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CCPR/C/45/D/491/1992
18 September 1992

Original: ENGLISH

HUMAN RIGHTS COMMITTEE
Forty-fifth session

DECISIONS

Communication No. 491/1992

Submitted by : J.L.

Alleged victim : The author

State party : Australia

Date of communication : 7 August 1991 (initial submission)

Documentation references : Prior decisions - none

Date of present decision : 28 July 1992

Decision on admissibility

[See Annex]

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*/ All persons handling this document are requested t o

respect and observe its confidential nature.

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ANNEX **/

Decision of the Human Rights Committee under the Optional Protocol
to the International Covenant on Civil and Political Rights
- Forty-fifth session -

concerning

Communication No. 491/1992

Submitted by : J.L. (name deleted)

Alleged victim : The author

State party : Australia

Date of communication : 7 August 1991 (initial submission)

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

Meeting on 28 July 1992,

Adopts the following:

Decision on admissibility

1. The author of the communication is J.L., an Australian citizen residing in Moorabbin, Victoria, Australia. He claims to be a victim of violations by Australia of article 14 of the International Covenant on Civil and Political Rights. The Optional Protocol entered into force for Australia on 25 December 1991.

The facts as submitted by the author:

2.1 The author is a solicitor; in the State of Victoria, the practice of law is regulated by the Legal Profession Practice Act of 1958. Pursuant to Section 8 3(1), no one may practice law unless he or she is duly qualified and holds a certificate issued by the

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

Law Institute of Victoria. Under the Act, two fees must be paid before a practising certificate is issued: an annual practising fee and a compulsory professional indemnity insurance premium. Pursuant to Section 90, anyone without a practising certificate is not qualified to practice law.

2.2 Section 88(2)(c) stipulates that the rules determining a practising fee for solicitors have no effect unless approved by the Chief Justice. The latter may also approve the regulations concerning the professional indemnity insurance. In 1985, the Chief Justice approved a new insurance scheme proposed by the Law Institute, under which its Solicitors' Liability Committee was entitled to henceforth determine the insurance premium.

2.3 In 1986, J.L. refused to pay the increased premium for the new insurance scheme, since he considered it to be invalid. He claimed that, apart from being a tax which had to be determined by Parliament, the Institute had not sought the necessary recommendations from its members for the new rules, nor had it complied with the so-called regulatory impact statement requirements of the Subordinate Legislation Act of 1962.

2.4 The Institute refused to issue the author's practising certificate; the latter did, however, continue to practice. On 13 May 1986, the Secretary of the Institute obtained an injunction against J.L. pursuant to Section 90(7) of the Act, which stipulates that :

> "On application made ... by the secretary ... of the Institute, the Supreme Court may, if it is satisfied that an unqualified person is acting or practising as a solicitor ..., make an order restraining that person from so acting or practising."

2.5 J.L. ignored the injunction. On 21 May 1986, the Chief Justice sentenced him to three weeks imprisonment for contempt of court. The author appealed the injunction and the committal order. On 10 April 1987, the full Court dismissed the appeal against the committal order but set aside the injunction, inter alia on the ground that the members of the Institute had not recommended the new insurance regulations.

2.6 Under a subsequent amendment to the Act, the Solicitors' Liability Committee may determine the insurance premium with the approval of the Institute's Council and without the necessary recommendations from the Institute's members. Notwithstanding, the

author, maintaining that the fee constituted a form of taxation that would have to be determined by Parliament, continued to practice without the requisite certificate.

2.7 Throughout 1988, the author refused to pay his practising fees to the Institute, complaining that the Institute used the fees to "improperly" finance private activities, rather than for administrative or regulatory purposes. He contended that although the Act did not specify the purpose for which the fee should be used, it was a statutory fee and should accordingly be used solely for such purposes. He further claimed that, as the fee was also fee for membership in the Institute, he was forced to become member in a union.

