HUMAN RIGHTS COMMITTEE

A.B. et. al. v. Italy

Communication No. 413/1990*

2 November 1990

CCPR/C/40/D/413/1990 */

ADMISSIBILITY

Submitted by: A.B. et. al. (names deleted)

Alleged victims: The author and 14 other persons

State party concerned: Italy

Date of communication: 30 April 1990 (date of initial letter)

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

Meeting on 2 November 1990,

Adopts the following:

Decision on admissibility

1. The authors of the communication are A.B., President of the Union für Südtirol, and 14 other members of the executive committee of the Union. All are Italian citizens. The author and two other signatories are delegates to the Provincial Council of the autonomous Province of Bozen-South-Tirol (Bolzano, Alto Adige). The authors claim that the rights of the people of South Tirol under article 1 of the International Covenant on Civil and Political Rights have been violated by Italy.

2.1 The authors allege that the right of self-determination of the people of South Tirol has been violated by numerous acts and decrees adopted by the Italian Parliament, which are said to encroach on he "autonomous legislative and executive regional power" of the Province, provided for in the De Gasperi-Gruber Accord of 5 September 1946 (the "Paris Agreement") and developed further in the Autonomy Statutes of 1948 and 1972. They refer to 33 decisions of the Italian Constitutional

Court since 1983, concerning actions brought by the South Tirol Provincial Assembly which upheld the powers of direction and control of the Italian Government over matters previously held to be within the competence of the Province. They allude to the underlying grievance in only one of these suits, namely that Law No. 183 of 18 May 1989 "about safeguard of the soil" requires plans concerning the "catchment area" of the Etsch Valley to be approved by the Council of Ministers.

2.2 An advisory opinion of the Procedural Aspects of International Law Institute, appended to the communication, refers to more specific grievances presumably shared by the authors. These include: Law No. 217 of 17 May 1983 which establishes State control over tourism and hotel classifications; laws of 1982 and 1987 concerning housing subsidies, Law No. 529 of 7 August 1982 allowing hydroelectric concessions to remain in private hands after the expiration of their grants, thus by-passing provincial control (most of the electricity is consumed in other regions of Italy); failure of the State to transfer property to the province, as provided by article 68 of the 1972 Autonomy Statute; denial of unilingual trials in the defendant's mother tongue; and lack of ethnolinguistic proportionality in public employment. All of the above have been upheld by the Constitutional Court, with the exception of the property question, which was pending before the Court of Cassation as of November 1988.

2.3 According to the authors, the Italian Government concedes the validity of the Paris Agreement in international law but considers the Autonomy Statute of 1948 to constitute fulfilment of its obligations thereunder. The Government considers the Autonomy Statute of 1972 to be a purely unilateral political act, while the authors claim that it is a result of the "package" agreement of 1969 between Austria and Italy arising out of disputes concerning the Paris Agreement.

2.4 As there is no appeal from decisions of the Italian Constitutional Court, and as the population of South-Tirol is not sufficiently numerous to initiate a constitutional amendment, the authors claim that domestic remedies have been exhausted.

2.5 The matter of implementation of the Paris Agreement was taken up by the United Nations General Assembly in 1960 and 1961 (G.A. Resolution 1497 (XV) and G.A. Resolution 1661 (XVI)) and the European Commission of Human Rights (Opinion of 31 March 1960, Application No. 788/60) as well as in the above-mentioned negotiations between Australia and Italy in 1969.

3.1 Before considering any claims contained in a communication, the Human Rights Committee must, pursuant to rule 87 of its rules of procedure, ascertain whether or not it is admissible under the Optional Protocol to the Covenant.

3.2 With regard to the issue of the authors' standing under the Optional Protocol, the Committee recalls its constant jurisprudence that pursuant to article 1 of the Optional Protocol it can receive and consider communications only if they emanate from individuals who claim that their individual rights have been violated by a State party to the Optional Protocol. While all peoples have the right of self-determination and the right freely to determine their political status, pursue their economic, social and cultural development, and may, for their own ends, freely dispose of their natural wealth and resources, the Committee has already decided that no claim for self-determination may be brought under the Optional Protocol. 1/ Thus, the Committee is not required to decide whether the ethno-German population living in South Tirol constitute "peoples" within the meaning of article

1 of the International Covenant on Civil and Political Rights.

4. The Human Rights Committee therefore decides:

(a) that the communication is inadmissible;

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

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

---

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

* Made public by decision of the Human Rights Committee.

1/ See Committee's views in communication No. 167/1984 (B. Ominayak and the Lubicon Lake Band v. Canada), decision of 26 March 1990, paragraph 32.1; communication No. 318/1988 (E.P. et al. v. Colombia), inadmissibility decision of 25 July 1990, para 8.2.