AS TO THE ADMISSIBILITY OF

Application No. 15523/89
by Peter SCHMAUTZER
against Austria

The European Commission of Human Rights sitting in private on 10 May 1993, the following members being present:

MM. C.A. NØRGAARD, President
J.A. FROWEIN
F. ERMACORA
E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
H.G. SCHERMERS
H. DANELIUS
Mrs. G.H. THUNE
Sir Basil HALL
MM. C .L. ROZAKIS
Mrs. J. LIDDY
MM. M.P. PELLONPÄÄ
B. MARXER
G.B. REFFI
M.A. NOWICKI

Mr. H.C. KRÜGER, Secretary to the Commission

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 26 May 1989 by Peter Schmautzer against Austria and registered on 20 September 1989 under file No. 15523/89;

Having regard to;

- the report provided for in Rule 47 of the Rules of Procedure of the Commission;

- the observations submitted by the respondent Government on 8 November 1991 and the observations in reply submitted by the applicant on 7 January 1992;

- the submissions of the parties at the oral hearing held on 10 May 1993;

Having deliberated;

Decides as follows:

THE FACTS

The applicant, an Austrian citizen born in 1942 who resides in Graz, is a practising lawyer.

The facts of the case, as submitted by the parties, may be summarised as follows:

A. Particular circumstances of the case

On 30 April 1986 the applicant was stopped by a policeman who found that he was driving his car without wearing his safety belt. By a penal order (Straferkenntnis) of 1 June 1987 the Federal Police (Bundespolizeidirektion) in Graz imposed on the applicant a fine of AS 300, to be replaced by 24 hours' detention in case of default, for having committed the offence of non-compliance with the car-driver's duty to wear a safety belt according to Article III paras. 1 and 5 (a) of the 3rd amendment to the Motor Vehicles Act (Kraftfahrgesetz). On 2 February 1988 the Provincial Governor (Landeshauptmann) of Styria confirmed this decision while reducing the fine to AS 200 (to be replaced by fourteen hours' detention in case of default).

The applicant filed a complaint (B 821/88) with the Constitutional Court (Verfassungsgerichtshof) alleging, inter alia, a violation of his rights under Articles 5, 6 and 8 of the Convention.

On 27 February 1989 the Constitutional Court rejected the complaint as lacking prospects of success. It referred to an earlier decision of 3 December 1988 (B 176/87) where it had held that the imposition of administrative penal sanctions for failure to wear a safety belt was not unconstitutional and did not infringe the Convention. As regards Articles 5 and 6, the Constitutional Court considered that the Austrian reservation concerning Article 5 applied, notwithstanding that the administrative offence in question had been introduced after the declaration of the reservation, because it was no more than a logical development (systemkonforme Fortentwicklung) of legal provisions which had existed at that time. In this context the Constitutional Court referred to a number of offences included in the Motor Vehicles Act 1955 which also pursued the aim of protecting the life, health and safety of persons transported in motor vehicles.

As regards Article 8 of the Convention, the Constitutional Court referred to Application No. 8707/79 (Dec. 13.12.79, D.R. 18, 255) where the Commission had denied an interference with private life by an obligation to wear safety belts.

The applicant's case was referred to the Administrative Court (Verwaltungsgerichtshof), but the applicant did not pursue the proceedings before that Court.

B. Relevant domestic law

The duty to wear a safety belt was introduced in 1976 by Article III of the 3rd amendment to the 1955 Motor Vehicles Act. However, at that time it was deliberately decided not to make non-compliance with this duty an administrative offence. The legal consequences of breaches of the duty were limited to civil law (coverage by insurance etc.) It was only in 1984 that a further amendment to the Motor Vehicles Act made the failure to comply with this duty an administrative offence (Verwaltungsübertretung).

As far as relevant, Article III of the 3rd amendment to the Motor Vehicles Act in the new version reads as follows:

"(1) Ist ein Sitzplatz eines Kraftfahrzeugs nach kraftfahrgesetzlicher Anordnung mit einem Sicherheitsgurt ausgerüstet, so sind Lenker und beförderte Personen, die einen solchen Sitzplatz benützen, je für sich zum bestimmungsgemäßen Gebrauch des Sicherheitsgurts verpflichtet.

...

(5) Wer
(a) als Lenker eines Kraftfahrzeuges oder
(b) als mit einem Kraftfahrzeug beförderte Person die im Abs. 1 erster Satz angeführte Verpflichtung nicht erfüllt, begeht ... eine

Verwaltungsübertretung, welche mit einer Organstrafverfügung gemäß §50 VStG 1950 mit einer Geldstrafe von 100 S zu ahnden ist. Wenn die Zahlung des Strafbetrages ... verweigert wird ... ist von der Behörde eine Geldstrafe bis zu 300 S, im Falle der Uneinbringlichkeit eine Freiheitsstrafe bis zu 24 Stunden, zu verhängen."

(Translation)

> "(1) If a seat of a motor vehicle is equipped with a safety belt in accordance with the requirements of the Motor Vehicles Act, the driver and the transported persons who use such a seat are obliged to wear the safety belt in accordance with its intended purpose ...
>
> (5) Whoever fails to comply with the duty referred to in para. 1
>
> (a) as the driver of a motor vehicle or
> (b) as a person transported by a motor vehicle commits an administrative offence to be punished, by way of a provisional penal order within the meaning of Section 50 of the 1950 Code of Administrative Offences, with a fine of AS 100. If payment of the fine is refused ... the authority [dealing with the case in ordinary proceedings] may impose a fine of up to AS 300, to be replaced, in case of default, by detention of up to 24 hours."

