

AS TO THE ADMISSIBILITY OF

Application No. 26941/95
by Günther TEWS
against Austria

The European Commission of Human Rights (First Chamber) sitting in private on 6 September 1995, the following members being present:

Mr. C.L. ROZAKIS, President
Mrs. J. LIDDY
MM. E. BUSUTTIL
A.S. GÖZÜBÜYÜK
A. WEITZEL
M.P. PELLONPÄÄ
G.B. REFFI
B. CONFORTI
N. BRATZA
I. BÉKÉS
E. KONSTANTINOV
G. RESS
A. PERENIC

Mrs. M.F. BUQUICCHIO, Secretary to the Chamber

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 9 January 1995 by Günther TEWS against Austria and registered on 31 March 1995 under file No. 26941/95;

Having regard to the report provided for in Rule 47 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is an Austrian national, born in 1956 and residing in Linz. He is a lawyer by profession.

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

A. Particular circumstances of the case

On 29 April 1991 the Linz District Court (Bezirksgericht) dissolved the applicant's marriage. As regards the further matters related to the divorce, it based its decisions on an agreement (Vergleich) concerning parental authority over the children and maintenance payments for them and his wife which the applicant and his wife had concluded the same day in court. According to this agreement, the applicant's divorced wife should be the sole guardian of their children. The applicant had the right to visit his children under conditions to be specified in a further agreement between the parents.

On 29 May 1991 the Guardianship Division of the Linz District Court approved of the agreement of 29 April 1991 as regards the transfer of parental authority to the applicant's divorced wife.

On 14 October 1992 the applicant introduced court proceedings for transfer of parental authority over his children from his divorced wife

to him. These proceedings are still pending.

B. Relevant domestic law and practice

According to the relevant provisions of the Civil Code (Allgemeines Bürgerliches Gesetzbuch) the married parents of a child have to care for it, to educate it, to administer its assets and to represent it (parental authority). If the marriage of the child's parents has been dissolved or annulled, or if the parents have formally separated, they can submit an agreement on the question whether in the future the father or the mother should have sole parental authority. The court has to approve this agreement if it is in conformity with the interests of the child. A parent, who does not have parental authority has the right to personal visits with the child as well as other minimum rights, such as the right to be informed of all exceptional circumstances concerning the child or important measures and the right to give his or her opinion.

COMPLAINTS

The applicant complains about a violation of Article 5 of Protocol No. 7 in that Austrian law, in the case of divorce or separation of spouses, provides that parental authority must be assigned to one of the parents and does not permit in such a case for joint parental authority. As a consequence of this legal situation he could only visit his children but could not exercise any further influence on their education.

THE LAW

The applicant complains about a violation of Article 5 of Protocol No. 7 (P7-5) in that Austrian law, in the case of divorce or separation, provides that parental authority must be assigned to one of the parents and does not allow in such a case for joint parental authority.

Article 5 of Protocol No. 7 (P7-5) reads as follows:

"Spouses shall enjoy equality of rights and responsibilities of a private law character between them, and in their relations with their children, as to marriage, during marriage and in the event of its dissolution. This Article shall not prevent States from taking such measures as are necessary in the interests of the children."

However, the Commission is not required to decide whether or not the facts alleged by the applicant disclose any appearance of a violation of Article 5 of Protocol No. 7 (P7-5), as under Article 26 (Art. 26) of the Convention, it may only deal with a matter after all domestic remedies have been exhausted according to the generally recognised rules of international law and within a period of six months from the date on which the final decision was taken.

Even assuming that the applicant has exhausted domestic remedies within the meaning of Article 26 (Art. 26) of the Convention, the Commission observes that the applicant lost his parental authority over his children by virtue of the District Court's decision of 29 April 1991. He introduced the present application only on 9 January 1995.

It follows that the applicant has failed to comply with the six months' time-limit stipulated in Article 26 (Art. 26) of the Convention.

Furthermore, an examination of the case does not disclose the existence of any special circumstances which might have interrupted or suspended the running of the six months' period provided for in that Article.

Accordingly the application must be rejected under Article 27
para. 3 (Art. 27-3) of the Convention.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the First Chamber

(M.F. BUQUICCHIO)

President of the First Chamber

(C.L. ROZAKIS)