

APPLICATION N° 27614/95

Enrico LUKSCH v/ITALY

DECISION of 21 May 1997 on the admissibility of the application

Articles 9 and 10 of the Convention *These provisions do not guarantee the right to vote as such*

Article 3 of the First Protocol

a) *In principle, this provision guarantees the right to vote and the right to stand for election to the legislature. States may however impose certain restrictions on these rights*

The Contracting States enjoy a wide margin of appreciation regarding the conditions governing the right to vote and eligibility to vote

In respect of the right to vote a condition of citizenship is not contrary to this provision

b) *The term "legislature" must be interpreted in the light of the institutions established by the Constitution*

Can regional, provincial and municipal councils (Italy) be deemed to be part of the "legislature"? (Question unresolved)

THE FACTS

The applicant is a German citizen, born in Venice in 1935, and lives in Milan

The applicant has been living in Italy for a long time. He states that, under Italian law (section 13 of the Municipal Elections Act and section 1 of the Electoral Act), only Italian citizens can vote in elections to the regional, provincial or municipal councils.

Accordingly, as the applicant cannot vote in elections to the Regional Council of Lombardy or to the Provincial or Municipal Council of Milan, he is excluded from local political life.

COMPLAIN

The applicant complains that he cannot vote in the Italian local elections, despite the fact that he has to pay taxes. He invokes Articles 9 and 10 of the Convention.

THE LAW

The applicant complains that he cannot vote in the local elections. He alleges a violation of Articles 9 and 10 of the Convention.

The Commission recalls that neither Article 9 nor Article 10 of the Convention guarantees the right to vote as such (see No. 6573/74, Dec. 19 12 74, D R 1, p 87, No 6850/74, Dec 18 5.76, D R 5, p 90 at p 93).

However, the Commission must examine the application in the light of Article 3 of Protocol No 1, which provides:

"The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature."

In its case-law, the Commission has established that, although the wording of the above Article makes express provision only for an institutional guarantee of free elections, it implies a recognition of the principle of universal suffrage and, in this context, recognition of the right to vote and the right to stand for election to the legislature.

However, this right is neither absolute nor without limitations, but subject to such restrictions imposed by the Contracting States as are not arbitrary and do not interfere with the free expression of the peoples' opinion (see No 11391/85, Dec 5.7.85, D R 43, p 236 at p 247).

The Commission recalls in particular that in their internal legal orders the Contracting States make the rights to vote and to stand for election subject to conditions which are not in principle precluded under Article 3 of Protocol No 1. The Contracting States enjoy a wide margin of appreciation in this sphere, but [the Convention organs] ha[ve] to satisfy [themselves] that the conditions do not curtail the

rights in question to such an extent as to impair their very essence and deprive them of their effectiveness; that they are imposed in pursuit of a legitimate aim, and that the means employed are not disproportionate (see Eur Court HR, Mathieu-Mohin and Clerfayt v. Belgium judgment of 2 March 1987, Series A no. 113, p. 23, para. 52).

There is an issue as to whether the regional, provincial and municipal councils in question can be deemed to be part of the legislature in Italy. In this respect, the Commission recalls that the term "legislature" must be interpreted in the light of the institutions established by the constitutions of the Contracting Parties (No. 9267/81, Dec. 12.7.83, D.R. 33, p. 97 at p. 128).

However, this question can remain unresolved, since the application is inadmissible for the following reasons.

Even supposing that Article 3 of Protocol No. 1 does apply to the instant case, the Commission recalls that citizenship, residence and age are among the conditions commonly imposed in Convention countries (see No. 7566/76, Dec. 11.12.76, D.R. 9, p. 121 at p. 122, No. 8987/80, Dec. 6.5.81, D.R. 24, p. 192 at p. 196; No. 6745/74 and No. 6746/74, Dec. 30.5.75, D.R. 2, p. 110 at p. 117).

It follows that the application is manifestly ill-founded and must be rejected pursuant to Article 27 para. 2 of the Convention.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE