Citizenship Act of 1938
- Aliens Act of Estonia
- Estonian Constitution

International Law

- Article 25(c) of the International Covenant on Civil and Political Rights (equal right to vote and equal access to government service);
- Article 26 of the International Covenant on Civil and Political Rights (right to non-discrimination).

4) Legal Arguments
The Author

The author argued that he had been the victim of discrimination on the basis of social origin, contrary to Article 26 of the Covenant. He contended the Citizenship Act imposes an unreasonable and unjustifiable restriction of rights on the grounds of a person's social position or origin. He argued that the law presumes that all foreigners who have served in armed forces pose a threat to Estonian national security, regardless of the individual features of the particular service or training in question. Further, he argued that there was proof neither of a threat posed generally by military retirees, nor of such a threat posed by the author specifically.

Likewise, the author argued that, as a result of this legal position, there are some 200,000 persons comprising 15% of the population that are residing permanently in the State but who remain stateless. As a result of the violation of Article 26, the author seeks compensation for pecuniary and non-pecuniary damage as well as costs and expenses of the complaint.

The State

In respect to Article 26, the State party referred to the Committee's established jurisprudence that not all differences in treatment were discriminatory; rather, differences that are justified on a reasonable and objective basis are consistent with Article 26. The State argued that the exclusion in its law from citizenship of persons who have served as professional members of the armed forces of a foreign country was based on historical reasons, and must also be viewed in the light of the treaty with the Russian Federation concerning the status and rights of former military officers.

5) Decision

The Committee turning to the substance of the admissible claim under Article 26, referred to its jurisprudence that an individual may be deprived of his right to equality before the law if a provision of law is applied to him or her in arbitrary fashion, such that an application of law to an individual's detriment is not based on reasonable and objective grounds. In this case, the State had invoked national security, a ground provided for by law, for its refusal to grant citizenship to the author in the light of particular personal circumstances.

The Committee observed that the State argued that a grant of citizenship to the author would raise national security issues generally on account of the duration and level of the author's military training, his rank and background in the armed forces of the then USSR. The Committee noted that the author had a residence permit issued by the State and that he continued to receive his pension while living in Estonia. Although the Committee was aware that the lack of Estonian citizenship will affect the author's enjoyment of certain Covenant rights, notably those under Article 25, it noted that neither the Covenant nor international law in general spelt out specific criteria for the granting of citizenship through naturalization, and that the author did enjoy a right to have the denial of his citizenship application reviewed by the courts of the State. Furthermore, the role of the State's courts in reviewing administrative decisions, including those decided with reference to national security, appeared to entail genuine substantive review, the Committee concluded that the author has not made out his case that the decision taken by the State with respect to him was not based on reasonable and objective grounds. Consequently, the Committee found no violation of Article 26 of the Covenant.