AS TO THE ADMISSIBILITY OF

Application No. 22651/93
by J. R.
against Germany

The European Commission of Human Rights (First Chamber) sitting in private on 18 October 1995, 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. MARXER
G.B. REFFI
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 20 February 1993 by J. R. against Germany and registered on 17 September 1993 under file No. 22651/93;

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, living in Erfstadt-Lechenich. He is represented by Mr. H. Hagemeier & Partners, a law firm in Cologne.

It follows from the applicant's statements and the documents submitted that the applicant, after having exhausted the administrative proceedings, brought an action against an income tax assessment order dated 19 November 1987. This action was dismissed by the Cologne Finance Court (Finanzgericht) on 14 July 1988. The court found that the applicable Section 32 (a) of the Income Tax Act (Einkommensteuergesetz) according to which taxes had to be levied in relation to the economic capacity (wirtschaftliche Leistungsfähigkeit) and a minimum of 378 DM per month to cover the minimum exigencies of existence was free from taxation was compatible with constitutional law. The court noted that after deduction of income taxes, the applicant still had approximately 20,000 DM for his and his wife's maintenance, therefore the applicant's request to submit the case to the Federal Constitutional Court to have the constitutionality of Section 32 (a) para. 1 of the Income Tax Act was not granted.

On 8 June 1990 the Federal Finance Court (Bundesfinanzhof) dismissed the applicant's appeal on points of law (Revision).

The applicant then lodged a constitutional complaint.

On 25 September 1992 the Federal Constitutional Court (Bundesverfassungsgericht) decided at the request (Vorlagebeschluß) of several Finance courts that Section 32 (a) para. 1 of the Income Tax Act was unconstitutional. It considered that every tax-payer had the right to a minimum of existence (Existenzminimum), i.e. that after having met his tax liabilities he should still dispose of enough money necessary for his and his family's maintenance (Lebensunterhalt). The minimum of the existence amount depended on the general economic situation and the recognized standards in the legal community. The tax-payer should at least have as much at his disposal as the public social authorities granted to needy persons out of public funds. The Federal Constitutional Court requested the legislator to enact a new provision to replace Section 32 (a) from 1 January 1996 onwards. Until then, so the court decided, the unconstitutional regulation remained in force. Neverthless, as from 1993 onwards, income taxation should be limited so as not to deprive a tax-payer of a minimum of existence.

The applicant's own constitutional complaint was rejected by a panel of three judges of the Federal Constitutional Court on 22 December 1992. The court referred to its decision of 25 September 1992 and added that the applicant had to accept the unconstitutional taxation until the relevant legislation had been amended. Should the legislator decide in the new legislation that it also applied to the relevant prior assessment periods, then the binding force of the assessment decisions did not prevent a reconsideration of the matter under the new regulations.

COMPLAINTS

The applicant considers that the application in his case of a tax law provision, which the Federal Constitutional Court has held to be unconstitutional, violates his rights guaranteed by Article 1 of Protocol No. 1 to the Convention. He alleges a further violation in that he has to bear the costs of the domestic proceedings although his arguments about the unconstitutionality of the applicable tax law provision were justified.

THE LAW

The applicant complains that no retroactive effect was given to the Federal Constitutional Court's decision of 25 September 1992 and that the unconstitutional provision of the German Income Tax Act was applied by the Finance Court in his matter and to his detriment.

The Commission has examined this complaint under Article 1 of Protocol No. 1 (P1-1) which guarantees the right to the peaceful enjoyment of possessions, in conjunction with Article 14 (P1-1+14) of the Convention which forbids discrimination as to the enjoyment of Convention rights.

However, with regard to the applicant's complaint that no retroactive effect was given to a Constitutional Court decision declaring a certain provision of the tax law to be unconstitutional, the Commission notes that according to the jurisprudence of the European Court of Human Rights, the principle of legal certainty, which is necessarily inherent in the law of the Convention, may dispense States from re-opening legal acts or situations that antedate judgments of this Court declaring domestic legislation incompatible with the Convention (Eur. Court H.R., Marckx judgment of 13 June 1979, Series A no. 31, p. 26, para. 58). The same considerations apply where a Constitutional Court annuls domestic legislation as being unconstitutional (No. 17750/91, Dec. 30.6.92, unpublished). In view of this principle of legal certainty, the Commission finds that the regulation adopted by the Federal Constitutional Court according to

which the impugned provisions of the Income Tax Act remain in force until 1 January 1996 is objectively justified. The Commission also notes that in its decision of 25 September 1992 the Federal Constitutional Court ordered that from 1993 onwards it had to be made sure that income tax was not levied in an excessive manner so as to deprive the tax-payer of a minimum of existence. The Commission further notes that according to the finding of the Cologne Finance Court at the relevant time the applicant still disposed of about 20,000 DM to cover his and his wife's maintenance , after payment of taxes. In these particular circumstances, the Commission cannot find that the case discloses any appearance of a violation of the Articles cited above.

Furthermore, the applicant has not shown that the costs which he had to bear in the domestic proceedings were excessive and arbitrarily imposed.

It follows that the application has to be rejected as being manifestly ill-founded in accordance with 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)