AS TO THE ADMISSIBILITY OF

Application No. 25993/94
by Klaus-Jürgen SCHREPFFER
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 28 July 1994 by Klaus-Jürgen SCHREPFFER against Germany and registered on 19 December 1994 under file No. 25993/94;

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

The applicant, born in 1943, is a German national and resident in Bühl. He is a dentist by profession. Before the Commission he is represented by Mr. G.-A. Hahn and partners, lawyers practising in Hamburg.

A. Particular circumstances of the case

On 22 January 1992 the Mannheim District Disciplinary Court for Dentists (Bezirksberufsgericht für Zahnärzte) found the applicant guilty of professional misconduct (berufsunwürdige Handlung) and imposed a fine of DM 12,000.

The District Disciplinary Court, having heard various witnesses, found that the applicant had, contrary to the relevant provisions of the Baden-Württemberg Act on the Professional Bodies, the Professional Duties, the Training and Disciplinary Courts for Medical Practitioners, Veterinary Surgeons, Pharmacists and Dental Technicians ("Chamber Act" Gesetz über die öffentliche Berufsvertretung, die Berufspflichten, die

Weiterbildung und die Berufsgerichtsbarkeit der Ärzte, Zahnärzte, Tierärzte, Apotheker und Dentisten - Kammergesetz) and the professional rules for dentists (Berufsordnung der Landeszahnärztekammer Baden-Württemberg), delegated a range of his tasks in orthodontic treatment to his assistants and moreover had failed to control them in their activities. Furthermore, due to the delegation and failure of control, he had failed to diagnose and treat the caries of one of his patients. In fixing the sentence, the Court considered that the continued delegation of tasks contrary to the professional rules was of a very serious nature and that he had a very high income.

In these and the subsequent proceedings the applicant was represented by counsel.

On 20 November 1993 the Stuttgart Regional Disciplinary Court for Dentists (Landesberufsgericht für Zahnärzte) dismissed the applicant's appeal (Berufung). The Regional Disciplinary Court, having again taken evidence, found in particular that the applicant had delegated a range of tasks to his assistants which, according to the relevant provisions of the Chamber Act and the professional rules for dentists, formed part of the professional activities reserved to dentists, and had furthermore failed to control the work of his assistants. The applicant had thereby breached his duties as laid down in the legal provisions concerning his profession, the question of the potential risk of such a delegation for the patients concerned being irrelevant in this context.

On 11 March 1994 the Federal Constitutional Court (Bundesverfassungsgericht) refused to admit the applicant's constitutional complaint (Verfassungsbeschwerde).

B. Relevant domestic law

The professional conduct of dentists in Baden-Württemberg is regulated in the Baden-Württemberg Act on the Professional Bodies, the Professional Duties, the Training and Disciplinary Courts for Medical Practitioners, Veterinary Surgeons, Pharmacists and Dental Technicians ("Chamber Act" Gesetz über die öffentliche Berufsvertretung, die Berufspflichten, die Weiterbildung und die Berufsgerichtsbarkeit der Ärzte, Zahnärzte, Tierärzte, Apotheker und Dentisten - Kammergesetz) and the professional rules for dentists, issued by the Baden-Württemberg Chamber for Dentists (Berufsordnung der Landeszahnärztekammer Baden-Württemberg).

According to S. 54 para. 2 of the above Chamber Act, dentists commit professional misconduct (berufsunwürdige Handlung), if they violate their professional duties as a member of the Chamber concerned, which they are bound to fulfil in order to maintain the reputation of the medical profession.

S. 1 of the Baden-Württemberg professional rules for dentists provides that, as a rule, a dentist has to exercise his profession as dentist personally. S. 22 further specifies the limits of a possible delegation of tasks to assistants in accordance with their professional training.

According to S. 57 of the Chamber Act, disciplinary sanctions are a warning, a reprimand, a fine of maximum DM 20,000, the deprivation of their membership in the organs of the Chamber or its subordinate organisations or the deprivation of the right to vote or to stand for election in the said organs for a maximum of five years.

COMPLAINTS

The applicant complains under Article 6 of the Convention about about the alleged unfairness of the proceedings before the Regional Disciplinary Court. He submits that the Regional Disciplinary Court,

in its decision of 20 November 1992, failed to consider essential elements of his submissions in defence according to which his practice of delegation was confirmed in publications of some legal experts.

THE LAW

The applicant complains under Article 6 (Art. 6) of the Convention about the disciplinary proceedings against him before the Stuttgart Disciplinary Court of Appeal for Dentists.

Article 6 (Art. 6), so far as relevant, provides as follows:

> "1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal ..."

As regards the applicability of Article 6 (Art. 6), the Commission recalls that disciplinary proceedings concerning the disciplinary penalty of a suspension from practice as a medical practitioner were regarded as a dispute relating to "civil rights and obligations" (Eur. Court H.R., Le Compte, Van Leuven and De Meyere judgment of 23 June 1983, Series A no. 43, pp. 20-22, paras. 45-50; Albert and Le Compte judgment of 10 February 1983, Series A no. 58, p. 15, para. 28; Houart v. Belgium, Comm. Report 8.7.86, D.R. 53, p. 5). The existence of a "criminal charge" depends upon the classification of the offence in issue according to the legal system of the respondent State, the nature of the offence and the nature and degree of severity of the penalty incurred (cf. Eur. Court H.R., Weber judgment of 22 May 1990, Series A no. 177, pp. 17-18, paras. 30-35).

The present case relates to disciplinary proceedings which were conducted against the applicant for professional misconduct, pursuant to the Baden-Württemberg Chamber Act and the professional rules for dentists. A fine of DM 12,000 was imposed. The question arises whether these proceedings involved a determination of the applicant's civil rights and obligations or of any criminal charge against him within the meaning of Article 6 para. 1 (Art. 6-1). However, this matter can be left open on the ground that the application is inadmissible for the following reasons.

The applicant considers that the appeal proceedings were unfair in that the Regional Disciplinary Court, in its decision dismissing his appeal, allegedly did not duly consider his arguments.

Article 6 para. 1 (Art. 6-1) obliges the courts to give reasons for their judgments, but cannot be understood a detailed answer to every argument (Eur. Court H.R., Ruiz Torija and Hiro Balani judgments of 9 December 1994, para. 29/27, Series A nos. 303 A/B, respectively). Moreover, the Convention organs are not called upon to examine whether arguments are adequately met (see Eur. Court H.R., Van de Hurk judgment of 19 April 1994, Series A no. 288, p. 20, para. 61).

In the present case, the applicant argued in defence that his practice of delegating tasks to his assistants could not be regarded as professional misconduct. The Stuttgart Regional Disciplinary Court, in its decision, examined the applicant's practice of delegation and found that he had delegated tasks reserved to dentists in breach of the relevant legal provisions on professional duties.

In these circumstances, there is no indication that the Regional Disciplinary Court failed to fulfil its obligations to consider the applicant's appeal submissions and to state reasons in its decision.

The Commission considers that the applicant's submissions do not disclose any appearance of a violation of the right to a fair hearing, as guaranteed by Article 6 para. 1 (Art. 6-1) of the Convention.

It follows that the application is manifestly ill-founded 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.F. BUQUICCHIO) — (C.L. ROZAKIS)