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CCPR/C/46/D/427/1990
13 November 1992

Original: ENGLISH

HUMAN RIGHTS COMMITTEE
Forty-sixth session

DECISIONS

Communication No. 427/1990

Submitted by : H.H.

Alleged victim : The author

State party : Austria

Date of communication : 20 September 1990 (initial submission)

Documentation references : Prior decisions - Working Group's
rule 91 decision
transmitted to the
State party on
30 July 1991 (not
issued in document
form)

Date of present decision : 22 October 1992

Decision on admissibility

[See annex]

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ANNEX */

Decision of the Human Rights Committee under the Optional
Protocol
to the International Covenant on Civil and Political Rights
- Forty-sixth session -
concerning
Communication No. 427/1990

Submitted by : H.H. (name deleted)
Alleged victim : The author
State party : Austria
Date of communication : 20 September 1990 (initial submission)

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

Meeting on 22 October 1992,

Adopts the following:

Decision on admissibility

1. The author of the communication (dated 20 September 1990) is H.H., an Austrian citizen residing in Vienna. He claims to be the victim of violations by Austria of articles 7, 17, 23 and 26 of the International Covenant on Civil and Political Rights. The Optional Protocol entered into force for Austria on 10 March 1988.

The facts as submitted by the author :

2.1 The author is a professor of biomechanics at the University of Vienna. Since 1986, he has been endeavouring to build a house in the community of E. in the District of Lower Austria (Niederösterreich); allegedly, the mayor of E. has used his

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administrative powers to frustrate the author's efforts to obtain construction authorizations.

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

2.2 Since 1986, the mayor of E. has allegedly sent several summons, notices and decisions to the author, many of them based on the building regulations of Lower Austria (Niederösterreichische Bauordnung), with the sole purpose of harassing him. These summons and decisions were later found to be unlawful by the district government of Lower Austria, as well as by the courts. The author submits that he had to invest considerable time and money to obtain the necessary legal advice for the proceedings destined to fend off the attacks of the mayor.

2.3 In the chronology of his case, the author singles out the following events. On 14 March 1988, the mayor of E. issued a notice ordering the author to pay a substantial sum of money (Aufschliessungsbeitrag) for the authorization of the joinder of two building sites. Three legal advisors of the district government allegedly explained to the mayor by letter that his notice was lacking a proper legal basis. Ignoring their advice, the mayor initiated proceedings by which a significant part of the author's salary was seized and transferred to a community account.

2.4 On 6 July 1990, the Supreme Administrative Tribunal of Austria (Verwaltungsgerichtshof) found in the author's favour and confirmed that the actions of the mayor lacked a legal basis. The money seized from the author had to be repaid.

2.5 The author states that the "unbearable situation" caused by the mayor's actions against him means that the normal pursuit of his professional duties and participation in academic symposia and publication activities have been reduced alarmingly. In this context, he explains that since 1986, he has spent over 600 hours on drafting "countless appeals and letters" in defence of his rights; this has amounted to financial losses of approximately \$US 90,000, for which he claims he deserves compensation.

2.6 The author further states that he has requested the president of the provincial government of Lower Austria as well as the Vice Chancellor of the Republic to investigate the conduct of the mayor of E. However, they informed him that they had no competence to carry out an investigation into the matter, on account of the autonomy of municipalities (Gemeindeautonomie) in Austria. With these steps, the author claims to have exhausted available domestic remedies.

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The complaint :

3.1 According to the author, the proceedings initiated by the mayor of E. have caused "irreparable harm" to his reputation at the University of Vienna, as many university departments, as well as the dean of his faculty, the rector of the university and some colleagues, were involved in the "degrading procedures" against him or became aware of them. In the author's opinion, the "unlawful" attacks of the mayor constitute violations of article 17, paragraph 1, of the Covenant.

3.2 The author further submits that the "permanent harassment and psychological terror" exercised by the mayor since 1986 have had a profoundly detrimental effect on his and his family's health, security and well-being, a situation said to constitute a violation of articles 7 and 23, paragraph 1, of the Covenant.

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

4. In its submission, dated 24 September 1991, the State party argues that the communication is inadmissible. According to the State party all unlawful actions by the mayor have been remedied; the author has failed to substantiate his allegations that he is still a victim of a violation of articles 7, 17, 23, and 26 of the Covenant. The State party further contends that the author has failed to exhaust criminal and constitutional remedies.

5.1 In his comments, the author disputes the State party's contention that there are still criminal and constitutional remedies available. He states that, on 29 August 1988 and 21 September 1990, he filed criminal charges against the mayor for misuse of official powers; on both occasions the public prosecutor declined to initiate criminal proceedings against the mayor. He forwards copies of the notices of dismissal of his complaints. He further submits that he filed a constitutional complaint with the Government of Lower Austria on 28 May 1990, alleging to be a victim of a violation of the principle of equality. This complaint was dismissed on 22 March 1991.

5.2 The author argues that he still suffers from the consequences of the unlawful acts intentionally committed by the mayor, which, according to the author, amounted to inhuman and degrading treatment. He further contends that the violations are not sufficiently remedied by the quashing of the mayor's

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decisions, since he did not receive any compensation for the harm done to his reputation and for the time and money he spent on appealing the decisions.

Issues and proceedings before the Committee :

6.1 Before considering any claims contained in a communication, the Human Rights Committee must, pursuant to rule 87 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

6.2 The Committee considers that the author has not substantiated, for purposes of admissibility, his claim that he is a victim of violations by the State party of articles 7, 17, 23 and 26 of the Covenant. The Committee further notes that the author's allegations concern decisions taken by the mayor of E., which have subsequently been quashed by higher authorities or the courts. The Committee, accordingly, concludes that the author has failed to advance a claim under article 2 of the Optional Protocol.

6.3 In so far as the author may be understood as claiming compensation for the harm done to his reputation and for the time and money he spent on appealing the mayor's decisions, the Committee notes that the author has not initiated civil proceedings against those persons or entities whom he claims were responsible. The Committee therefore concludes that, in this respect, the author has failed to exhaust domestic remedies.

7. The Human Rights Committee therefore decides:

- (a) That the communication is inadmissible under articles 2 and 5, paragraph 2(b), of the Optional Protocol;
- (b) That this decision shall be transmitted to the State party and to the author of the communication.

[Done in English, French, Russian and Spanish, the English text being the original version.]