AS TO THE ADMISSIBILITY OF

Application No. 32206/96
by G. K.
against Austria

The European Commission of Human Rights (First Chamber) sitting in private on 16 October 1996, the following members being present:

Mrs. J. LIDDY, President
MM. M.P. PELLONPÄÄ
E. BUSUTTIL
A. WEITZEL
B. MARXER
G.B. REFFI
B. CONFORTI
N. BRATZA
I. BÉKÉS
G. RESS
A. PERENIC
C. BÎRSAN
K. HERNDL
M. VILA AMIGÓ

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 various dates (see Annex) by G. K. against Austria and registered on 10 July 1996 under file No. 32206/96;

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 born in 1955. He is a retired lawyer, and lives in Vienna. This is his third application to the Commission. The first (No. 23861/94) was declared inadmissible on 31 August 1994, and the second (No. 26137/95) was declared inadmissible on 6 April 1995. The facts of the present case, as submitted by the applicant in a series of application forms, may be summarised as follows.

I. In an application form dated 5 April 1994 the applicant referred to a decision of the Review Chamber (Ratskammer) of the Vienna Regional Criminal Court (Landesgericht für Strafsachen) of 2 December 1992. In the decision, the Review Chamber rejected a complaint by the applicant against a summons which had been issued against him to secure his attendance at a psychiatric examination. The Vienna Court of Appeal (Oberlandesgericht) on 1 February 1993 rejected the applicant's appeal against the decision of 2 December 1992 on the ground that no appeal lay. A further purported appeal was rejected on 13 April 1993 on the grounds that it was out of time, that it repeated the first appeal, and that in any event no more that one complaint could be made in respect of a single decision.

II. In an application form dated 1 November 1995 the applicant referred to proceedings which are being taken with a view to a guardian

being appointed for him. It appears that, in the light of a large number of applications made by the applicant to the Administrative Court (Verwaltungsgerichtshof), that Court proposed that guardianship proceedings should be instituted in order to establish whether a guardian was need to protect the applicant and in his own interest, because he was bringing a large number of applications which would saddle him with a considerable costs burden.

The applicant was summoned to appear before the Donaustadt District Court (Bezirksgericht) on 13 January 1994. He challenged the summons, and on several occasions requested, and demanded, that the guardianship proceedings should be stayed. At the same time he applied for an expert's report to be prepared on the ground that he would in any event exercise his right to silence in the guardianship proceedings, which could therefore never come to a conclusion. The District Court tried to summon the applicant for 20 June 1994 and 27 June 1994, but each time the applicant challenged the summons.

On 9 August 1994 the applicant attended the court. A judge met him and invited him into his room. The applicant refused to comply with the "oral summons" and ran away. He challenged the "summons". In November 1994, the applicant added to the latter challenge an allegation that the judge had attempted to bring him before the court and had violated his right to freedom of the person.

On 9 August 1994 the court ordered the applicant's arrest for the purpose of bringing him before the court as he had failed to reply to summonses.

On 31 January 1995 the Vienna Regional Civil Court (Landesgericht für Zivilsachen) dealt with the applicant's appeals against all the above matters. It rejected the appeal as to the oral "summons" of 9 August 1994 and the addition of November 1994 on the ground that discussion between the judge and the applicant took place outside a formal hearing, and so could not possibly constitute a summons which could be challenged. As to the request that the guardianship proceedings should be stayed, and that an expert's report should be prepared, the Regional Court noted that the proceedings had not properly begun, and that until the applicant appeared before the District Court, that court could not consider any applications.

As to the warrant for the applicant's arrest, the Regional Court noted that it was a fundamental principle of guardianship proceedings that the person concerned should be present in court for the judge to make his own assessment: for that reason the Non-Contentious Proceedings Act (Außerstreitverfahrensgesetz) provides for coercive measures - such as arrest - to ensure the attendance at court of the person concerned. The Regional Court found that the conditions for a first hearing had been present, and that the applicant had failed to appear on several occasions, such that the issue of the arrest warrant was justified.

In connection with the applicant's request for an expert's report, the Regional Court noted that the request was incompatible with rules on guardianship proceedings, which provide for the judge himself to form an impression of the person concerned before any reports are commissioned and interim guardianship orders made.

