

**APPLICATION N° 35385/97**

**Enrico LUKSCH v/GERMANY**

**DECISION** of 21 May 1997 on the admissibility of the application

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

**Article 3 of the First Protocol** *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*

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

*Person residing abroad deprived of the possibility of exercising the right to vote in his country of origin Examination of the justification of such a rule*

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**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 As he does not fall into the category of individuals who, although living abroad, retain, under the German Federal Electoral Law (*Bundeswahlgesetz*), their right to vote in elections to the Federal Parliament (*Bundestag*), the applicant cannot exercise that right

Under section 12 of that Law, persons eligible to vote in Federal Parliament elections are "German" citizens within the meaning of Article 116, para 1 of the Constitution who, on the date of the elections, have been domiciled or habitually resident in Germany for at least three months

As the applicant is a German national, he cannot vote in Italian elections either

## COMPLAINT

The applicant complains that he cannot express his political opinions owing to the fact that he cannot vote in German Federal Parliament elections. He alleges a violation of Articles 9 and 10 of the Convention

## THE LAW

The applicant complains that he cannot vote in German Federal Parliament 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 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 people's opinion (see No 11391/85, Dec 5 7 85, D R 43 p 236 at p 247)

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)

The Commission has, in the past, decided that the condition of residence on the possession or exercise of the right to vote in parliamentary elections is not an arbitrary restriction of the right to vote and is not therefore incompatible with Article 3 of Protocol No. 1 (see No. 8987/80, Dec 6 5.81, D R. 24, p. 192 at p. 196; No 7730/76, Dec. 28.2.79, D.R. 15, p. 137 at p. 139).

In the present case, the Commission considers that the reasons justifying the residence requirement complained of are: first, the assumption that a non-resident citizen is less directly or continuously concerned with, and has less knowledge of, his country's day-to-day problems; secondly, the impracticability for and sometimes undesirability (in some cases impossibility) of parliamentary candidates presenting the different electoral issues to citizens abroad; thirdly, the lack of any influence of non-resident citizens on the selection of candidates and on the formulation of their electoral programmes; and lastly, the correlation between one's right to vote in parliamentary elections and being directly affected by acts of the political bodies so elected.

It is possible that the applicant has not severed ties with his country of origin and that some of the reasons given above are 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 claim to be affected by the acts of political bodies to the same extent as resident citizens. Thus, the applicant's situation is different from that of a resident citizen, which justifies the condition of residence.

Having regard to the foregoing considerations, the Commission considers that the residence requirement imposed by the German Federal Electoral Law cannot be regarded as unreasonable or arbitrary and thus incompatible with Article 3 of the First Protocol.

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**