



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE
Eightieth session
15 March – 2 April 2004

DECISION

Communication No. 1115/2002

<u>Submitted by:</u>	Mr. Werner Petersen (represented by counsel, Mr. Georg Rixe)
<u>Alleged victim:</u>	The author
<u>State party:</u>	Germany
<u>Date of communication:</u>	31 January 2002 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 91 decision, transmitted to the State party on 2 September 2002 (not issued in document form)
<u>Date of adoption of decision:</u>	1 April 2004

[ANNEX]

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- Made public by decision of the Human Rights Committee.

ANNEX

**DECISION OF THE HUMAN RIGHTS COMMITTEE UNDER
THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT
ON CIVIL AND POLITICAL RIGHTS**

Eightieth session

concerning

Communication No. 1115/2002**

Submitted by: Mr. Werner Petersen (represented by counsel,
Mr. Georg Rixe)

Alleged victim: The author

State party: Germany

Date of communication: 31 January 2002 (initial submission)

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

Meeting on 1 April 2004

Adopts the following:

DECISION ON ADMISSIBILITY

1. The author of the communication is Werner Petersen, a German national, who claims to be a victim of a violation by Germany¹ of articles 2, paragraphs 1 and 3, 3, 14, 17 and 26 of the Covenant. He is represented by counsel.

** The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine Chanet, Mr. Franco Depasquale, Mr. Maurice Glèlè Ahanhanzo, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Martin Scheinin, Mr. Ivan Shearer, Mr. Hipólito Solari Yrigoyen, Mr. Roman Wieruszewski and Mr. Maxwell Yalden.

¹ The Covenant and the Optional Protocol to the Covenant entered into force for Germany on 17 March 1974 and 25 November 1993, respectively. Upon ratification of the Optional Protocol, the State Party entered the following reservation: "The Federal Republic of Germany formulates a reservation concerning article 5 paragraph 2 (a) to the effect that the competence of the Committee shall not apply to communications (a) which have already been considered under

The facts as submitted by the author

2.1 The author is the father of a child born out of wedlock on 3 May 1985. He lived with the child's mother, Ms. B, from May 1980 to November 1985. They agreed that the son would bear the mother's surname. After separation from the mother, the author continued to pay maintenance and had regular contact with his son until autumn 1993. In August 1993, the mother married Mr K., and took her husband's name in conjunction with her own surname, i.e. B.-K.

2.2 In November 1993, the author asked the Youth Office of Bremen whether the mother had applied for a change of his son's surname. By letter of 20 December 1993, he was advised that she had inquired about the possibility, but that no request had been filed yet. In his letter, the competent Youth Office official informed the author that, should such a request be lodged, he would agree to a change of surname, as the stepfather had been living together with the mother and the son for more than one year and since the child fully accepted him. On 30 December 1993, the mother and her husband recorded statements at the Bremen Registry Office, to the effect that they gave their family name (K.) to the author's son. They also filed a document issued by the Bremen Youth Office, on 29 December 1993, on behalf of the son (then 8 years old), according to which he agreed to the change of his surname. The Bremen Registry Office informed the Helmstedt Registry Office accordingly, following which the registrar of the Helmstedt Registry Office added the change of the child's surname to his birth record.

2.3 On 6 April 1994, the author filed an action with the Administrative Court of Bremen against the Bremen Municipality, complaining that the Bremen Youth Office had failed to hear him about the envisaged change of his son's surname. On 19 May 1994, the Administrative Court of Bremen declared itself incompetent to deal with the action and transferred the case to the District Court of Braunschweig.

2.4 On 21 October 1994, the Braunschweig District Court dismissed the author's claim for rectification of his son's birth record, insofar as the change of his surname was concerned. The Court found that the entry was correct because the child's surname had been changed in accordance with s. 1618² of the Civil Code. It considered that this section did not amount to a

another procedure of international investigation or settlement, or (b) by means of which a violation of rights is reprimanded having its origin in events occurring prior to the entry into force of the Optional Protocol for the Federal Republic of Germany, or (c) by means of which a violation of article 26 of the [said Covenant] is reprimanded, if and insofar as the reprimanded violation refers to rights other than those guaranteed under the aforementioned Covenant."

² Pursuant to section 1617 of the German Civil Code in force at the material time, a child born out of wedlock received the surname that the mother was bearing at the time of the child's birth. A subsequent change of the mother's surname as a result of marriage did not affect the child's surname.

