HUMAN RIGHTS COMMITTEE

Kaaber v. Iceland

Communication No. 674/1995*

5 November 1996

CCPR/C/58/D/674/1995

ADMISSIBILITY

Submitted by: Lúdvík Emil Kaaber

Victim: The author

State party: Iceland

Date of communication: 12 October 1995 (initial submission)

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

Meeting on 5 November 1996,

Adopts the following:

Decision on admissibility

1. The author of the communication is Lúdvík Emil Kaaber, an Icelandic citizen residing in Reykjavik, Iceland. He claims to be a victim of violations by Iceland of articles 2 and 26 of the International Covenant on Civil and Political Rights.

The facts as submitted by the author

2.1 The author is self-employed, working both as a translator and a lawyer in Reykjavik.

2.2 As a self-employed person, the author is obliged, under Icelandic tax laws, to declare as income an amount comparable to what he would have earned if he performed similar work as an employee. According to Act No. 55/1980, section 4, every self-employed person must contribute "at least 10%" of his computed wages to a pension fund. As these 10% are

included in the author's taxable income, tax is levied on the total 10% contribution.

2.3 As regards employed wage-earners, regulations on pension fund contributions are established through collective labour agreements, both in the public and the private sector. According to these provisions, 4% of the employee's wages are withheld and paid into a pension fund. Another 6% of the employee's wages are contributed by the employer and paid directly by the employer into a pension fund. Tax is therefore levied on 40% of an employee's pension fund contribution, as these 40% are included in the employee's taxable income, whereas tax is levied on 100% of a self-employed person's pension fund contribution. For the employer who pays them, these pension fund contributions are deductible as "operating expenses".

2.4 In the author's tax return for 1992, he deducted his pension fund contribution from his taxable income. In July of 1992, he received a letter from the local tax authority (skattstjóri), notifying him that his taxable income had been increased by the amount corresponding to his pension fund contribution. The author replied to the local tax authority and protested against this practice, asking for a detailed explanation. In October 1992 he received a letter from the fiscal office, stating that the contributions in question were not deemed to constitute "operating expenses" within the meaning of Section 31 of the Income Tax Act. This section contains a general description and non-exhaustive enumeration of deductible business expenses. In this letter, reference was made to a decision of the State Internal Revenue board (Ríkisskattanefnd), where a taxpayer's request to deduct certain expenses had been refused, because it was "established that the applicant paid the said charges exclusively for his own sake".

2.5 The author then applied to the State Internal Revenue Board, S.I.R.B. (Yfirskattanefnd) (the successor to Ríkisskattanefnd), on 6 November 1992. After several rounds of correspondence (in which the author, inter alia, raised questions about the procedure before the Board, as well as doubts regarding the members' impartiality), the S.I.R.B. delivered its decision on 5 November 1993. The Board stated, inter alia: "It is established that the pension fund contributions concerned solely provisions made for the applicant's own pension. The payments in question can therefore not be deemed to have been made for the generation of income in the applicant's independent business operation, and therefore neither to be deductible under Section 31.1 of Act No. 75/1981, in respect of Tax on Income and Property, ...". After notification of the Board's decision, the author complained to the Ombudsman about certain issues concerning the procedure before the Board, such as its duty, under Icelandic law (Act No. 32/1992), to provide detailed reasoning for its decisions. The Ombudsman replied in writing on 11 February 1994, enclosing replies given in writing by the Chairman of the S.I.R.B. to the Ombudsman.

2.6 On 11 February 1994 the author sent a letter to the Public Prosecutor, expressing doubts about the procedure before the S.I.R.B., in particular about the impartiality of the members of the Board. He received a reply two weeks later, indicating that no measures could be taken.

2.7 The author claims that the taxation practice he is challenging has been applied during

about 13 years in Iceland, and that the Icelandic fisc earns approximately 300 millions ISK per year with this practice. According to the author, the fiscal authorities have accepted a deduction of these pension fund contributions in some cases, as was the case for the author himself in 1990 and 1991.

2.8 As regards the question of exhaustion of domestic remedies, the author submits that it would be possible for him to challenge the decision of the S.I.R.B. before the domestic courts in Iceland. In this context, he refers, however, to a specific complaint by a self-employed person regarding his right to deduct 60% of his pension fund contribution from his taxable income, which was lodged with a court of first instance in Iceland in 1994. A judgment in this case was expected for October 1995. The author states that he does not expect this decision to be in favour of the plaintiff, and that if he were to bring legal action himself, the decision in his case would undoubtedly be similar to the decision in the case pending. He claims that domestic remedies in his case would therefore not be useful.

The complaint

3.1 The author claims that self-employed persons and employed wage-earners in Iceland are subjected to different treatment in as much as taxes levied by the Icelandic Government on pension fund contributions, under applicable tax law, are concerned. He claims that this different treatment constitutes unlawful discrimination.

3.2 The author claims that the Icelandic Government violates national laws, as well as basic constitutional principles and principles of international law, when allowing its fiscal offices to apply the above practice.

State party's submission and the author's comments thereon

4.1 By submission of 21 February 1996, the State party argues that the communication is inadmissible for non-exhaustion of domestic remedies. The State party explains that the author could have appealed the decision by the State Internal Revenue Board of 5 November 1993 to the District Court and, if necessary, from there to the Supreme Court.

4.2 The State party notes that recently the Reykjavik District Court ruled on a case which is identical to that of the author. This case has been appealed to the Supreme Court, which has not yet decided on the matter.

5.1 In his comments on the State party's submission, the author takes the opportunity to add to his claim that he has also been a victim of a violation of article 14, paragraph 1, of the Covenant, because the State Internal Revenue Board cannot be considered an independent tribunal.

5.2 As regards his claim under article 26 of the Covenant, the author points out that no law in Iceland prevents self-employed persons from enjoying the same tax deduction as employees. However, the tax authorities are interpreting the regulations differently.

5.3 The author admits that he could have brought an action and requested invalidation of the decision by the State Internal Revenue Board to the court, on the basis that the S.I.R.B. had not given full reasons for its decision. However, he argues that, if successful, this would only have led to referral of the matter back to the S.I.R.B., whereas the author has little confidence that the S.I.R.B. would follow lawful procedure after such referral. Further, the author claims that such a referral would have rendered the proceedings too lengthy. Moreover, the author contends that he cannot bring questions such as the misuse of public authority by the S.I.R.B. before the courts. The author also argues that to require that he await the outcome of the Government's appeal against the Reykjavik District Court's decision in a case similar to his, would merely reduce the likelihood that complaints such as his are submitted to the Committee. The author further states that he is not convinced that the case now before the Supreme Court is exactly identical to his.

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 it is admissible under the Optional Protocol to the Covenant.

6.2 The State party has argued that the communication is inadmissible for failure to exhaust domestic remedies. The Committee notes that the author has not contested that he could have appealed the decision of the State Internal Revenue Board to the courts, but has merely stated that he doubted that an appeal would be effective. The Committee recalls its jurisprudence that mere doubts about the effectiveness of domestic remedies, do not absolve an author of the requirement to exhaust them. The communication, therefore, is inadmissible under article 5, paragraph 2(b), of the Optional Protocol.

7. The Human Rights Committee therefore decides:

(a) that the communication is inadmissible under article 5, paragraph 2(b), 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 also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

Footnotes

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