AS TO THE ADMISSIBILITY OF

Application No. 14623/89
by H.K.KG.
against Austria

The European Commission of Human Rights (First Chamber) sitting in private on 2 September 1992, the following members being present:

MM. J.A. FROWEIN, President of the First Chamber
F. ERMACORA
E. BUSUTTIL
A.S. GÖZÜBÜYÜK
Sir Basil HALL
Mr. C.L. ROZAKIS
Mrs. J. LIDDY
MM. M. PELLONPÄÄ
B. MARXER

Mr. M. de SALVIA, Secretary to the First 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 12 January 1989 by H.K.KG. against Austria and registered on 6 February 1989 under file No. 14623/89;

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 company runs a transport business. Its headquarters is at A. and it is represented before the Commission by Mr. Heinz Walther, a lawyer in Klagenfurt.

On 4 September 1986 the applicant company was ordered by the competent authority to pay an equalisation tax (Ausgleichstaxe) for 1985 in the amount of AS 14,440 under Section 9 of the Disabled Persons Employment Act (Invalideneinstellungsgesetz). According to this Act every employer with a staff of over 25 persons has to employ disabled persons. The Act sets a quota of one disabled person per 25 employees. Employers who qualify under the Act have to pay an equalisation tax if they do not employ disabled persons. This revenue is used for a Disabled Persons Employment Fund (Ausgleichtaxfonds) according to Section 10 (1) of the Act.

The applicant company's objections were rejected on 23 June 1987 by the Regional Authority (Landeshauptmannschaft) of Carinthia on the ground that the tax was due regardless of the reasons for the non-employment of disabled persons. The authority also pointed out

that the Constitutional Court (Verfassungsgerichtshof) had repeatedly decided that the tax in question was compatible with the constitutional rights.

The applicant company nevertheless lodged a constitutional complaint which was however declared inadmissible on 26 September 1987 as offering no prospects of success. The Constitutional Court referred in its decision to its constant jurisprudence in respect of the tax in question.

A complaint to the Administrative Court (Verwaltungsgerichtshof) was rejected on 29 June 1988 (received by the applicant company's counsel on 14 July 1988) as being unfounded. This Court likewise referred to the Constitutional Court's jurisprudence and added that the applicant company's allegations about an irregular determination of the amount of the tax due were unsubstantiated.

COMPLAINTS

The applicant company submits that it has to pay the tax although it tried in vain to find disabled persons as employees. It considers that the tax is excessive as it is unproportionate to the number of jobs for invalids secured by employment obligations. It also considers it to be excessive in view of the great number of additional taxes and contributions imposed on business companies. In addition it argues that the imposition was unlawful as a taxation scale was applied which is provided for in an amendment which came into force on 1 January 1986 only.

Furthermore the applicant company alleges a violation of Article 6 para. 1 which it considers applicable to the proceedings before the Administrative Court as they concern a civil right. As the Administrative Court does not itself establish the facts the proceedings do not, according to the applicant company, comply with paragraph 1 of this provision.

THE LAW

The applicant company complains about the imposition of a special tax on certain employers who do not employ disabled persons.

However, the Commission has repeatedly held that the imposition of taxes is in principle justified under paragraph 2 of Article 1 of Protocol No. 1 (P1-1-2) to the Convention, in particular when the imposition only concerns a particular group of the population, such as employers (see No. 6087/73, Dec. 13.5.76, D.R. 5 p. 11 with further references, and in the case No. 17819/91, Dec. 3.9.91 (not yet published) likewise concerning the equalisation tax under the Disabled Persons Employment Act).

In the present case the imposition of the tax in question is clearly linked to an objective factor namely non-employment of disabled persons regardless of whether this is the result of a deliberate policy of the employer or of an impossibility to find suitable persons as employees. The receipts are paid into a Disabled Persons Employment Fund.

The Commission cannot therefore find that in the circumstances of the applicant company the imposition of the equalisation tax was excessive or arbitrary.

Finally, according to the Commission's case-law disputes on taxation do not, in principle, fall under the ambit of Article 6 (Art. 6) of the Convention (cf. No. 9908/82, Dec. 4.5.83, D.R. 32 p. 266 with further references).

It follows that the application is manifestly ill-founded and partly incompatible with the Convention ratione materiae within the meaning of Article 27 para. 2 (Art. 27-2).

For these reasons, the Commission unanimously

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the First Chamber | President of the First Chamber

(M. de SALVIA) | (J.A. FROWEIN)