AS TO THE ADMISSIBILITY OF

Application No. 28610/95
by Franz HANDWERKER
against Germany

The European Commission of Human Rights (First Chamber) sitting in private on 4 September 1996, the following members being present:

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

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 22 July 1995 by Franz HANDWERKER against Germany and registered on 20 September 1995 under file No. 28610/95;

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 a German citizen, born in 1970 and residing in Traitsching. Before the Commission he is represented by Mr. G. Althammer, a lawyer practising in Cham.

A. Particular circumstances of the case

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

In 1992 the applicant had a serious accident at work and has been handicapped ever since. He receives an invalidity pension (Erwerbsunfähigkeitsrente) under the old age and invalidity pension scheme of the Social Insurance Code (Reichsversicherungsordnung) and, in addition, a pension after accident (Unfallrente) under the same Act.

The applicant, assisted by counsel, intended to sue the person who was responsible for his accident. However, Section 636 and 637 of the Social Insurance Code excludes a claim for compensation of damages against a person who had caused an accident at work. On 20 September 1993 the applicant, therefore, introduced a constitutional complaint to the Federal Constitutional Court (Bundesverfassungs-gericht), submitting that the above provisions of the Social Insurance Code were unconstitutional.

On 28 September 1993 the Federal Constitutional Court informed the applicant that his constitutional complaint would have no prospect of success. A constitutional complaint directed against a provision of law as such could only be filed within one year after the law at issue had entered into force. Since the relevant provisions of the Social Insurance Code had entered into force long ago, a complaint about the constitutionality of these provisions could only be raised indirectly, that is in the context of constitutional complaint concerning proceedings in which this law has been applied by a court or other public authority. The applicant did not pursue his constitutional complaint.

In January 1994, the applicant requested the Weiden Labour Court (Arbeitsgericht) to grant him legal aid for civil proceedings against the person who had caused the accident.

On 28 February 1994 the Weiden Labour Court (Arbeitsgericht) refused to grant legal aid. It found that compensation claims against a person who had caused an accident at work were excluded by Sections 636 and 637 of the Social Security Act. The applicant's action therefore had no prospect of success and legal aid could not be granted.

On 25 March 1994 the Nuremberg Regional Labour Court (Landesarbeitsgericht) dismissed the applicant's appeal against the refusal of legal aid.

On 8 February 1995 the Federal Constitutional Court declined to deal with the applicant's constitutional complaint for lack of prospect of success. The Constitutional Court noted that the exclusion of compensation claims against a person who has caused an accident at work was justified as the injured person in this particular case was not only entitled to an invalidity pension but also to a pension after accident. The pension after accident must be conceived as a substitute for compensation claims against the person who had caused the accident.

B. Relevant domestic law

According to S. 636 of the Social Insurance Code (Reichs-versicherungsordnung) the employer is only liable to pay compensation for personal injury caused by an accident at work to the insured person working in his enterprise, or to his relatives or surviving dependants, even if they are not entitled to a pension, if he has wilfully caused the accident or if the accident happened while the insured person was participating in general traffic. Any payment which the insured person, his relatives or surviving dependants receive from the social security authorities is to be deducted from the compensation claim.

S. 637 provides that, in case of an accident at work, S. 636 also applies to compensation claims of the insured person, his relatives or surviving dependants, directed against an employee working in the same enterprise, if the latter has caused the accident by a work-related activity.

COMPLAINTS

The applicant complains that if his accident would not have happened at work or if he had been self employed and not subject to the general social insurance scheme, he would have had the possibility to sue the person responsible for the accident for compensation of damages. He therefore had been discriminated against persons belonging to these groups. He invokes Articles 2, 5 and 14 of the Convention and provisions of the European Social Charter.

THE LAW

The applicant complains that he cannot raise a compensation claim for damages against the person who had caused his accident at work. In his view, he had been discriminated against persons who had suffered an accident outside work or who were self employed and not insured under the general social insurance scheme. He invokes Articles 2, 5 and 14 (Art. 2, 5, 14) of the Convention and provisions of the European Social Charter.

Insofar the applicant relies on provisions of the European Social Charter, the Commission recalls that under Article 19 (Art. 19) of the Convention it is only competent to ensure the observance of the engagements undertaken by the High Contracting Parties in the present Convention.

The applicant has also invoked Articles 2, 5 and 14 (Art. 2, 5, 14) of the Convention with regard to the above matter. The Commission finds that the exclusion of compensation claims may raise an issue which comes within the ambit of Article 6 para. 1 (Art. 6-1) of the Convention. The Commission therefore finds it appropriate to examine the application under Article 14 of the Convention in conjunction with Article 6 para. 1 (Art. 14+6-1) of the Convention (see No. 10475/83, Dec. 9.10.84, D.R. 39 p. 246).

Article 14 (Art. 14) of the Convention reads as follows:

> "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

Article 6 para. 1 (Art. 6-1) of the Convention, insofar as relevant, reads as follows:

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

The Commission recalls that Article 6 para. 1 (Art. 6-1) of the Convention secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal. In this way the Article embodies a "right to a court", of which the right of access, that is the right to institute proceedings before a court in civil matters, constitutes one aspect only (Eur. Court HR, Fayed v. the United Kingdom judgment of 21 September 1994 Series A no. 294-B, p. 49, para. 65)

The Commission recalls further that for the purpose Article 14 (Art. 14) of the Convention a difference in treatment is discriminatory only if it has no objective and reasonable justification or if there is no reasonable relationship of proportionality between the means employed and the aim sought to be realised (Eur. Court HR, Darby v. Sweden judgment of 23 October 1990, Series A no. 187, p. 12, para. 31; Karlheinz Schmidt v. Germany judgment of 18 July 1994, Series A no. 291-B, p. 32, para. 24).

In the present case, the provisions of the Social Insurance Code, which excludes compensation claims under civil law against the person who had caused an accident, applied to the applicant's compensation claim as he had suffered an accident at work. The Federal Constitutional Court, in its decision of 8 February 1995, found that the exclusion of compensation claims under the Social Insurance Code was justified as the injured person was entitled to a pension after accident which must be conceived as a substitute for compensation claims.

Having regard to the finding of the Federal Constitutional Court,

the Commission finds that the difference in treatment of persons insured under the Social Insurance Code and other persons who suffer an accident is based on an objective and reasonable criterion. In the Commission's view, the States may take into account the specific dangers of working situations and may apply different schemes of social protection to these situations. Moreover, the applicant was not put into a less advantageous situation than other persons who suffer from accidents, as he has the benefit of a pension after accident to which persons, who had an accident outside work or who are not insured under the Social Insurance Code, are not entitled.

The Commission also finds that there is a reasonable relationship of proportionality between the means chosen, that is, the pension after accident replacing the civil action for damages, and the aim of making special provisions for persons injured in accidents at work. In this respect, the Commission observes that no-fault pension schemes offer many advantages when compared to the traditional action for damages, frequently characterised as time-consuming, costly and uncertain. The pension scheme, on the other hand, circumvents the inherent difficulties of establishing negligence by providing immediate and certain coverage of the needs of all persons injured in an accident at work who fall within the scheme of the Social Insurance Code (see No. 10475/83, Dec. 9.10.84, D.R. 39 pp. 246-254).

Accordingly, the applicant has not been discriminated against in his right of access to a court as guaranteed by Article 6 para. 1 (Art. 6-1) of the Convention.

It follows that in this respect 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, by a majority,

DECLARES THE APPLICATION INADMISSIBLE.

M.F. BUQUICCHIO
Secretary
to the First Chamber

J. LIDDY
President
of the First Chamber