Section 1618 of the same Code provided that the mother of a child born out of wedlock and her husband could declare, for the record of a registrar, that the child, who was bearing a surname in accordance with section 1617 and was not yet married, should in future bear their family name. Similarly, the father of the child could declare, for the record of a registrar, that the

violation of the non-discrimination provision of the German Constitution or of article 8 of the European Convention on Human Rights. On balance, s. 1618 of the Civil Code did not affect the equality between children born out of wedlock and children born in wedlock. Rather, in providing for the possibility of having the same surname, s.1618 ensured that the child's status - born out of wedlock - was not disclosed to the public. As far as procedural matters were concerned, the proceedings for a change of surname in which the natural father did not participate could not be objected to on constitutional grounds. In particular, there was no breach of the author's rights as a natural parent, since his son had never borne the father's surname. The change of surname served the best interests of the child. A right of the natural father to be heard in the proceedings, as argued by the author, without the possibility to block a change of surname would not be effective, as mother and stepfather would have the final say in any event.

2.5 On 4 January 1995, the Regional Court of Braunschweig dismissed the author's appeal, confirming the reasoning of the District Court and holding that there were no indications that the legal provisions applied in the present case were unconstitutional. The change of surname served the interests of the child's well-being, which prevailed over the interests of the natural father.

2.6 On 10 March 1995, the Higher Regional Court of Braunschweig dismissed the author's further appeal. Relying on the case-law of the Federal Constitutional Court, it reiterated that s. 1618 of the Civil Code could not be objected to on constitutional grounds. The author could not derive from his rights as a natural father any right to be heard in proceedings about the change of his child's surname, because his rights conflicted with those of the mother and, in particular, of the child, whose protection was the provision's paramount objective. The child's interests were safeguarded by the Youth Office's participation in the proceedings. If the child's mother, her husband and the guardian agreed on the change of the child's surname, this change would generally have to be considered to be in the interest of the child's well-being.

2.7 In January 1994, as a result of problems in having access to his son, the author applied to the Bremen District Court for a decision granting him a direct right of access to his son. In April 1994, by interlocutory decision, the District Court granted him visiting rights. Subsequently, the child's mother did not comply with the decision and prohibited visits from October 1994.

2.8 On 3 January 1995, the author instituted proceedings against the mother before the Bremen District Court, claiming compensation for lost travel expenses caused by her refusal to allow him access to his son on 16 October and 13 November 1994.

2.9 On 5 April 1995, after an oral hearing, the Bremen District Court dismissed the author's action. It found that there was no legal basis to claim compensation for the mother's alleged refusal to grant him access to his son. The Court noted that, pursuant to s. 1711 of the Civil Code, the person with custody and care of a child born out of wedlock determines contact arrangements with the father, and that the father can only claim personal contacts if they are in the child's interest. The Court also observed that its interlocutory decision of April 1994 on

child should bear his surname. The child and the mother had to agree to the change of the surname, in case that the father wanted to give his surname to the child.

visiting arrangements had been formulated as granting the child a right to visit the author, not in terms of awarding a right of access to the author.

2.10 On 17 August 1995, the Federal Constitutional Court dismissed the author's constitutional complaints against the decisions in both sets of proceedings (change of his son's surname; rejection of his compensation claim). It found that, in both cases, the conditions of admissibility had not been met. In particular, the Court considered that the author's complaint about the change of his son's surname did not raise any question of fundamental importance. Referring to its decision of 7 March 1995 in another matter³, it recalled that the father of a child born out of wedlock enjoyed the right to the care and upbringing of the child under the Basic Law, even if he was not living with the child's mother and was not raising the child together with her. However, in the present case, there was no indication that the courts, in interpreting and applying s. 1618 of the Civil Code, had disregarded the author's parental rights. As to the Bremen District Court's decision of 5 April 1995, the Court considered that the author had no constitutional claim for his parental right to access to his child to be enforced by means of a tort action.

