

HUMAN RIGHTS COMMITTEE

K. V. and C. V. v. Germany

Communication No. 568/1993*/

8 April 1994

CCPR/C/50/D/568/1993*/

ADMISSIBILITY

Submitted by: K.V. and C.V. [names deleted]

Alleged victims: The authors

State party: Germany

Date of communication: 7 September 1993

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

Meeting on 8 April 1994,

Adopts the following:

Decision on admissibility

1. The authors of the communication are K.V. and C.V., two German citizens residing in Merzhausen, Germany. They claim to be victims of a violation by the Federal Republic of Germany of article 18 of the International Covenant on Civil and Political Rights. They are represented by counsel. The Optional Protocol entered into force for Germany on 25 November 1993.

The facts as submitted by the authors:

2.1 The authors are members of the Society of Friends (Quakers). On 7 May 1985, they requested the competent tax authorities (Freiburg-Land) to deduct from their income tax declaration for fiscal year 1983 an amount representing 8.33 per cent which, according to

their calculation, would be allocated to German military expenditures. Alternatively, they requested the fiscal authorities to block this amount in a bank account specifically designated for this purpose ("Sperrkonto"). They further requested a deduction of 8.45 per cent for advance income tax payments for fiscal year 1985, pursuant to article 227 of the relevant tax legislation ("Abgabenordnung").

2.2 On 17 July 1985, the authors' request was rejected by the tax office of Freiburg-Land. Their formal objection ("Beschwerde") to this decision was dismissed by the tax directorate for Land Baden-Württemberg on 30 October 1985.

2.3 The authors thereupon filed a complaint with the financial court for Baden-Württemberg (Finanzgericht) which, on 1 June 1989, rejected their complaint as unfounded. The court granted leave to appeal to the Federal Financial Court (Bundesfinanzhof) which, on 6 December 1991, declared the appeal to be unfounded. The authors filed a constitutional motion with the Federal Constitutional Court in Karlsruhe, which on 26 August 1992 denied leave to appeal on the ground that the complaint was "manifestly ill-founded". With this, the authors exhausted available domestic remedies.

2.4 Before the German courts, the authors invoked article 4 of the German Basic Law (Grundgesetz), which guarantees everyone freedom of religion and conscience. They argued that they had insurmountable conscientious objections to the fact that part of their income tax would help to finance military expenditures. According to the authors, the terms of article 4 of the Basic Law are "stronger than or at least as strong as" the guarantees under article 18 of the Covenant.

2.5 The authors indicate that they are well aware that the Human Rights Committee has previously declared inadmissible two complaints similar to their own, namely communication No. 466/1991 (J.P. v. Canada, declared inadmissible on 7 November 1991) and No. 483/1991 (J.W.K. v. Netherlands, declared inadmissible on 23 July 1992). In these decisions, the Committee had held that "the refusal to pay taxes on grounds of conscientious objection clearly falls outside the scope of protection of" article 18 of the Covenant.

The complaint:

3. The authors contend that the State party has violated article 18 of the Covenant. They indicate that they strongly disagree with the Committee's earlier decisions and argue that they would deserve a better **ratio decidendi** and that, in fact, the decisions should be reversed. They argue that as long as individuals have strong conscientious objections to seeing part of their taxes used for military expenditures, and as long as certain countries (such as Germany) continue to spend considerable amounts of taxpayers' money for military purposes, then it is difficult to flatly argue that the refusal to pay income tax on a **pro rata** basis falls outside the scope of article 18 of the Covenant: "The act of tax paying is not excluded from ... moral beliefs and convictions, and article 18 of the Covenant does not make an exception for this, ... explicitly or otherwise".

Issues and proceedings before the Committee:

4.1 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 the communication is admissible under the Optional Protocol to the Covenant.4.2 The Committee notes that upon ratifying the Optional Protocol, the Federal Republic of Germany entered the following reservation under article 5, paragraph 2(a), of the Optional Protocol:

"... the competence of the Committee shall not apply to communications ... (b) by means of which a violation of rights is reprimanded having its origins in events occurring prior to the entry into force of the Optional Protocol for the Federal Republic of Germany."

As all the events that form the basis of the present complaint occurred between 1985 and 1992 and thus prior to 25 November 1993, the date of entry into force of the Optional Protocol for Germany, the Committee is precluded **ratione temporis** from considering the communication, in the light of the German reservation.

4.3 The Committee cannot fail to note that two of its previous decisions declaring communications inadmissible are in essence dispositive of the authors' claim under article 18 of the Covenant, and that the authors primarily question the **ratio decidendi** of these earlier decisions (see paragraph 2.5 above). The authors' claim would thus, regardless of the considerations in paragraph 4.2 above, be inadmissible as incompatible with the provisions of the Covenant, under article 3 of the Optional Protocol. As no reasons to depart from the Committee's jurisprudence in the above decisions have been adduced, the Committee confirms that jurisprudence.

5. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible;

(b) That this decision shall be communicated to the authors, to their counsel and, for information, to the State party.

[Adopted in English, French and Spanish, the French 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.]

Footnotes

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

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