AS TO THE ADMISSIBILITY OF

Application No. 26808/95
by Peter HAUSER
against Austria

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

Mr. C.L. ROZAKIS, President
Mrs. J. LIDDY
MM. E. BUSUTTIL
A.S. GÖZÜBÜYÜK
A. WEITZEL
M.P. PELLONPÄÄ
B. CONFORTI
N. BRATZA
I. BÉKÉS
E. KONSTANTINOV
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 1 February 1995 by Peter HAUSER against Austria and registered on 22 March 1995 under file No. 26808/95;

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 an Austrian citizen born in 1957 and residing in Salzburg. He is a lawyer by profession.

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

A. Particular circumstances of the case

On 26 January 1993 the Salzburg Municipality Office (Magistrat) convicted the applicant under the Salzburg Municipality Parking Fee Act (Parkgebührengesetz für die Stadt Salzburg) of failure to pay parking fees and sentenced him to a fine of 500 AS or 20 hours' imprisonment in default.

Between 3 February 1993 and 3 May 1993 the Municipality Office convicted the applicant five times under the Salzburg Municipality Parking Fee Act of failure to comply with instructions of the Municipality Office to inform them on the person who had used the applicant's car on specific days (Lenkerauskunft). It imposed in each case a fine of 600 AS or 21 hours' imprisonment in default.

The applicant appealed in all cases.

On 18 November 1993 the Salzburg Independent Administrative Panel (unabhängiger Verwaltungssenat), in separate decisions, dismissed the applicant's appeals against the convictions concerning the failure to give information to the Municipality Office. On 3 December 1993 it dismissed the applicant's appeal concerning the conviction for non-payment of parking fees.

The applicant lodged complaints with the Constitutional Court (Verfassungsgerichtshof) against the Independent Administrative Panel's decisions as regards the convictions for failure to give information to the Municipality Office and a complaint with the Administrative Court (Verwaltungsgerichtshof) as regards the conviction for non-payment of parking fees.

On 1 March 1994 the Constitutional Court declined to deal with the applicant's complaints for lack of prospect of success and referred the cases to the Administrative Court.

On 14 July 1994 the Administrative Court, relying on Section 33a of the Administrative Court Act (Verwaltungsgerichtshofgesetz), declined to deal with all the applicant's complaints. It found that his cases did not raise important legal issues.

B. Relevant domestic law

1. Articles 129a and 129b in the version of the 1988 Amendment of the Federal Constitution (Federal Law Gazette No. 1988/685) provided for the institution of Independent Administrative Panels.

Independent Administrative Panels deal, inter alia, with appeals against penal orders issued by administrative authorities. Their members are lawyers, appointed by the Regional Government for a term of office of at least 6 years. They are independent and must not receive instructions. They can only be dismissed from office upon a decision of the Independent Administrative Panel itself.

The Salzburg Regional Act of 4 July 1990 on the Independent Administrative Panel for Salzburg (Gesetz über den Unabhängigen Verwaltungssenat des Landes Salzburg, LGBl. 1990/65) repeats to a large extent the provisions of the Federal Constitution. Section 3 para. 2 of the Act provides that members are initially appointed for a term of office of six years; any renewal of appointment is for ten years.

2. Section 33a of the Administrative Court Act (Verwaltungs-gerichtshofgesetz), as in force from 1 January 1991, reads as follows:

> "The Administrative Court may decline to deal with a complaint against a decision of an Independent Administrative Panel in an administrative criminal case, if no prison sentence or a fine exceeding AS 10,000 has been imposed and the Administrative Court's decision would not involve the determination of a legal question of fundamental importance. A legal question of fundamental importance is involved in particular if the challenged decision of the Independent Administrative Panel is at variance with the Administrative Court's case-law, if no such case-law exists or if the legal questions at issue have not been answered uniformly in the Administrative Court's case-law."

According to Section 11 of the Administrative Court Act, the Court decides in administrative criminal cases in chambers of three judges.

3. The Salzburg Municipality Parking Fees Act (Parkgebührengesetz für die Stadt Salzburg) regulates parking fees in the city of Salzburg. Section 7 of the Act provides that the owner of a car has to give

information to the authority on request as to the user of the car at a specified time. The maximum penalty for non-payment of parking fees and failure to give information as to the user of a car is a fine of 10.000 AS.

According to Section 16 of the Code of Administrative Criminal Procedure (Verwaltungsstrafgesetz) the administrative authority which imposes a fine must at the same time order imprisonment in default. If the law providing for the fine does not provide otherwise, imprisonment in default must not exceed two weeks. No minimum duration of imprisonment by default is provided for.