Notwithstanding the statement in the decision of 31 January 1995 that no ordinary appeal lay, the applicant applied to the Supreme Court (Oberster Gerichtshof) by way of extraordinary appeal (außerordentlicher Revisionsrekurs) and application for the proceedings to be re-opened (Antrag auf Wiedereinsetzung in den vorigen Stand). The Supreme Court rejected the applications on 10 October 1995. The applicant informed the Commission of the proceedings before the Supreme Court by way of a further application form, dated 19 April 1996.

III. In an application form dated 2 November 1995 the applicant referred to a decision of the Administrative Court of 1 February 1995 (received by the applicant on 21 March 1995). Further complaints were made in an application form dated 19 April 1996. The applicant had first raised these complaints in a letter to the Commission's secretariat of 9 September 1995.

The Administrative Court noted that in three of the cases referred to by the applicant, the decision challenged was not a formally valid decision because the person who signed it was not the person whose name it bore. The complaints concerning those decisions were therefore rejected. As to a series of four complaints the applicant had made that the administrative authority had not dealt with applications within the time-limit laid down by law (Säumnisbeschwerden), the Administrative Court noted that as the administrative authority had in any event given a decision on the case after the Administrative Court's time-limit for action had passed, that the applicant's complaint became meaningless, and the proceedings were stayed (eingestellt).

As to costs, the Administrative Court noted that the applicant was not entitled to costs in connection with the challenges to the "non-decisions" as the complaints had been rejected. In connection with the other complaints (the "Säumnisbeschwerden"), the Administrative Court found that the content of the complaints had a close factual nexus, and were all introduced on the same day. It considered that they should have been brought as one complaint, and that the applicant was therefore only entitled to reimbursement for one pleading and the stamp duty on it. Costs of ATS 600.00 were awarded. The Court commented that there was no question of awarding ATS 162,200.00, as requested in one of the complaints.

IV. In an application dated 5 November 1995 the applicant referred to a decision of the Administrative Court of 23 November 1994 (received by him on 28 December 1994).

In its decision of 23 November 1994 the Administrative Court recalled that on 20 September 1994 the tax authorities had decided to seize part of the applicant's pension entitlement, pursuant to Section 65 (1) of the Tax (Execution) Act (Abgabenexekutionsordnung). On the same day, 20 September 1994, the tax authority made an order prohibiting the applicant from dealing with the pension entitlement. The applicant's complaint against the (second) decision of 20 September 1994 was rejected as such a decision could not be challenged by way of complaint to the Administrative Court. The Court noted that the applicant's protection under the law was ensured because the applicant was able to challenge the seizure itself. A subsidiary request for the proceedings to be re-opened (Wiedereinsetzung in den vorherigen Stand) depended on a time-limit having been missed: here, as no administrative complaint was possible, there was no time limit to miss.

V. In an application form dated 11 April 1996 the applicant referred a series of decisions of the Administrative Court of 30 June 1995 (received by him on 16 October 1995) and 12 December 1995 (received on 29 January 1996).

In one decision of 30 June 1995 (93/12/0303) the Administrative Court dismissed complaints by the applicant concerning his pension. It found that the calculation of his pension on the basis of 80% of his last earnings as a civil servant was both appropriate and in accordance with the law. It did not accept that expenses listed by him (including various leisure pursuits and loans) counted as "obligations", nor did it accept that he should be entitled to a pension based on 100% of his last salary. It found no reason to base the pension not on the actual last salary but on the last salary which he said he should have received. It did not agree with the applicant that he should be entitled to an extra pension on the ground that Austria, and especially

the 2nd and 20th Districts of Vienna, was a multi-cultural society (in which he could not find his bearings) and he was entitled to leave it.

In another decision of 30 June 1995 (95/12/0158) the Administrative Court dismissed a claim by the applicant that, before his early retirement, he should have been paid more because he was doing the work of a person in a higher grade.

A further complaint by the applicant was rejected by the Administrative Court on 30 June (95/12/0102) as being out of time.

By decision No. 93/12/0302 of 30 June 1995 the Administrative Court dismissed an application from the applicant that a wrong authority had taken a decision.

