

[TRANSLATION]

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THE FACTS

The applicant [Mr Erich Hilbe] is a Liechtenstein national who was born in 1934 and lives in Riehen, in the Canton of Basle, in Switzerland.

The facts of the case, as submitted by the applicant, may be summarised as follows.

On 21 March 1995 the applicant made an application to be entered in the electoral register (*Stimmregister*) for the municipality of Schaan in Liechtenstein in order to vote in the referendum (*Abstimmung*) scheduled for April 1995 on whether Liechtenstein should join the European Economic Area.

In a letter of 28 March 1995 Schaan Town Council (*Gemeindevorsteherung*) informed the applicant that it could not grant his application, because he had been residing in Riehen, in Switzerland, for several years and therefore did not satisfy the statutory requirement as to place of residence. By the terms of section 1(1) of the 15 November 1984 version of the Rights of the People Act (*Volksrechtegesetz*) (Official Gazette 1985, no. 4), persons are entitled to vote only if they are Liechtenstein nationals who have reached the age of 20 and have a place of ordinary abode (*ordentlicher Wohnsitz*) in Liechtenstein one month before the date of the elections or the referendum.

On 30 March 1995 the applicant appealed to the Liechtenstein government on the ground that the result of the referendum would be decisive for him and for all Liechtenstein nationals living abroad and that place of residence could not be accepted as the only criterion for participation in elections or a referendum.

In a decision of 4 April 1995 the government dismissed the appeal, likewise referring to section 1(1) of the Rights of the People Act.

On 7 April 1995 the applicant lodged an appeal against this decision with the Liechtenstein Administrative Court of Appeal (*Verwaltungsbeschwerdeinstanz*). He argued that by denying them the right to vote, the legislature deprived Liechtenstein nationals living abroad of the fundamental right to participate in their country's democratic life.

In a decision of 7 June 1995 the Administrative Court of Appeal refused to refer the question of the constitutionality of the impugned statutory requirement to the Constitutional Court (*Staatsgerichtshof*). It held that the principle of depriving Liechtenstein nationals living abroad of the right to vote was not unconstitutional and referred to a judgment of the Constitutional Court on that issue. As to the applicant's application for

inclusion in the electoral register for the municipality of Schaan, the court upheld the government's decision.

From late 1995 onwards there was a debate nationally and in Parliament on the question of introducing a postal vote (*Briefwahl*) in Liechtenstein.

In two letters dated 27 November 1995 and 14 May 1996 the applicant drew Parliament's attention to the need to include also Liechtenstein nationals living abroad.

In observations of 30 April 1996 sent to Parliament the government expressed its opposition to giving Liechtenstein nationals living abroad the right to vote, having regard, in particular, to their large number in proportion to the number of residents. In 1993 about 2,700 Liechtenstein nationals lived abroad as opposed to 14,000 who lived in Liechtenstein.

On 23 May 1996 Parliament confirmed that Liechtenstein nationals living abroad did not have the right to vote.

COMPLAINTS

The applicant complained under Article 3 of Protocol No. 1 of the fact that it was impossible for him to vote in elections or referendums in Liechtenstein because his place of residence was in Switzerland.

THE LAW

The applicant complained that it was impossible for him to vote in elections or referendums in Liechtenstein. He referred to 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.”

The applicant submitted that the removal of the right to vote deprived him of a fundamental right, whereas in the majority of the Council of Europe's member States that right was granted in one form or another to nationals living abroad.

The Court notes, firstly, that in the instant case the decision by the Administrative Court of Appeal, which ruled on the case at last instance, is dated 7 June 1995 and that Protocol No. 1 entered into force in Liechtenstein on 14 November 1995. However, it may be considered that what is at issue is a continuing situation, that the principle of excluding Liechtenstein nationals living abroad from participating in elections and referendums is contained in legislation, that it was upheld by a decision of

Parliament on 23 May 1996 and that the applicant was directly affected by that decision.

As to the merits, the Court reiterates that the obligations imposed on the Contracting States by Article 3 of Protocol No. 1 are limited to parliamentary elections and do not apply to referendums (see *Bader v. Austria*, application no. 26633/95, Commission decision of 15 March 1996, unreported).

It follows that this part of the application is incompatible *ratione materiae* with the provisions of the Convention.

As to parliamentary elections, the Court notes that the rights safeguarded by Article 3 of Protocol No. 1 are not absolute but subject to restrictions. The Contracting States have a wide margin of appreciation to make the right to vote subject to conditions, but it is for the Court to determine in the last resort whether the requirements of Protocol No. 1 have been complied with; it has to satisfy itself 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. In particular, such conditions must not thwart “the free expression of the opinion of the people in the choice of the legislature” (see the *Mathieu-Mohin and Clerfayt v. Belgium* judgment of 2 March 1987, Series A no. 113, p. 23, § 52, and *Matthews v. the United Kingdom* [GC], no. 24833/94, § 63, ECHR 1999-I).

Moreover, the European Commission of Human Rights has decided on several occasions in the past that having to satisfy a residence requirement in order to have or exercise the right to vote in parliamentary elections is not an arbitrary restriction of the right to vote and is therefore not incompatible with Article 3 of Protocol No. 1 (see *X and Association Y v. Italy*, application no. 8987/80, Commission decision of 6 May 1981, Decisions and Reports (DR) 24, p. 192; *X v. the United Kingdom*, application no. 7730/76, Commission decision of 28 February 1979, DR 15, p. 137; and *Luksch v. Germany*, application no. 35385/97, Commission decision of 21 May 1997, DR 89-B, p. 175).

In the present case the Court considers that the residence requirement which prompted the application is justified on account of the following factors: firstly, the assumption that a non-resident citizen is less directly or less continually concerned with his country’s day-to-day problems and has less knowledge of them; secondly, the fact that it is impracticable for the parliamentary candidates to present the different electoral issues to citizens abroad and that non-resident citizens have no influence on the selection of candidates or on the formulation of their electoral programmes; thirdly, the close connection between the right to vote in parliamentary elections and the fact of being directly affected by the acts of the political bodies so elected; and, fourthly, the legitimate concern the legislature may have to limit the influence of citizens living abroad in elections on issues which,

while admittedly fundamental, primarily affect persons living in the country.

It is possible that the applicant has not severed ties with his country of origin and that some of the factors indicated above are therefore inapplicable to this case. However, the law cannot take account of every individual case but must lay down a general rule. Furthermore, the applicant cannot argue that he is affected by the acts of political institutions to the same extent as resident citizens. Thus the applicant's situation is different from that of a resident citizen, and that justifies the residence requirement.

Having regard to the foregoing conclusions, the Court considers that the residence requirement imposed by Liechtenstein law in electoral matters cannot be regarded as unreasonable or arbitrary or, therefore, as incompatible with Article 3 of Protocol No. 1.

It follows that the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.