According to Section 54b of the Code of Administrative Criminal Procedure imprisonment in default can only be enforced if the collection of the fine, normally with the assistance of an enforcement court (Exekutionsgericht) has failed. The mere refusal to pay a fine is not sufficient to find that a fine is not collectible.

COMPLAINT

The applicant complains that the Administrative Court's refusal to deal with his complaints violated Article 2 of Protocol No. 7.

THE LAW

The applicant complains that the Administrative Court's refusal to deal with his complaints violated Article 2 of Protocol No. 7 (P7-2), which, insofar as relevant, reads as follows:

> "1. Everyone convicted of a criminal offence by a tribunal shall have the right to have his conviction or sentence reviewed by a higher tribunal. The exercise of this right, including the grounds on which it may be exercised, shall be governed by law.
>
> 2. This right may be subject to exceptions in regard to offences of a minor character, as prescribed by law, ..."

The Commission finds that the applicant was convicted of criminal offences within the meaning of Article 2 of Protocol No. 7 (P7-2). In this respect the Commission has had regard to the nature of the applicant's offences as a failure to comply with a specific regulation, their qualification under domestic law as administrative criminal offences and the severity of the punishment involved, which included the possibility of imprisonment and cannot be described as negligible (see mutatis mutandis Eur. Court H.R., Öztürk judgment of 21 February 1984, Series A no. 73, p. 18, para. 50; Gradinger judgment of 23 October 1995, Series A no. 328-C, paras. 35-36).

The Commission observes that the Salzburg Municipal Office cannot be considered as a tribunal within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention (see e.g. Eur. Court H.R., Gradinger judgment of 23 October 1995 loc. cit., para. 42; Schmautzer judgment of 23 October 1995, Series A no. 328-A, para. 34) and consequently not as a tribunal for the purpose of Article 2 of Protocol No. 7 (P7-2). However, having regard to the criteria developed in its case-law by the Court for the qualification of tribunals under Article 6 para. 1 (Art. 6-1) of the Convention and the relevant domestic provisions on the institution of Independent Administrative Panels, the Commission finds that the Salzburg Independent Administrative Panel has to be regarded as a tribunal within the meaning of Article 2 para. 1 of Protocol No. 7 (P7-2-1) (see mutatis mutandis Eur. Court H.R., Ringeisen judgment of 16 July 1971, Series A no. 13, p.39, para. 95; Sramek judgment of 22 October 1984, Series A no. 84, pp. 17-18, paras. 36-38; Ettl judgment of 23 April 1987, Series A no. 117, pp. 17-19, paras. 34-41).

Article 2 of Protocol No. 7 (P7-2) therefore applies to the applicant's convictions by the Salzburg Independent Administrative Panel and he was therefore in principle entitled to a review of his convictions or sentences by a higher tribunal.

The Commission recalls that reference to the grounds for review being governed by law in the second sentence of paragraph 1 of Article 2 of Protocol No. 7 (P7-2) clearly shows that the Contracting States have a discretion as to the modalities for the exercise of the right to review. Thus, different rules govern review by a higher tribunal in the various Member States of the Council of Europe. In some member States a person wishing to appeal to the highest tribunal must apply for leave to appeal. Such a right to apply for leave to appeal to a higher court can in itself be regarded as a review within the meaning of Article 2 of Protocol No. 7 (P7-2) (No. 18066/91, Dec. 6.4.94, D.R. 77 p. 37; No. 20087/92, Dec. 26.10.95, D.R. 83).

Under Austrian law the Administrative Court had the competence to review the appeal decisions given by the Salzburg Independent Administrative Panel on the applicant's convictions for road traffic offences. However, the Administrative Court, in applying Section 33a of the Administrative Court Act, could, and did, decline to deal with the applicant's complaints.

The Commission finds that the Administrative Court's decisions given pursuant to Section 33a of the Administrative Court Act may be equated to decisions given on applications for leave to appeal which in themselves have to be regarded as a review within the meaning of Article 2 of Protocol No. 7 (P7-2).

In these circumstances the Commission does not find any appearance of a violation of the applicant's right under Article 2 of Protocol No. 7 (P7-2) to a review of his conviction or sentence by a higher tribunal.

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, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the First Chamber — President of the First Chamber

(M.F. BUQUICCHIO) — (C.L. ROZAKIS)