By decision No. 93/12/0153 of 30 June 1995 the Administrative Court rejected a complaint from the applicant that an authority had failed to take a decision, as the original request to the authority was merely consequential on another matter (the applicant requested increased salary, whereas the issue was in fact the grade he was entitled to).

By further decisions of 30 June 1995 (93/12/0334, 94/12/0001, 93/12/0285) the Administrative Court dismissed further complaints from the applicant concerning his alleged entitlement to payments of various kinds.

In further decisions of the Administrative Court (Nos. 93/12/0130, 93/12/0222, 93/12/0344 & 93/12/0347 of 30 June 1995, 93/09/0332 of 19 October 1995, 95/12/0288-95/12/0291 of 12 December 1995 and 95/12/0189 & 216 of 12 December 1995) various further requests, complaints and applications were rejected or refused.

COMPLAINTS

I. The applicant complains about the decision of 2 December 1992, alleging violation of Articles 5, 6 and 13 of the Convention and of Article 2 of Protocol No. 4.

II. The applicant alleges violation of Article 8 of the Convention, Article 2 of Protocol No. 4, Article 1 of Protocol No. 1, and Articles 2, 3, 4, 5, 6 and 13 of the Convention.

III. The applicant alleges violation of Article 1 of Protocol No. 1 to the Convention, and of Articles 3, 4, 8, 10 and 13 of the Convention. In particular, he complains that he was required to pay costs in the proceedings, and that his costs were re-imbursed on a different basis from the basis on which he had to pay.

IV. The applicant alleges violation of Article 1 of Protocol No. 1 to the Convention, and of Articles 2 and 5 of the Convention. He claims that he was deprived of his possessions because he was required to spend money on the proceedings before the Administrative Court, and claims that the way the Administrative Court handled the proceedings amounted to expropriation without compensation. In connection with Articles 2 and 5 the applicant claims that his life and security of person are at risk because of externally caused financial strain. He adds reference to Articles 13, 14, 17 and 15 of the Convention.

V. The applicant alleges violation of Article 1 of Protocol No. 1 to the Convention, and of Articles 3, 4, 6, 8, 10, 13 and 14 of the Convention. He complains in particular that he had to expend a considerable amount of time and money on all the proceedings he brought, and that his contemporaries were able to enjoy more pay for equal work. He also complains that he did not - and does not - receive the pension to which he is entitled.

THE LAW

I. The applicant complains about the decision of 2 December 1992, alleging violation of Articles 5, 6 and 13 (Art. 5, 6, 13) of the Convention and of Article 2 of Protocol No. 4 (P4-2). However, the Commission is not required to consider whether this aspect of the case discloses a violation of the Convention as, by virtue of Article 26 (Art. 26) of the Convention, the Commission may only deal with a matter "within a period of six months from the date on which the final decision was taken".

It is clear from the decisions of the Vienna Court of Appeal of 1 February 1993 and 13 April 1993 that no appeal lay against the decision of 2 December 1992, which was merely a summons to appear. The Commission was first apprised of the complaint by the application form of 5 April 1994, that is, more than six months after the decision of 2 December 1992 and, indeed, more than six months after the decisions of 1 February and 13 April 1993.

It follows that the applicant has not complied with the six months rule set out in Article 26 (Art. 26) of the Convention, and this part of the application must be rejected pursuant to Article 27 para. 3 (Art. 27-3).

II. The applicant makes a series of complaints about the decision of the Vienna Regional Civil Court of 31 January 1995 and the subsequent decision of the Supreme Court.

The Commission notes that the Regional Court's decision was an interlocutory decision in proceedings to determine whether a guardian should be appointed for the applicant. Complaints about the imposition of a guardianship order as such and procedural matters connected with it are therefore premature.

The applicant complains that he was arrested in the course of the proceedings. The Commission notes that the Regional Court found that the arrest was justified in order to obtain the applicant's attendance at court, given that he had failed to answer a summons on several occasions. The applicant's arrest and detention were therefore compatible with Article 5 para. 1 (b) (Art. 5-1-b) of the Convention, which permits detention for non-compliance with the lawful order of a court. Any attendant interference with the applicant's right to respect for his private and family life was "necessary in a democratic society ... for the protection of health ..." within the meaning of Article 8 (Art. 8) of the Convention.