2.8 On 11 and 15 March 1988, another judge of the Supreme Court, upon application of the Law Institute, issued another injunction against J.L. He ruled that the practising fee was commensurate to the Institute's statutory functions and that the insurance premium was not a "tax", but a contribution to the governance and good order of the profession. The order of 15 March 1988 carried a stay until the "final determination of an appeal by the applicant or further order". An appeal against the order of 11 March was rejected by the full Court on 8 December 1988. The High Court refused leave to appeal from the court's judgment on 13 October 1989. No application to modify or discharge the orders was made by the Law Institute.

2.9 On 30 November 1990, a Supreme Court judge again found the author in contempt of court. The author argued that a stay of the order of 15 March 1988 was still valid, as he had not appealed against it. The judge, however, held that the stay had expired with the High Court's denial of leave to appeal. On 7 December 1990, the judge fined the author for having failed to obtain practising certificates for 1989 and 1990. The full Court denied leave to appeal against this order on 15 March 1991. Upon application from the Institute, the author's name was struck off the roll of solicitors and barristers of the Supreme Court on 11 June 1991. In addition, the author was again fined for contempt of court, with the proviso that if the fine was not paid within thirty days, he would be placed under arrest.

2.10 The author did not appeal against this order, nor did he pay the fine. On 1 September 1991, he was taken into custody. Upon application of the Institute, a further order was issued on 2 October 1991, by which the author was to remain in custody until 29 November 1991. Applications for habeas corpus and bail were dismissed.

The complaint :

3.1 The author complains that he has been denied proceedings before an independent and impartial tribunal. He alleges that the Supreme Court of Victoria is institutionally linked to the Law Institute by means of Section 88 (2)(c) of the Legal Profession Practice Act (see paragraph 2.2 above); the judges' rulings are said to be partial because of their "special relationship" with the Institute. It is further submitted that the judges of the Supreme Court simply refused to rule on the issue of whether the practising fee and insurance premium were valid.

3.2 The author claims that his detention was unlawful, as he was detained for refusing to pay a fine that in fact exceeded the maximum fine envisaged by the Act. He contends that the court had no jurisdiction to entertain the case against him, as there was no court rule authorizing a committal order for an indefinite period until the payment of the fine.

3.3 With respect to the date of entry into force of the Optional Protocol for Australia, it is claimed that the violation of article 14 of the Covenant has continuing effects, in that the author remains struck off the roll of solicitors of the Supreme Court, without any prospect of being reinstated.

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 The Committee has noted the author's claim that his detention between 1 September and 29 November 1991 was unlawful. It observes that this event occurred prior to the entry into force of the Optional Protocol for Australia (25 December 1991), and that it does not have consequences which in themselves constitute a violation of any of the provisions of the Covenant. Accordingly, this part of the communication is inadmissible ratione tempo ris. As to the author's contention that he was denied a fair and impartial hearing, the Committee notes that although the relevant court hearings took place before 25 December 1991, the effects of the decisions taken by the Supreme Court continue until the present

time. Accordingly, complaints about violations of the author's rights allegedly ensuing from these decisions are not in principle excluded *ratione temporis*.

4.3 As to the author's contention that he was forced to contribute to the activities of the Law Institute by paying a practicing fee as well as an insurance premium, the Committee notes that the regulation of the activities of professional bodies and the scrutiny of such regulations by the courts may raise issues in particular under article 14 of the Covenant. More particularly, the determination of any rights or obligations in a suit at law in relation thereto entitles an author to a fair and public hearing. It is in principle for States parties to regulate or approve the activities of professional bodies, which may encompass the provision for insurance schemes. In the instant case, the fact that the practice of law is governed by the Legal Profession Practice Act of 1958 and that the rules providing for a practicing fee and a professional indemnity insurance will have no effect unless approved by the Chief Justice does not lead in itself to the conclusion that the court, as an institution, is not an independent and impartial tribunal. Furthermore, the entitlement of the court, under Australian law, to commit the author for contempt of court for failing to respect an injunction not to practice law without paying the practicing fee and the insurance premium, is a matter of domestic law and beyond the Committee's competence to investigate.

4.4 Accordingly, the communication is inadmissible as incompatible with the provisions of the Covenant, within the meaning of article 3 of the Optional Protocol.

5. The Human Rights Committee therefore decides:

(a) that the communication is inadmissible under article 3 of the Optional Protocol;

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

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

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