

## HUMAN RIGHTS COMMITTEE

### A. S. and L. S. v. Australia

Communication No. 490/1992

30 March 1993

CCPR/C/47/D/490/1992

### ADMISSIBILITY

*Submitted by: A. S. and L. S. (names deleted)*

*Alleged victims: The authors*

*State party: Australia*

*Date of communication: 26 December 1991 (initial submission)*

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

Meeting on 30 March 1993,

Adopts the following:

### **Decision on admissibility**

1. The authors of the communication dated 26 December 1991 are A. S. and L. S., Australian citizens currently residing in Tuross Head, New South Wales, Australia. They claim to be victims of violations by Australia of articles 2, 16, 17, 26 and "others possibly to be determined by the Human Rights Committee" of the International Covenant on Civil and Political Rights. The Optional Protocol entered into force for Australia on 25 December 1991.

### Facts as submitted

2.1 The authors are shareholders and directors of the Sapphire Investments Ltd. In 1981-1982, they bought a number of land tracts at Merimbula, New South Wales. In 1984, they decided to use the land for the construction of a retirement village, "Valley High Resort

Village"; this was an ambitious project requiring substantial borrowing. Initially, Sapphire Investments was funded by Esanda Ltd., but in March 1985, the company approached other financiers for a sizeable loan in order to buy out Esanda and fund the further development of the project. A. S. approached the E. M. Group, a Melbourne-based consulting group acting as mortgage managers, brokers and finance consultants. Another company, B. P. T., a government-licensed lender of public investment funds, acted as the trustee of certain property trusts established and managed by E. M. As the trustee, B. P. T. advanced money to Sapphire Investments against certain collaterals.

2.2 In 1985 and 1986, disputes arose between the authors and B.P.T./E.M. concerning the extent of the financial engagements of the latter. They centred around the issue whether or not B.P.T./E.M. would provide the totality of the funds required to construct, market and manage Valley High, and whether or not E. M. would provide, or assist in opening, further credit lines required by the authors' company in the event that B. P. T. did not do so. The authors contend that such representations were indeed made; the respondents contest it.

2.3 On 15 May 1987, the authors filed a Statement of Claim in the Supreme Court of New South Wales and in the Federal Court of Australia, for breach of contract and several alleged violations of the Australian Trade Practices Act. On 16 December 1987 the Federal Court ruled in favour of B. P. T. and E. M.

2.4 According to the authors, the case before the Federal Court was "rushed"; they contend that they went into the hearing unprepared and against their express wishes, after the refusal of the judge to reschedule the hearing. In this context, they consider that the judge inappropriately invoked a Bar Association rule which prompted their duly instructed senior counsel, a Q. C., to retire from the case with immediate effect, after "unsubstantiated" allegations that he had previously provided commercial and legal advice to the authors.

2.5 As a result of the adverse decisions, the authors lost their property, including their family home; they consider themselves victims of illegal dispossession and believe that this dispossession was orchestrated to cover up a major financial scandal involving the defendants and to cover "corporate criminals". In A. S.'s opinion, B. P. T. knowingly entered into a number of conflicting positions on the Valley High project, with the intention of fraudulently stripping Sapphire Investments and the A. S. Family Trust of its assets. The defendants allegedly were aided in this endeavour by the E. M. Group.

2.6 The authors further consider that the Government, in order to limit the damage, "colluded" with the judicial authorities to deny the authors justice. Several appeals for a revision of the judgement addressed to the Federal Commissioner for Human Rights, the Prime Minister and the Chief Justice of New South Wales were unsuccessful. The authors admit that it would be possible to challenge the judgement in the High Court; however, the office of the Attorney-General has rejected their request for the assignment of legal aid.

### Complaint

3.1 The authors contend that by precipitating the departure of their senior counsel in the

proceedings before the Federal Court, the judge discriminated against them and unduly favoured the defendants, who were able to introduce another senior counsel, whereas the authors themselves were left without competent legal advice. The judge's action is said to constitute a violation of articles 2 and 26.

3.2 It is further submitted that the judge unjustly refused to make a ruling under Section 57 of the Legal Aid Act of New South Wales, when rejecting the authors' request for a postponement of the hearing, because the issue of a legal aid assignment had not been settled by the Legal Aid Commission. A. S. and L. S. explain that the judge's refusal forced their children and friends to advance money so as to avoid losing the family home by default. They submit that a decision about the assignment of legal aid was not made until after the beginning of the trial on 28 August 1987, with a new senior counsel appearing for the authors, and add that their new lawyer only had one weekend to study the file.

3.3 The authors claim to be victims of a violation of article 17 of the Covenant, because the judge allegedly allowed the defendants to introduce as evidence confidential documentation on A. S. obtained by "illegal means" from the Federal Department of Social Security. The judge also did not stop the defendants from introducing allegedly defamatory and unsubstantiated remarks designed to discredit their honour and reputation. By so doing, the defendants allegedly were able to distort the court records, which would otherwise have shown that they were in breach of the Trustee Act of the State of Victoria.

3.4 In respect of their appeal, the authors allege violations of articles 16, 17 and 26, since the Court of Appeal proceeded with the hearing of the appeal in the autumn of 1987, even after being informed that L. S. could not attend the hearing because of illness. The authors further claim that they were denied equality before the law, because they were denied legal aid to argue the seven grounds of appeal. In this context, A. S. indicates that the Court ruled that he, as an Australian of non-anglophone origin, was capable of representing the interests of Sapphire Investments, whereas the defendants were represented by a Queen's Counsel.

3.5 Finally, the authors claim a violation of articles 2 and 26, because the Court of Appeal allegedly did not reach an independent verdict based on the evidence in the appeal documents, thereby denying the authors an effective remedy.

#### 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 it is admissible under the Optional Protocol to the Covenant.

4.2 With regard to the application of the Optional Protocol to Australia, the Committee recalls that it entered into force on 25 December 1991. It observes that the Optional Protocol cannot be applied retroactively and concludes that the Committee is precluded ratione temporis from examining events that occurred in 1985-1987, unless it is demonstrated that these acts or omissions continued or had effects after the entry into force of the Optional Protocol, constituting in themselves violations of the Covenant. No evidence has been

adduced to show that the proceedings at issue had such effects.

5. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible;

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

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