To the extent that the applicant complains of the length of the proceedings, it appears that the first time the applicant was affected by the proceedings was on 31 December 1994, when he was summoned to appear before the Donaustadt District Court. Assuming that Article 6 (Art. 6) applies to the proceedings, the Commission does not find that they have taken more than a "reasonable time" within the meaning of that provision.

The Commission has also considered the remainder of the applicant's complaints in his application forms of 1 November 1995 and 19 April 1996. It finds, to the extent that they are substantiated and fall within the Commission's competence, that they disclose no appearance of a violation of the Convention.

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.

III. The applicant makes a series of complaints about the decision of the Administrative Court of 1 February 1995. In particular, he complains about the costs position.

The Commission recalls that the imposition of costs may raise questions under Article 6 para. 1 (Art. 6-1) of the Convention where the costs are of such an order as to impede effective access to court (cf. No. 6206/73, Dec. 16.3.75, D.R. 1 p. 66; No. 22741/93, De Luca v. Italy, Dec. 11.1.95). There is, however, no right under the Convention or its protocols to reimbursement of a successful litigant's costs (see, in the context of a person acquitted of a criminal offence, Eur. Court HR, Masson and van Zon judgement of 28 September 1995, Series A no. 327-A, p. 19, para. 49).

The applicant does not complain about the imposition of the initial costs as such, but rather complains that he was reimbursed only the costs - to the extent that he was successful - for the proceedings which he ought to have brought. In the absence of a right to costs, the Commission finds that this complaint raises no issues under Article 6 para. 1 (Art. 6-1) of the Convention.

The Commission has also considered the remainder of the applicant's complaints in his application form of 2 November 1995. It finds, to the extent that they are substantiated and fall within the Commission's competence, that they disclose no appearance of a violation of the Convention.

IV. The applicant makes a series of complaints about the Administrative Court's decision of 23 November 1994. In particular, he claims that he has been deprived of his possessions.

The Commission notes that in its decision of 23 November 1994 the Administrative Court did not deprive the applicant of anything, and did not permit or otherwise confirm any deprivation. Rather, it simply found that the decision to prevent the applicant dealing with part of his pension entitlement which had been seized could not be challenged, and rejected that part of the complaint. The decision to seize could be challenged.

Accordingly, the applicant was not deprived of any possessions by the decision of 23 November 1994, with the result that this complaint raises no issues under Article 1 of Protocol No. 1 (P1-1).

The Commission has also considered the remainder of the applicant's complaints in his application form of 5 November 1995. It finds, to the extent that they are substantiated and fall within the Commission's competence, that they disclose no appearance of a violation of the Convention.

V. The applicant complains about the series of decisions of 30 June 1995 and of 12 December. In particular, he complains under Article 1 of Protocol No. 1 (P1-1).

The Commission recalls that the Convention does not guarantee a right to a pension of a particular amount (see, for example, Müller v. Austria, Comm Rap. 1.10.75, D.R. 3 p. 25). Further, the Convention does not contain a right for civil servants to receive a particular salary (No. 7565/76, Dec. 7.3.77, D.R. 9 p. 117). The applicant has clearly not been deprived of the right to a pension following his early retirement, and indeed has been permitted to make a lengthy series of applications to the administrative authorities and the Administrative Court to allege that he should be entitled to further payments. The Commission finds that the applicant's enjoyment of his possessions has not been affected by the decisions he complains of.

The Commission has also considered the remainder of the applicant's complaints in his application form of 11 April 1996. It finds, to the extent that they are substantiated and fall within the Commission's competence, that they disclose no appearance of a violation of the Convention.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

M.F. BUQUICCHIO
Secretary
to the First Chamber

J. LIDDY
President
of the First Chamber

Annex

The applicant's complaints were made in a series of application forms. The date of introduction in respect of each set of complaints is as follows:

I. Application form dated 5 April 1994: introduced on 5 April 1994;

II. Application form dated 1 November 1995: introduced on 1 November 1995;

III. Application forms dated 2 November 1995 and 19 April 1995: introduced on 9 September 1995;

IV. Application form dated 5 November 1995: introduced on 5 November 1995;

V. Application form dated 11 April 1996: introduced on 11 April 1996.