AS TO THE ADMISSIBILITY OF

Application No. 31266/96
by G.H.
against Austria

The European Commission of Human Rights (First Chamber) sitting in private on 23 October 1997, the following members being present:

Mrs J. LIDDY, President
MM M.P. PELLONPÄÄ
E. BUSUTTIL
A. WEITZEL
C.L. ROZAKIS
L. LOUCAIDES
B. MARXER
B. CONFORTI
N. BRATZA
I. BÉKÉS
G. RESS
A. PERENIC
C. BÎRSAN
K. HERNDL
M. VILA AMIGÓ
Mrs M. HION
Mr R. NICOLINI

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 26 March 1996 by G.H. against Austria and registered on 2 May 1996 under file No. 31266/96;

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 citizen. He is a forester, and is represented before the Commission by Mr. H. Walther, lawyer, of Klagenfurt. The facts of the application, as submitted by the applicant, may be summarised as follows.

On 6 May 1991 the applicant applied to the mayor of Baldramsdorf for an amendment to a planning consent of 1988. The amendment concerned the line which a game fence should take. The mayor convened a site meeting for 5 July 1991, which was also attended by a neighbour ("the neighbour").

On 20 November 1991, the applicant applied for the superior authority (the local council: Gemeindevorstand) to decide on his application. On 13 October 1992, the council accepted the transfer to it, but refused the substantive application.

On 7 April 1993 the Kärnten Regional Government (Landesregierung), on the applicant's appeal, quashed the decision of

13 October 1992 and remitted the case to the council. An objection by the neighbour was dismissed.

The council took its second decision on 17 May 1993. On this occasion, it again accepted the transfer to it, and granted the applicant's application for an amendment to the line of his fence.

The neighbour challenged the decision of 17 May 1993 with the Regional Government, which on 21 September 1993 quashed the decision of 17 May and again remitted the case to the council. The applicant, however, challenged the decision of 21 September 1993 by way of administrative complaint to the Administrative Court (Verwaltungsgerichtshof), which on 21 May 1996 quashed the decision of 21 September 1993. The case therefore returned to the procedural stage where the council's decision of 17 May 1993 had been made and challenged by the neighbour.

On 7 May 1997 the Regional Government dismissed the neighbour's objection. The neighbour did not appeal to the Administrative Court.

COMPLAINTS

The applicant alleges violation of Article 6 para. 1 of the Convention. He claims that the proceedings were not determined within a reasonable time. He also claims that the administrative authorities which dealt with his case were not tribunals within the meaning of Article 6 of the Convention, and further that the review by the Administrative Court cannot remedy the position as it does not have power to decide on questions of fact, but has only cassatory powers.

The applicant also alleges a violation of Article 1 of Protocol No. 1 to the Convention, in that he was required to expend considerable sums of money on repairs to the existing fence, even though he wished to have the fence elsewhere.

THE LAW

1. The applicant alleges a violation of Article 6 (Art. 6) of the Convention as regards the length of the proceedings. Article 6 (Art. 6) of the Convention provides, so far as relevant, as follows:

> "1. In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

The Commission considers that it cannot, on the basis of the file, determine the admissibility of this complaint and that it is therefore necessary, in accordance with Rule 48 para. 2 (b) of the Rules of Procedure, to give notice of this complaint to the respondent Government.

2. The applicant also alleges violation of Article 6 para. 1 (Art. 6-1) of the Convention as regards the structural nature of the authorities and courts which decided in the case.

The Commission recalls that the Convention organs have considered the question of the compatibility with Article 6 (Art. 6) of the Convention of decisions of Austrian administrative authorities and the subsequent review by the Constitutional Court (Verfassungsgerichtshof) and the Administrative Court on several occasions (see, for a recent example, Eur. Court HR Fischer v. Austria judgment of 26 April 1995, Series A no. 312, pp. 16-18, paras. 27-34).

However, in the present case, the Commission is not required to consider these complaints as the applicant was ultimately successful in his application for an amendment to the 1988 planning consent. It

follows that he may no longer claim to be a victim, within the meaning of Article 25 (Art. 25) of the Convention, of a violation of Article 6 (Art. 6) of the Convention in this respect.

3. Finally, the applicant also alleges violation of Article 1 of Protocol No. 1 (P1-1) to the Convention in connection with unnecessary expense caused by the authorities' behaviour.

However, any expense incurred by the applicant because of the length of the proceedings is a matter to be considered in the context of the complaint concerning the length of the proceedings. There is no indication that the applicant has been required to incur other expenditure.

It follows that this part of the application is manifestly ill-founded, within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission,

DECIDES TO ADJOURN the examination of the applicant's complaint concerning the length of the proceedings,

unanimously,
DECLARES INADMISSIBLE the remainder of the application.

M.F. BUQUICCHIO
Secretary
to the First Chamber

J. LIDDY
President
of the First Chamber