2.11 On 8 February 1996, the author submitted an application to the European Court of Human Rights, claiming violations of his and his son's rights under articles 6, 8 and 14 of the European Convention on the Protection of Human Rights and Fundamental Freedoms (European Convention). On 6 December 2001, the European Court declared the application inadmissible⁴ on the following grounds: (1) author's lack of standing to act on his son's behalf; (2) incompatibility *ratione materiae* with the provisions of the Convention of his claim that the proceedings concerning the change of his son's surname had discriminated against him as a natural father, thereby infringing article 14 of the Convention; and (3) as manifestly ill-founded, insofar as the author alleged (a) that the change of his son's surname violated his right to respect for family life under article 8 of the Convention; (b) that the absence of an oral hearing and a public pronouncement of the decisions in the proceedings before the Bremen Administrative Court and the Braunschweig District and Regional Courts violated article 6 of the Convention; and (c) that the dismissal of his compensation claim not only failed to enforce his visiting rights, but also discriminated against him, if compared to fathers of children born in wedlock, in violation of article 8, *juncto* article 14, of the Convention.

The complaint

3.1 The author alleges a violation of his rights under articles 2, paragraphs 1 and 3, 3, 14, 17 and 26 of the Covenant, because his interests as the natural father had not been duly taken into account, given that neither his consent, nor his participation were required in the proceedings to change his son's surname. He explicitly states that he is not submitting the communication on his son's behalf.

³ Decisions of the Constitutional Court (BVerfGE), Vol. 92, No. 12, at pp. 158.

⁴ See European Court of Human Rights (Third Section), Decision as to the Admissibility of Application No. 31180/96 (*Werner Petersen against Germany*), 6 December 2001.

3.2 The author claims that, by contrast to a father of a child born in wedlock, he did not have the benefit of a public authority having to justify the change of the child's name by an important reason related to the child's well-being. He feels discriminated against in comparison to the child's mother or the father of a child born in wedlock, who must be heard in the proceedings under the Change of Surnames Act. Moreover, unlike the father of a child born in wedlock, he had no effective access to the courts to contest the decision of the guardian, the mother and her husband concerning the change of surname for lack of important reasons, incompatibility with the child's interest, or failure to be heard in the change of name proceedings.

3.3 The author submits that the change of his son's surname serves no legitimate aim, since the child's well-being generally requires continuity of name as a means of personal identification. Concealing an illegitimate birth by change of name was not a legitimate purpose. Furthermore, representation by the guardian does not sufficiently safeguard the child's interests, as the Youth Office regularly hears only the mother and her husband and not the child himself.

3.4 The author alleges that the Bremen District Court's decision of 5 April 1995 violates his rights under articles 2, 3, 17 and 26 of the Covenant, as it fails to ensure his right of access to his son. He adds that the father of a child born in wedlock is entitled to compensation if the mother refuses to comply with his right of access.

3.5 The author claims that the European Court of Human Rights, in its inadmissibility decision of 6 December 2001, did not "consider" his claims within the meaning of the State party's reservation to article 5, paragraph 2 (a), of the Optional Protocol. *If* there is a material difference between the applicable provisions of the Covenant and the European Convention, and if a matter has been declared inadmissible *ratione materiae* by the European Court, that matter has not been "*considered*" within the meaning of the German reservation, in accordance with the Committee's jurisprudence in *Rogl v. Germany*⁵ and in *Casanovas v. France*⁶.

3.6 As to his claims under article 26 of the Covenant, the author submits that the European Court has held that the change of his son's surname and the denial of compensation for his lost travel expenditures did not directly affect his right to family life (article 8 of the Convention), so that there was no room for the application of article 14, which could be applied solely in relation to the substantive rights and freedoms of the Convention. Unlike article 14 of the European Convention, article 26 is a free-standing provision, which could be invoked independently of the other Covenant rights. In the light of the material difference between both provisions, the Committee was not precluded by the German reservation from considering his claims based on article 26 of the Covenant.

3.7 Regarding his claims under article 17 of the Covenant, the author argues that the European Court's finding that his right to respect for family life was not affected by the change of his son's surname or the denial of his compensation claim, shows that the Court has found these claims to fall outside the ambit of article 8 of the Convention, thereby not considering them within the meaning of the German reservation. Moreover, the Court had failed to consider his

⁵ Communication No. 808/1998.

⁶ Communication No. 441/1990.

claim under article 14 of the Convention that, in comparison to fathers of children born in wedlock, he had no access to the courts to challenge the change of name as not being in the child's interest or for not having been heard in the relevant proceedings.

