AS TO THE ADMISSIBILITY OF

Application No. 14452/88
by H.
against Austria

The European Commission of Human Rights sitting in private on 3 September 1990, the following members being present:

MM. C.A. NØRGAARD, President
S. TRECHSEL
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
J.-C. GEUS
A.V. ALMEIDA RIBEIRO

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 4 August 1988 by H. against Austria and registered on 28 November 1988 under file No. 14452/88;

Having regard to the report provided for in Rule 40 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is an Austrian citizen born in 1940 and living in Gaaden.

In 1987 the applicant brought an action (Beschwerde) with the Administrative Court (Verwaltungsgerichtshof) complaining about a fine which had been imposed on him by the competent authorities for having run a car repair shop without the necessary authorisation. The applicant alleged that he had been wrongly fined.

On 19 November 1987 the applicant's counsel was requested by the Administrative Court to submit within a week a further copy of his complaint for the purpose of its communication to the Ministry concerned.

On 15 December 1987 the Administrative Court discontinued the proceedings on the ground that the further copy submitted by the applicant within the fixed time-limit was not identical to the original memorial. The applicant's counsel had added a further fee

stamp in the amount of AS 120 to the memorial but this supplement was missing on a copy of the complaint previously submitted.

The applicant thereupon challenged the judges for bias. This motion was rejected on 12 February 1988.

On 17 May 1988 the Administrative Court rejected the applicant's request for restitutio in integrum. The Court stated that restitution was possible only in case a time-limit had not been respected. The applicant had however submitted a further copy of his complaint in time but in an imperfect manner. This could not be remedied by way of restitutio in integrum.

COMPLAINTS

The applicant complains that he was arbitrarily denied access to the Administrative Court in violation of Article 6 of the Convention which is applicable in his case, because the administrative proceedings in question concerned his right to freedom of trade, i.e. a civil right.

THE LAW

The applicant complains that he was denied access to the Administrative Court and thereby arbitrarily denied a fair hearing of the action he intended to lodge against the imposition of a fine.

He invokes Article 6 para. 1 (Art. 6-1) of the Convention which, in its first sentence, reads:

> "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing ... by an independent tribunal ..."

The Commission observes that the proceedings in question related to a remedy which the applicant had lodged against the Administrative Court's decision of 15 December 1987 refusing to deal with his action. This decision had the effect of depriving the applicant of the possibility of having a court determination of the question whether or not he was wrongly fined.

However, even assuming that Article 6 (Art. 6) applies to the proceedings in question there is no element in the present case indicating that the applicant was denied access to a court in an arbitrary manner. The Commission has repeatedly recognised the right of the High Contracting States to make access to courts dependent on the respect by the parties of formal rules relating in particular to the form of their submissions to a court and to time-limits (No. 8407/78, Dec. 6.5.80, D.R. 20 p. 179 with further reference).

In the present case the applicant's counsel had been requested by the Administrative Court to submit further identical copies of his complaint within a week. Undisputedly he did not comply with this court order as the copy submitted by him within the time-limit was not identical in all details. His request to be granted restitutio in integrum was rejected on the ground that such a request could only be considered where a party had failed to respect a time-limit, not however where an incomplete set of the complaint was submitted within the given time-limit. The Commission is not competent to examine whether this decision is based on errors of law or fact unless such errors reveal a violation of Convention rights. It cannot, however, be found in the present case that the interpretation by the Austrian Court of the rules governing restitutio in integrum was arbitrary and amounted to a denial of justice.

It follows that 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

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Commission — President of the Commission

(H.C. KRÜGER) — (C.A. NØRGAARD)