



**International covenant
on civil and
political rights**

Distr.
RESTRICTED*

CCPR/C/81/D/999/2001
20 August 2004

Original: ENGLISH

HUMAN RIGHTS COMMITTEE
Eighty-first session
5 – 30 July 2004

DECISION

Communication No. 999/2001

Submitted by: Mr. Friedrich Dichtl et. al (represented by counsel,
Mr. Alexander H.E. Morawa)

Alleged victim: The author

State party: Austria

Date of communication: 14 July 2000 (initial submission)

Document references: Special Rapporteur's rule 91 decision, transmitted to
the State party on 25 July 2001 (not issued in
document form)

Date of adoption of decision: 7 July 2004

[ANNEX]

* 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

Eighty-first session

concerning

Communication No. 999/2001**

Submitted by: Mr. Friedrich Dichtl et. al (represented by counsel,
Mr. Alexander H.E. Morawa)

Alleged victim: The author

State party: Austria

Date of communication: 14 July 2000 (initial submission)

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

Meeting on 7 July 2004

Adopts the following:

DECISION ON ADMISSIBILITY

1. The authors of the communication are Mr. Friedrich Dichtl and five other Austrian citizens residing in Austria¹. They claim to be victims of a violation by Austria of article 26 of the Covenant. The authors are represented by counsel. The Optional Protocol entered into force for Austria on 10 March 1988.

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

¹ Originally the communication was presented by twelve Austrian citizens. On 9 October 2001, six of them withdrew their case before the Committee in order to continue their petition the European Court of Human Rights.

The facts as submitted by the authors

2.1 The authors are retired employees of the Social Insurance Board in Salzburg (Salzburger Gebietskrankenkasse). Counsel states that they receive retirement benefits under the relevant schemes of the Regulations of Service for Employees of the Social Insurance Board (Dienstordnung A für die Angestellten bei den Sozialversicherungsträgern).

2.2 Until 31 December 1993 the retirement benefits were adjusted pursuant to section 87(3) of the Regulations according to new salary increases of active employees. On 1 January 1994 an amendment came into effect, linking the future adjustment of pensions to the annual multiplier valid for payments by the public pension fund. Some of the retired employees then initiated a lawsuit against the amendment, which they lost before the Austrian courts. The case was brought to the Human Rights Committee as case No. 803/1998, Althammer et.al. v. Austria, and declared inadmissible by the Committee on 21 March 2002.

2.3 In July 1998 the Austrian Supreme Court ruled in two cases concerning bank employees that a retroactive modification of the rules for calculating the adjustment factors of retirement benefits was unlawful. Subsequently, on 2 November 1998, the authors filed a lawsuit seeking a judgement that the 1994 amendment to the Regulations was unlawful and an order to the Salzburg Regional Social Insurance Board to pay retirement benefits accordingly. The District Court dismissed the authors' claim on 17 June 1999. The authors' appeal was dismissed by the Appeals Court (Oberlandesgericht Linz) on 19 January 2000. The Supreme Court (Oberster Gerichtshof) rejected a further request for revision on 20 September 2000. All domestic remedies are thus said to be exhausted.

The complaint

3. Counsel refers to his arguments in case No. 803/1998 and claims that the authors' right to equality before the law has been violated.

State party's observations on the admissibility of the communication

4.1 By submission of 25 January 2002, the State party comments on the admissibility and merits of the communication. It notes that the facts and arguments advanced by counsel are the same as in case No. 803/1998. One of the authors of the present communication is said to be also an author in case No. 803/1998. The State party argues that in her specific case, the communication is inadmissible for violation of the principle *ne bis in idem*.

4.2 As to the merits of the communication, the State party refers to its observations in case No. 803/1998.

The authors' comments

5.1 By letter of 3 March 2002, counsel comments on the State party's observations. In reaction to the State party's objection to the admissibility of the communication in respect of one of the authors, counsel notes that the present communication raises identical issues of facts and law as communication No. 803/1998 and that he would like the Committee to either join the two communications or to decide both of them on the same day. Counsel further explains that the particular author exhausted two sets of domestic procedures (one which

cumulated in case No. 803/1998 and one which cumulated in the present case) which were both considered admissible by the domestic courts.

5.2 By letter of 25 March 2002, counsel informs the Committee that a committee of the First Section of the European Court of Human Rights has declared inadmissible the application of the original co-authors of the communication.

Issues and proceedings before the Committee

6.1 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.

6.2 The Committee notes that the issues before it are identical to those in case No. 803/1998, which was declared inadmissible by the Committee on 21 March 2002². In that decision, the Committee considered that the authors had failed to substantiate, for purposes of admissibility, that the change brought about in the computation of their pension rights was discriminatory or otherwise possibly fell within the ambit of article 26 of the Covenant. The Committee notes that the authors of the present communication rely entirely on the arguments forwarded in communication No. 803/1998. The present communication is thus likewise inadmissible under article 2 of the Optional Protocol.

7. The Committee therefore decides:

- a) that the communication is inadmissible under article 2 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.]

² See paragraph 6.1 of the decision of the Human Rights Committee concerning the communication N° 803/1998. CCPR/C/74/D/803/1998, of 21 March 2002.