3.8 With regard to the State party's reservation *ratione temporis*, the author submits that the change of his son's surname had its origin on 30 December 1993, when the mother and her husband recorded their statements at the Bremen Registry Office, which then informed the Helmstedt Registry Office, whose registrar added the change of name to the child's birth certificate. The compensation proceedings before the Bremen District Court related to his lost travel expenditures on 16 October and 13 November 1994, given the mother's refusal to let him visit his son. These events occurred after the entry into force of the Optional Protocol for the State party on 25 November 1993.

3.9 The author argues that the German reservation concerning article 26 of the Covenant is incompatible with the object and purpose of the Optional Protocol, if not the Covenant itself, as it seeks to limit the State party's obligations under article 26 in a manner inconsistent with the Committee's interpretation of that provision as a free-standing principle of equality.⁷ By reference to the Committee's General Comment 24⁸, its jurisprudence in *Kennedy v. Trinidad and Tobago*⁹, as well as articles 2, paragraph 1 (d), and 19 of the Vienna Convention on the Law of Treaties, he argues that no reservation can be made to a substantive obligation under the Covenant through the vehicle of the Optional Protocol. He recalls that the Committee had expressed regrets about the State party's reservation in its concluding observations on the fourth periodic report of Germany.

3.10 The author submits that the Committee is competent to determine whether a reservation is compatible with the object and purpose of the Covenant and that the effect of any finding that the German reservation is incompatible with the object and purpose of the Optional Protocol is that it will be generally severable, in the sense that the Covenant will be operative for the State party without the benefit of the reservation.¹⁰ For him, the State party has no legitimate interest in upholding its reservation, after having signed¹¹ Protocol No. 12 to the European Convention, which contains a general prohibition of discrimination. The author concludes that the reservation is invalid and does not preclude the Committee from examining his claims under article 26.

⁷ The author refers to Communication No 182/1984, *Zwaan-de Vries v. The Netherlands*.

⁸ CCPR, 52nd session (1994), General Comment 24: Issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under article 41 of the Covenant, at para. 13.

⁹ Communication No. 845/1998, at para. 6.

¹⁰ The author refers to General Comment 24, at para. 18, and the decision on admissibility of the Committee on communication No. 845/1998, *Kennedy v. Trinidad and Tobago*.

¹¹ Germany has signed Protocol No. 12 to the European Convention on 4 November 2000 but has not ratified it to date. See the Council of Europe's Treaty Office at: <http://conventions.coe.int> (consulted on 22 December 2003).

State party's observations on admissibility

4.1 On 1 November 2002, the State party submitted its observations on the admissibility of the communication, arguing that, on the basis of the German reservation, it is inadmissible *ratione materiae* and because of the prior consideration of the same matter by the European Court of Human Rights.

4.2 The State party argues that an isolated invocation of articles 3 and 26 of the Covenant is incompatible with the wording of article 3 and with the German reservation to article 26, given the accessory character of both provisions. Insofar as the author alleges a violation of these provisions alone, his communication must be considered *ratione materiae* incompatible with the provisions of the Covenant. By invoking these provisions separately from articles 14 and 17 of the Covenant, the author seeks to circumvent *litera a)* of the German reservation, as both claims are identical and based on the same arguments which already were considered by the European Court of Human Rights. The mere formulation of a complaint as an isolated claim of discrimination, concerning the same matter and based on identical arguments as a previous application to the European Court, should not undermine the application of the German reservation, whose purpose was to prevent duplication of international control procedures, conflicting decisions under such procedures and “forum shopping” by complainants.

4.3 The State party adds that the European Court has “considered” the same matter, since its decision that the author’s claims were inadmissible *ratione materiae* or manifestly ill-founded in both cases implied a summary examination of the merits of his application. The Committee’s decision in *Casanovas v. France* must be distinguished from the present case, since the scope of protection of article 6 of the European Convention differs in substance from that of article 14 of the Covenant, as regards the issue decided in that case. That the European Court declared the application inadmissible *ratione materiae* was therefore not decisive for the Committee’s finding that the same matter had not been “considered” by the Court. Rather, the additional requirement of a comparable degree of protection of the rights in question had not been met in *Casanovas*. However, in the present case, the author has failed to demonstrate an essential material difference between the Covenant rights invoked by him and their counterparts in the European Convention.

