AS TO THE ADMISSIBILITY OF

Application No. 20110/92
by M. S.
against Austria

The European Commission of Human Rights sitting in private on 2 March 1994, the following members being present:

MM. A. WEITZEL, President
C.L. ROZAKIS
F. ERMACORA
E. BUSUTTIL
A.S. GÖZÜBÜYÜK
Mrs. J. LIDDY
MM. M.P. PELLONPÄÄ
B. MARXER
G.B. REFFI
B. CONFORTI
N. BRATZA
I. BÉKÉS
E. KONSTANTINOV

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 15 May 1992 by M. S. against Austria and registered on 11 June 1992 under file No. 20110/92;

Having regard to the report provided for in Rule 47 of the Rules of Procedure of the Commission;

THE FACTS

A. Particular circumstances of the case

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

The applicant, born in 1960, is an Austrian citizen residing in Innsbruck. Before the Commission, he is represented by Mr. E. Proksch, a lawyer practising in Vienna.

On 24 September 1984 the applicant, then assistant at the Veterinary University of Vienna, presented his post-doctoral thesis (Habilitation) for examination by the University in view of his appointment as university teacher (Universitätsdozent).

On 14 November 1984 the University Council (Universitäts-kollegium) set up an Examination Board (Habilitationskommission) according to S. 36 of the University Organisation Act (Universitäts-organisationsgesetz).

On 7 January 1986 the Examination Board decided not to admit the applicant to the further parts of the examination proceedings. In particular, it held that the applicant's post-doctoral thesis was not methodically correct and that its content was not scientifically new as required by S. 36 of the University Organisation Act.

In January 1986 the applicant lodged an appeal with the Federal Ministry of Science and Research (Bundesministerium für Wissenschaft und Forschung). In August 1986 he complained to the Administrative

Court of the Ministry's failure to decide on his appeal.

On 29 June 1987 the Administrative Court quashed the decision of the Examination Board of 7 January 1986. The Administrative Court held that a Special Examination Board (Besondere Habilitationskommission) had to be appointed for a fresh evaluation of the applicant's qualification. This Board had its first session in April 1988.

It cannot be determined from the applicant's submissions, whether the above proceedings have meanwhile been terminated.

B. Relevant domestic law

SS. 35 to 37 of the University Organisation Act (Universitäts-organisationsgesetz) govern the procedure and the conditions for appointment as university teacher.

According to S. 35 of this Act, the title of university teacher (Universitätsdozent) is granted following an examination of the candidate's qualification by an Examination Board (Habilitations-kommission). The first part of these proceedings concerns formal requirements and also the general aptitude of a candidate. After admittance to the second part of the proceedings, the Examination Board assesses the candidate's qualification, i.e. whether his post-doctoral thesis is scientifically new and methodically correct. S. 35 also provides that the conferment of the title of university teacher does not entail any employment or right to a contract with the University. S. 36 of this Act sets out the specific requirements of the proceedings. S. 37 para. 2 provides that in case of an appeal against a decision of the Examination Board, a Special Examination Board (Besondere Habilitationskommission) is to be set up.

The employment of university assistants (Universitätsassistent) at an university is regulated in the Civil Service Act (Beamten-Dienst-rechtsgesetz), according to which these assistants are employed in the civil service, being first appointed for a definite period, which may be prolonged. Under S. 10 of the University Assistants Act (Hochschul-assistentengesetz), and some transitional provisions concerning university teachers appointed in 1988, the conferment of the title university teacher gave an assistant the right to apply for a permanent appointment.

COMPLAINTS

The applicant complains under Article 6 para. 1 of the Convention of the length of the proceedings before the Austrian authorities regarding his qualification for appointment as a university teacher. He submits that he meanwhile had to leave the university and look for another occupation.

THE LAW

The applicant complains under Article 6 para. 1 (Art. 6-1) of the Convention about the length of the proceedings regarding his request for appointment as university teacher.

The Commission recalls that an assessment of knowledge and experience for carrying on a profession under a particular title, is akin to a school or university examination and is so far removed from the exercise of the normal judicial function that the safeguards in Article 6 (Art. 6) do not apply (Eur. Court H.R., Van Marle judgment of 26 June 1986, Series A no. 101, p. 12, para. 36).

In the present case, the competent Austrian authorities, in accordance with SS. 35 and 36 of the University Organisation Act, were called upon to examine the applicant's post-doctoral thesis and qualification in view of his appointment as university teacher. An

assessment of this kind cannot be considered as a determination of civil rights and obligations within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention. The applicant's professional expectations were only a remote consequence of a possibly successful termination of these proceedings. Consequently, Article 6 para. 1 (Art. 6-1) is not applicable.

The application is thus incompatible ratione materiae with the provisions of the Convention within the meaning of Article 27 para. 2 (Art. 27-2).

For these reasons, the Commission by a majority

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the First Chamber — President of the First Chamber

(M.F. BUQUICCHIO) — (A. WEITZEL)