

HUMAN RIGHTS COMMITTEE

I. P. v. Finland

Communication No 450/1991

26 July 1993

CCPR/C/48/D/450/1991

ADMISSIBILITY

Submitted by: I. P. (name deleted)

Alleged victim: The author

State party: Finland

Date of communication: 30 July 1990 (initial submission)

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

Meeting on 26 July 1993,

Adopts the following:

Decision on admissibility

1. The author of the communication is I. P., a Finnish citizen, born in 1945, and at present residing in Naarajärvi, Finland. He claims to be a victim of violations by Finland of articles 2, 5, 14 and 17 of the Covenant.

Facts as submitted

2.1 In 1979, the author founded a data-processing company, but continued to work as an employee in another company until 1983, when he became an independent businessman. In November 1985, a tax audit was conducted over the books of two companies, H. K. and N. O., with which the author had concluded business contracts; the author had worked as an employee for one of these companies before starting his own business. On 27 June 1986, the provincial Tax Office ordered the two companies to pay taxes and social security

contributions on the author's salary, since, according to the audit, the author was fulfilling his duties towards these companies as an employee, and not as a business partner. According to the author, the tax inspectors wrongly informed the companies that he was three years in arrears with the payment of his taxes.

2.2 Subsequently, the two companies deducted the amount paid in taxes from the payment they owed the author, thereby causing him financial distress, which threatened the continuity of his business. Thereupon, the author addressed a letter to the Tax Office, requesting it to annul its decision of 27 June 1986; the Tax Office treated the letter as a complaint and forwarded it to the Administrative County Court. The Court, in December 1986, dismissed the case since the author had no standing to appeal, as the decision concerned companies H. K. and N. O., and not the author.

2.3 In May 1987, the author started a civil action against the two companies to recover the amount they owed him. The case was dismissed by the District Court of Pieksämäki in July 1987. In April 1989, the Court of Appeal ordered the companies to pay the author the full amount of their outstanding debts. Thereupon the companies paid the author, but deducted a certain percentage. The author then filed a complaint with the East Finland Court of Appeal, in order to collect the percentage.

2.4 On 3 September 1987, the author filed a criminal complaint of slander against the tax inspectors, since they allegedly had disclosed false information about him to the two companies. In December 1987, the author was informed that the investigation was discontinued. The author then complained to the Parliamentary Ombudsman, who concluded, in September 1989, that there was no evidence of an incorrect decision by the tax inspectors.

2.5 In April 1988, the author learned that the police were conducting a criminal investigation against him, for false denunciation. At the end of 1988, he was informed that the investigation was discontinued. In turn, the author, in October 1988, filed a request for criminal prosecution of the rural deputy police chief, likewise for false denunciation. However, the County Prosecutor decided not to initiate a prosecution, for lack of evidence; the author was informed of this decision in July 1989.

2.6 The author further has certain grievances against the tax board and tax appeal board, which stem from a complaint against his tax assessment for 1986. He filed a criminal complaint with the police against the Rural Tax Inspector for forgery of documents pertaining to his case. The Public Prosecutor, however, refused to initiate prosecution, on the ground that there was no evidence that a criminal act had been committed.

2.7 In November 1989, the author requested the public prosecutor of the East Finland Court of Appeal to begin a criminal investigation against the tax authorities. On 3 April 1990, the prosecutor informed the author that, after a preliminary investigation, he had decided not to prosecute.

2.8 In February 1990, the author requested the County Tax Office Director to take action

against its employees because of their alleged negligence in his case. The Office refused to take action. The author then filed a complaint with the Administrative County Court; he further requested the Director General of the National Board of Taxation to order the County Tax Director to reply to his letters and to correct her mistakes. The Director General did not respond to his request. In May 1990, the Administrative County Court upheld the decision of the County Tax Office not to start investigations.

Complaint

3. The author claims to be a victim of a violation of article 17 of the Covenant, since the tax inspectors disclosed sensitive information about the payment of his taxes to third parties. The author claims that this information was false, and that the tax officials did not give him an opportunity to correct the information given, nor corrected it themselves. He further claims to be a victim of a violation of article 14, since, in determining his status as employee, decisions affecting his rights and obligations were made without hearing him, and he had no right to appeal these decisions.

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

4.1 The State party, by submission of 14 October 1991, argues that the communication is inadmissible on the grounds of non-exhaustion of domestic remedies and incompatibility with the provisions of the Covenant.

4.2 As regards the author's complaint under article 17 of the Covenant, the State party concedes that the author has filed criminal complaints against the tax inspectors with the police. However, it submits that the author has not pursued his constitutional right to bring a private action against the officials concerned. The State party argues that this remedy has in similar cases led to an effective prosecution of public officials.

4.3 The State party further submits that the disclosure of information by the Tax Office was based on legal regulations and was necessary in order to determine the taxation of the two companies involved. It argues that the author has failed to substantiate his claim that the disclosure violated his rights under article 17 of the Covenant.

4.4 As regards the author's claim that he is a victim of a violation of article 14, since he was not heard in the administrative procedure, the State party argues that the Tax Office's decision to order the author's employers to pay taxes had no effect on the legal position of the author. It further argues that, if the Tax Office would have decided, upon receipt of the author's tax return concerning the fiscal year 1985, that he was an employee rather than an independent businessman, this decision would have been subject to appeal with the County Administrative Court. However, the State party notes that the author did not file tax returns for the fiscal years 1985, 1986 and 1987, but only for 1983 and 1984.

4.5 The State party further argues that the imposition of a tax or matters of taxation in general do not constitute the determination of rights and obligations in a suit at law.

5. The author, on 17 December 1991, informed the Committee that he intended to comment on the State party's submission by January 1992. However, no comments were received, in spite of a reminder sent on 19 June 1992.

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 Committee turns first to the author's claim under article 14. The Committee notes that whether matters relating to the imposition of taxes are or are not "rights or obligations in a suit at law" does not have to be determined, because in any case the author was not denied the right to have his claims concerning the decision by the Tax Office heard before an independent tribunal. As for the author's claim that he was denied the possibility of appeal, even were these matters to fall within the scope ratione materiae of article 14, the right to appeal relates to a criminal charge, which is not here in issue. This part of the communication is therefore inadmissible under article 3 of the Optional Protocol.

6.3 As regards the author's claim that the disclosure by tax inspectors of information concerning the author's payment of taxes constitutes a violation of article 17 of the Covenant, the Committee notes that the State party has argued that domestic remedies exist, which the author may still pursue. The Committee also notes that the State party submits that the disclosure of the information was based on lawful regulations and necessary to determine the taxation of the companies H. K. and N. O. The Committee observes that article 17 protects everyone from arbitrary or unlawful interference with his privacy and from unlawful attacks on his honour and reputation. After careful examination of the information before it, the Committee considers that the author has not substantiated, for purposes of admissibility, his claim that he was a victim of an arbitrary and unlawful interference with his privacy, nor that the disclosure of information by the tax inspectors could constitute an unlawful attack on his honour and reputation. These aspects of the communication are, therefore, inadmissible under article 2 of the Optional Protocol.

7. The Human Rights Committee therefore decides:

- (a) That the communication is inadmissible under articles 2 and 3 of the Optional Protocol;
- (b) That this decision shall be communicated to the State party and to the author.

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