

HUMAN RIGHTS COMMITTEE

Pauger v. Austria

Communication No. 415/1990

22 March 1991

CCPR/C/41/D/415/1990*

ADMISSIBILITY

Submitted by: Dietmar Pauger

Alleged victim: The author

State party concerned: Austria

Date of communication: 5 June 1990

Document references: List - CCPR/C/CL/R.49/Add.1

Prior fact sheets - None. *Decisions* - *Special Rapporteur's decision under rule 91, dated 28 September 1990 (not issued in document form)*

Date of present decision: 22 March 1991

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

Decision on Admissibility

1. The author of the communication dated 5 June 1990 is Dietmar Pauger, an Austrian citizen born in 1941 and a resident of Graz, Austria. He claims to be the victim of a violation by Austria of article 26 of the International Covenant on Civil and Political Rights. The Optional Protocol entered into force for Austria on 10 March 1988.

Facts as submitted

2.1 The author is a university professor. His wife died on 23 June 1984. She had been a civil servant and employed as a teacher in a public school in the county of Steiermark (Land Steiermark). On 24 August 1984, the author submitted a pension claim pursuant to the Pension Act of 1965

(Pensionssgesetz 1965). He notes that the Pension Act granted preferential treatment to widows, whereas widowers could receive pensions only if they did not have any other form of income. Since the author was gainfully employed, the county Government of Steiermark (Steiermarkische Landesregierung) rejected his claim, which was similarly dismissed on appeal by the Constitutional Court of Austria (Verfassungsgerichtshof).

2.2 Subsequently, the eighth amendment to the Pension Act (8. Pensionsgesetznovelle) of 22 October 1985 introduced a general widower pension, applicable retroactively from 1 March 1985. However, a three-phase pension scheme was set up providing reduced benefits in the first two stages: one third of the pension as of 1 March 1985, two thirds, as of 1 January 1989, the full pension as of 1 January 1995.

2.3 On 13 May 1985 the author again applied for a widower pension, which was granted at the reduced (one-third) level provided for in the eighth amendment. However, according to a particular provision of this amendment, applicable only to civil servants, the pension initially was not paid to the author but placed “in trust”.

2.4 The author therefore appealed to the Constitutional Court, requesting (a) payment of the full pension; and (b) the annulment of the provision stipulating that pensions of civil servants are “kept in trust” (Ruhensbestimmung). By decision of 16 March 1988, the Constitutional Court held the Ruhensbestimmung to be unconstitutional, but did not settle the question of the constitutionality of the three phases of pension benefits for widowers. After yet another appeal, the Constitutional Court dismissed, on 3 October 1989, the author’s request for a full pension and the annulment of the three phases of implementation. The author contends that available domestic remedies have thus been exhausted.

2.5 The author acknowledges that he has submitted a related matter to the European Commission of Human Rights.¹ Before that body, however, he claims to be the victim of a violation of article 6, paragraph 1, of the European Convention on Human Rights (the equivalent of article 14, paragraph 1, of the Covenant), contending that the procedure before the Constitutional Court did not constitute a “fair trial” within the meaning of article 6 of the European Convention. He has not claimed a violation of the principle of equality protected by article 14 of the European Convention (similar to article 26 of the Covenant). Thus he argues that the two international instances have not been seized of the “same matter”, and that Austria’s reservation in respect of article 5, paragraph 2 (a), of the Optional Protocol is not applicable to his case.

Complaint

3. The author claims to be a victim of a violation of article 26 of the Covenant because, whereas a widow would have received a full pension under similar circumstances, he, as a widower, received no pension at all from 24 June 1984 to 28 February 1985, and has received only a partial pension since then. In particular, in inequality in pension benefits resulting from the three phases of implementation of the eighth amendment to the Pension Act is said to constitute discrimination, since the differentiation between widows and widowers is arbitrary and cannot be said to be based on reasonable and objective criteria.

State party's observations

4. The State party does not raise any objection to the admissibility of the communication.

Issues and proceedings before the Committee

5.1 Before considering any claims 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.

5.2 The Committee notes that the State party has not invoked its reservation to article 5, paragraph 2 (a), of the Optional Protocol nor raised any objection to the admissibility of the communication. Nevertheless, the Optional Protocol requires the Committee to ascertain that the same matter is not being examined under another procedure of international investigation or settlement. In this Commission, while emanating from the same factual situation, addresses other legal issues and does not constitute "the same matter" as that submitted under the Optional Protocol. The Committee has furthermore ascertained that the communication satisfies all other admissibility criteria.

6. The Human Rights Committee therefore decides:

(a) That the communication is admissible in so far as it may raise issues under article 26 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 measures, if any that may have been taken by it;

(c) That any explanations or statements received from the State party be communicated by the Secretary-General under rule 93, paragraph 2, of the Committee's rules of procedure to the author, with the request that any comments that he may wish to submit thereon 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 transmittal;

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

(Done in English, French, Russian and Spanish, the English text being the original version.)

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

1/ Case No. 16,717/90, submitted on 14 February 1990, registered on 13 June 1990.