4.4 With regard to the author’s specific claims, the State party submits that the European Court examined whether the change of his son’s surname affected his right to respect for family life under article 8 of the European Convention; it also examined the substantive prerequisites of article 14 of the Convention, and came to a negative conclusion in both cases. As a result of this consideration, the Committee was precluded from examining the author’s identical claims under article 17, read in conjunction with article 26 of the Covenant, in the absence of a material difference with articles 8 and 14 of the European Convention.

4.5 Regarding the author’s claims under article 14, read in conjunction with article 26, that the proceedings relating to the change of his son’s surname were unfair and that, as the father of a child born out of wedlock, he had no opportunity to contest the name change, the State party submits that the European Court declared these complaints inadmissible as manifestly ill-founded, after comprehensively examining the merits of the claims under articles 6 and 8 of the

European Convention. The Committee's competence to examine the same matter was therefore precluded by virtue of the German reservation.

4.6 Lastly, with regard to the author's claim under article 17, read in conjunction with article 26, of the Covenant, that the denial of compensation for his loss of travel expenditures discriminated against him in comparison to fathers of children born in wedlock and did not ensure his right of access to his son, the State party submits that the European Court considered this complaint to be primarily a financial matter, which fell outside the scope of protection of article 8 of the European Convention.

Comments by the author

5.1 On 20 February 2003, the author reaffirmed that the communication is admissible for the reasons set out in his initial submission. He emphasizes that his free-standing claims of discrimination have not, and could not have been, considered by the European Court, in accordance with the established case law of the Court.¹² Therefore, the Committee was not precluded from examining these claims on the basis of the State party's reservation to article 5, paragraph 2 (a), of the Optional Protocol.

5.2 For the author, the State party failed to address his argument that the German reservation to article 26 of the Covenant is incompatible with the object and purpose of the Covenant and thus severable. He submits that, in its fifth periodic report¹³ to the Human Rights Committee, the State party indicates that it would review this part of the reservation once ratification of Protocol No. 12 to the European Convention, containing a general prohibition of discrimination, was completed. In the author's view, this supports his assumption that the State party has no legitimate interest to uphold the reservation.

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 the communication is admissible under the Optional Protocol to the Covenant.

6.2 The Committee notes that the State party has invoked its reservation to article 5, paragraph 2 (a), of the Optional Protocol, precluding the Committee from examining communications "which have already been considered under another procedure of international investigation or settlement." The Committee is satisfied that consideration by the European Court of Human Rights constitutes an examination by another procedure of international investigation or settlement within the meaning of article 5, paragraph 2 (a), of the Optional Protocol.

¹² The author refers to Communication No. 965/2000, *Karakurt v. Austria*, at para. 7.4.

¹³ See Fifth periodic report of Germany, UN Doc. CCPR/C/DEU/2002/5, 4 December 2002, at para. 372.

6.3 The Committee observes that *litera a)* of the State party's reservation to article 5, paragraph 2 (a), must be read in the light of the wording of that provision. A communication has, therefore, already been considered by the European Court of Human Rights, if the examination by that Court related to the "same matter". The Committee recalls its jurisprudence that the "same matter" within the meaning of article 5, paragraph 2 (a), must be understood as relating to the same author, the same facts and the same substantive rights.¹⁴ It observes that Application no. 31180/96 was submitted to the European Court by the same author, was based on the same facts and related, at least in part, to the same substantive rights as those raised in the present communication, as articles 6 and 8 of the European Convention are similar in scope and content to articles 14 and 17 of the Covenant.

6.4 Having concluded that the State party's reservation concerning article 5, paragraph 2 (a), of the Optional Protocol applies the Committee must consider the author's argument that the European Court of Human Rights did not "consider" the same matter within the meaning of the State party's reservation. The Committee recalls its jurisprudence that where the Strasbourg organs have based a declaration of inadmissibility not solely on procedural grounds,¹⁵ but on reasons that comprise a certain consideration of the merits of the case, then the same matter has been "examined" within the meaning of the respective reservations to article 5, paragraph 2 (a), of the Optional Protocol.¹⁶