COMPLAINTS

1. The applicant complains that Articles 5 and 6 of the Convention were violated in that a criminal sanction involving, inter alia, a measure of deprivation of liberty was imposed on him in a procedure which did not take place before an independent and impartial tribunal. He claims that the Constitutional Court wrongly extended the scope of the Austrian reservation concerning Article 5 of the Convention to an offence which was created only after the declaration of the said reservation.

2. The applicant further claims a violation of Article 8 of the Convention, read both in isolation and in conjunction with Article 14, in that the obligation to wear a safety belt interfered with his right to respect for private life and a similar obligation did not exist for persons who performed other dangerous acts.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 26 May 1989 and registered on 20 September 1989.

On 11 July 1991 the Commission decided to request the parties to submit their written observations on the admissibility and merits of the application.

The respondent Government submitted their observations after an extension of the time-limit on 8 November 1991 and the applicant submitted his observations on 7 January 1992.

On 15 February 1993 the Commission decided to hold an oral hearing on the admissibility and merits of this case and Applications Nos. 15527/89, 15963/90, 16713/90, 16718/90 and 16841/90.

At the hearing, which was held on 10 May 1993, the parties in the present case were represented as follows:

For the Government:

Ambassador F. Cede — Legal Adviser, Federal Ministry for Foreign Affairs, Agent

Ms. S. Bernegger — Federal Chancellery, Adviser

The applicant was present in person.

THE LAW

1. The applicant alleges violation of Articles 5 and 6 (Art. 5, 6) of the Convention in that the administrative criminal proceedings in which he was fined for failure to wear a safety belt did not comply with the requirements of the Convention. The Commission notes that there is no indication in the present case that the applicant was actually detained, and it will therefore deal with this complaint exclusively under Article 6 (Art. 6) of the Convention.

The Government submit that the Austrian reservation to Article 5 (Art. 5) of the Convention prevents the Commission from entertaining the complaint.

To the extent that the absence of an oral hearing is at issue, they also rely on the Austrian reservation to Article 6 (Art. 6) of the Convention. They also point out that the applicant did not make a complaint about the absence of a hearing before the Administrative Court.

They add that, although in its terms the reservation to Article 6 (Art. 6) merely applies to civil and criminal cases, it must also be interpreted as covering proceedings before administrative authorities which are to be regarded as tribunals within the meaning of Article 6 (Art. 6) of the Convention. They consider that if the Commission is not prevented from considering the Article 6 (Art. 6) complaint by the reservation to Article 5, then the review of the facts undertaken by the Administrative Court pursuant to Section 42 (2) 3 (a) - (c) of the Administrative Court Act is sufficient to comply with Article 6 (Art. 6) of the Convention. They accept that the review undertaken by the Administrative Court is not unrestricted, but submit that it is nevertheless very far-reaching, and they add that the Constitutional Court also reviews cases, although in the light of different criteria.

The applicant considers that the reservation cannot apply to the offence at issue in the present case because the legislation was not in force when the reservation was made. He contends that the administrative authorities which decided the present case are not independent and impartial tribunals within the meaning of Article 6 (Art. 6) of the Convention. He further points out that Section 41 of the Administrative Court Acts prohibits the submission of new evidence to the Administrative Court, and that there is no provision for examination by the Administrative Court of the assessment of the evidence by the lower authority. The applicant, who is a lawyer, states that he has never experienced a case in which the Administrative Court has held an oral hearing in order to examine the assessment of evidence, which shows that the Administrative Court's primary task is to establish whether the lower authority have correctly assessed the case in law, on the basis of the facts as established by that authority. This is the reason, he submits, why administrative decisions can only be quashed. He considers that the reservation to Article 6 (Art. 6), if valid, is not applicable to the present proceedings.

The Commission finds that this complaint raises complex issues of law under the Convention, including questions concerning the Austrian reservations to Articles 5 and 6 (Art. 5, 6) of the Convention, the determination of which must be reserved for an examination on the merits.

This part of the application cannot therefore be declared manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention. No other ground for declaring it inadmissible has been established.

2. As regards the applicant's further complaint that the obligation to wear a safety belt unjustifiably interfered with his right to respect for his private life under Article 8 (Art. 8) of the Convention, and that it constituted discriminatory treatment contrary to Article 14 (Art. 14) of the Convention, the Commission refers to its decision on Application No. 8707/79 (Dec. 13.12.79, D.R. 18 p. 255, at p. 258) where it held that the compulsory use of safety belts, like other measures of individual or collective protection adopted in the public interest, in no way affects a person's "private life". Hence the applicant's complaint is outside the scope of Article 8 (Art. 8), and consequently also of Article 14 (Art. 14) of the Convention. This part of the application must accordingly be rejected as being 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

unanimously DECLARES INADMISSIBLE the applicant's complaint concerning the requirement that he wear a seat belt and

by a majority DECLARES ADMISSIBLE the remainder of the application, without prejudging the merits of the case.

Secretary to the Commission — President of the Commission

(H.C. KRÜGER) — (C. A. NØRGAARD)