AS TO THE ADMISSIBILITY OF

Application No. 16049/90
by Fa. MEDIA INT. Ges. f. Wirtschaftswerbung mbH
against Austria

The European Commission of Human Rights sitting in private on 5 October 1990, the following members being present:

MM. C.A. NØRGAARD, President
S. TRECHSEL
F. ERMACORA
G. SPERDUTI
E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H.G. SCHERMERS
H. DANELIUS
Mrs. G. H. THUNE
Sir Basil HALL
MM. F. MARTINEZ RUIZ
C.L. ROZAKIS
Mrs. J. LIDDY
MM. L. LOUCAIDES
A.V. ALMEIDA RIBEIRO
M.P. PELLONPÄÄ

Mr. H.C. KRÜGER, Secretary to the Commission

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

Having regard to the application introduced on 27 November 1989 by Fa. Media Int. Ges. f. Wirtschaftswerbung mbH against Austria and registered on 25 January 1990 under file No. 16049/90;

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 a business company having its seat in Liechtenstein and apparently represented by Mr. P. Meier, living in Zirl/Austria. In the proceedings before the Commission the applicant company is represented by Mr. J.P. Cammerlander, a lawyer in Innsbruck.

The applicant company complains that in civil proceedings its right of appeal was limited and it did not have the possibility of lodging an appeal on points of law (Revision) because the value of the claim did not exceed 15,000 AS.

It follows from the documents submitted that the applicant company sued a business man for payment of 2,870 AS for an advertisement published in 1986. The defendant objected that the advertisement had been published too late. On 23 March 1989 the Kufstein District Court (Bezirksgericht) granted the action stating that the defendant's objection (Mängelrüge) had been raised too late.

On appeal the Innsbruck Regional Court (Landesgericht) quashed the first instance decision and dismissed the action without an oral hearing by judgment of 26 May 1989. This Court considered that the applicant had not effected its contractual obligation in a defective manner (Sachmangel) but out of time and therefore the contract concluded between the parties was no longer binding. Consequently the defendant did not owe money to the applicant company regardless of whether he had raised objections against the belated advertisement.

COMPLAINTS

The applicant considers that the legislative regulation, according to which an appeal on points of law is possible only in legal disputes where the value of claim exceeds 15,000 AS (or 50,000 AS as from 31 December 1989 onwards), violates Article 1 of Protocol No. 1 to the Convention. He also considers that the restriction in question discriminates against socially weaker groups of the population. Furthermore he complains of Section 501 of the Code of Civil Procedure (ZPO) limiting the appeal in matters not exceeding 15,000 AS to grounds of nullity and alleged violations of the law while procedural errors and errors of fact cannot be invoked. Also it is left to the appellate court's discretion whether an oral hearing of the appeal be held.

The applicant submits that a request based on Article 6 para. 1 of the Convention to hold an oral hearing on the appeal was not made as it would have been useless. He refers to a decision given on 12 May 1989 by the Regional Court in another matter. In that case a party had pleaded that Section 501 of the Code of Civil Procedure violated the principle of equality before the law (Gleichheitssatz) and the right to protection of property. The Regional Court saw however no reason to question the compatibility of Section 501 ZPO with constitutional rights before the Constitutional Court.

THE LAW

1. The applicant company mainly complains that in petty cases there is no possibility of an appeal on points of law.

However, a right to an appeal in civil proceedings cannot be derived either from Article 6 (Art. 6) of the Convention which guarantees the right to a fair trial or from Article 1 of Protocol No. 1 (P1-1) which guarantees the right to the peaceful enjoyment of possessions. The Commission further refers to its own jurisprudence according to which the Convention does not prevent the High Contracting Parties from regulating the manner in which the public shall have access to courts in order to ensure the proper administration of justice (No. 6916/75, Dec. 8.10.76, D.R. 6 p. 107, 112).

There is furthermore no appearance of discrimination against the applicant company in the enjoyment of these rights as the limitations in question are made dependent on objective grounds, namely the value of the claim at stake in the proceedings, and not on any personal criterion related to the parties in the proceedings.

It follows that this part of the application must be rejected in accordance with Article 27 para. 2 (Art. 27-2) of the Convention as being manifestly ill-founded.

2. Insofar as the applicant complains that there was no oral hearing of its appeal, it is true that Article 6 (Art. 6) of the Convention, which, inter alia, guarantees the right to a public oral hearing, also applies to appeal proceedings if and to the extent that an appeal lies under the relevant provisions of the applicable domestic law.

The Commission notes that the applicant company had the possibility to invoke before the Regional Court its right to a public oral hearing as guaranteed by Article 6 para. 1 (Art. 6-1) of the Convention and that Sec. 501 of the Code of Civil Procedure leaves it to the court's discretion whether an oral hearing of the appeal be held. According to the applicant company's statements appeal proceedings concerning disputes of minor importance with a value of claim not exceeding 15,000 AS usually take place in Austria without a public hearing. In these circumstances the applicant company could have been expected to ask for such a hearing if it found it important that one be held. It did not do so and must therefore be considered as having waived its right to a public hearing before the appellate court (Eur. Court H.R., Håkansson and Sturesson judgment of 21 February 1990, Series A no. 171, para. 67). Consequently and regardless of what might have been the court's decision with regard to a request for an oral hearing, the applicant company cannot be considered as a victim in respect of the alleged violation of Article 6 (Art. 6).

It follows that this part of the application must also be rejected in accordance with Article 27 para. 2 (Art. 27-2) of the Convention as being manifestly ill-founded.

For these reasons, the Commission, by a majority

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Commission — President of the Commission

(H. C. KRÜGER) — (C. A. NØRGAARD)