6.5 Insofar as the author alleges that the change of his son's surname and the dismissal of his compensation claim violate his right to respect to family life under article 17, in conjunction with his procedural rights under Article 14, of the Covenant, the Committee notes that the European Court declared the analogous complaint inadmissible as manifestly ill-founded, pursuant to article 35, paras. 3 and 4, of the European Convention. The Court based its finding on the fact that the child had never borne the author's surname, which therefore had never constituted an outer sign of a bond between the author and his son. With regard to the compensation claim, the Court found that the issue concerned primarily a financial matter, which did not serve to obtain a decision on access or enforcement of access to his child. Consequently, the dismissal of the compensation claim did not affect the author's right to respect for family life. The Committee concludes that, in examining the author's complaints under article 8 of the European Convention, the European Court went beyond an examination of purely procedural admissibility criteria. The same is true regarding his complaints under article 6 of the European Convention, which related to the necessity of a public hearing and the public announcement of the judgments of the Braunschweig District and Regional Courts, and thus concerned aspects of article 6 of the European Convention which are similar in content and scope to article 14 of the Covenant. This part of the communication has therefore already been "considered", within the meaning of the State party's reservation.

¹⁴ See e.g. Communication 998/2001, *Althammer v. Austria*, at para. 8.4.

¹⁵ See e.g. Communication No. 716/1996, *Pauger v. Austria*, at para. 6.4.

¹⁶ See e.g. Communication No. 121/1982, *A.M. v. Denmark*, at para. 6; Communication No. 744/1997, *Linderholm v. Croatia*, at para. 4.2.

6.6 To the extent that the author claims, under article 26 of the Covenant, that he was discriminated against, in comparison with the child's mother or to fathers of children born in wedlock, the Committee notes that the European Court declared similar claims by the author inadmissible *ratione materiae*, since there was no room for the application of article 14 of the European Convention, as his right to respect to family life was not affected by the decisions in the change of name as well as the compensation proceedings. The Committee recalls its jurisprudence¹⁷ that, if the rights invoked before the European Court of Human Rights differ in substance from the corresponding Covenant rights, a matter that has been declared inadmissible *ratione materiae* has not, in the meaning of the respective reservations to article 5, paragraph 2 (a), been *considered* in such a way that the Committee is precluded from examining it.

6.7 The Committee recalls that the independent right to equality and non-discrimination in article 26 of the Covenant provides greater protection than the accessory right to non-discrimination contained in article 14 of the European Convention.¹⁸ It notes that, in the absence of any independent claim made under the Convention or its relevant Protocols, the European Court could not have examined whether the author's accessory rights under article 14 of the Convention had been breached. Consequently, the author's claims in relation to article 26 of the Covenant have not been considered by the European Court. It follows that the Committee is not precluded by the State party's reservation to article 5, paragraph 2 (a), of the Optional Protocol from examining this part of the communication.

6.8 The Committee recalls that not every distinction made by the laws of a State party amounts to a discrimination in the sense of article 26 but only those that are not based on objective and reasonable criteria. The author has not substantiated, for purpose of admissibility, that reasons for introducing S. 1618 into the German Civil Code (para. 2.4 above) were not objective and reasonable. Likewise, the author has not substantiated that the denial of compensation for lost travel expenses amounted to a discrimination within the meaning of article 26. Accordingly, this part of the communication is inadmissible under article 2 of the Optional Protocol to the International Covenant on Civil and Political Rights.

6.9 Under these circumstances the Committee does not need to address the permissibility and applicability of the State party's reservation to the Optional Protocol regarding article 26.

6.10 Insofar as the author alleges that he has been denied access to the German courts, in violation of Article 14 of the Covenant, because, unlike fathers of children born in wedlock, he could not contest the decision to change his son's surname, nor claim compensation for the mother's failure to comply with his right of access to his son, the Committee notes that the author had access to the German Courts, in relation to both matters, but that these courts dismissed his claims. It considers that he has not sufficiently substantiated, for purposes of admissibility, that his claims raise issues under article 14, paragraph 1, of the Covenant, which

¹⁷ See e.g. Communication No. 441/1990, *Casanovas v. France*, at para. 5.1.

¹⁸ See Communication 998/2001, *Althammer v. Austria*, at para. 8.4.

could be raised independently from article 26 and do not relate to matters that have already been “considered”, within the meaning of the State party’s reservation, by the European Court¹⁹.

7. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under articles 2 and 5, paragraph 2 (a), of the Optional Protocol;

(b) That this decision shall be communicated to the State party and to the author.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued in Arabic, Chinese and Russian as part of the Committee’s annual report to the General Assembly.]

¹⁹ See para. 6.5 above.