AS TO THE ADMISSIBILITY OF

Application No. 31779/96
by Ernst SWOBODA
against Austria

The European Commission of Human Rights (First Chamber) sitting in private on 22 October 1998, the following members being present:

MM	M.P. PELLONPÄÄ, President
	N. BRATZA
	E. BUSUTTIL
	A. WEITZEL
	C.L. ROZAKIS
Mrs	J. LIDDY
MM	L. LOUCAIDES
	B. MARXER
	I. BÉKÉS
	G. RESS
	A. PERENIČ
	C. BÎRSAN
	M. VILA AMIGÓ
Mrs	M. HION
Mr	R. NICOLINI

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 12 May 1996 by Ernst SWOBODA against Austria and registered on 6 June 1996 under file No. 31779/96;

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, born in 1959, is an Austrian citizen residing in Vienna. He is a lawyer by profession and is employed as head of the legal department of a media enterprise.

A. The particular circumstances of the case

The facts of the case, as submitted by the applicant, may be summarised as follows.

From 1 April 1987 to 31 December 1988 the applicant worked as a civil servant in the Attorney General's Department (Finanzprokuratur). On 14 December 1988 he took the first part of the bar exam necessary for the enrolment as a lawyer in the Bar Association as well as for the continuation of his career in the Attorney General's Department.

From 1 January 1989 to 31 December 1989 he was granted leave of absence from the Attorney General's Department in order to take over the function of head of the legal department in a large media firm. The applicant decided not to return from his leave of absence to the Attorney General's Department and continued to work for the media company.

On 6 May 1992 the applicant filed a request for admission to the second part of the bar exam.

On 1 October 1993 the President of the Bar Exam Commission (Rechtsanwaltsprüfungskommission), following the withdrawal of a positive statement by the competent committee of the Vienna Bar Association in a consultation procedure, dismissed the applicant's request to be admitted to the second part of the bar exam. He stated that the applicant had not fulfilled the condition laid down in S. 2 para. 1 of the Bar Exam Act (Rechtsanwaltsprüfungsgesetz) which, in the version applicable, required two years of practical professional experience acquired either in a lawyer's chambers or in the Attorney General's Department. The President found that the applicant had served only one year and nine months in the Attorney General's Department, as the period of his leave of absence could not be taken into account.

On 20 December 1993 the Appeals Board (Oberste Berufungs- und Disziplinarkommission), having held its session in private, dismissed the applicant's appeal. It confirmed that the Bar Exam Commission had correctly applied the law as regards the requirement of two years' practical professional experience. A leave of absence could not be taken into account, in particular as the law required that the professional activity in a lawyer's chambers or in the Attorney General's Department had to be exercised full-time. The Appeals Board added that this assessment could not be changed by the applicant's argument that a different decision had been taken in a case allegedly concerning the same legal issue.

On 17 October 1994 the applicant filed a complaint with the Constitutional Court (Verfassungsgerichtshof). He submitted that the Appeal Board's interpretation of the relevant provisions violated the principle of non-discrimination. He also complained about irregularities in the consultation procedure between the Bar Exam Commission and Bar Association. Further, he complained about the alleged arbitrariness of the proceedings. In this respect he submitted that the authorities had unduly delayed the proceedings. Moreover, in a similar case, a politician, who had been seconded as a staff member of the Attorney General's Department to the Federal Chancellery, had been admitted to the bar exam, without having served the required period in the Attorney General's Department. Finally, the applicant argued that the requirement of two years' practical professional experience laid down in S. 2 para. 1 of the Bar Exam Act was as such unconstitutional as being contrary to the principle of non-discrimination as well as the freedom to choose a profession and in contradiction with a recent law concerning the admission of lawyers from the European Economic Area to practise in Austria. The applicant did not request a hearing.

On 27 November 1995 the Constitutional Court, finding that it could deliberate in private in accordance with S. 19 para. 4 of the Constitutional Court Act (Verfassungsgerichtshofgesetz), dismissed the applicant's complaint as being unfounded.

The Constitutional Court, referring to its case-law, found that the applicant's submissions did not raise doubts as regards the constitutionality of the relevant provisions. Moreover, the Appeals Board's interpretation of the rules regarding admission to the bar exam, according to which the applicant's leave of absence could not be qualified as effective service in the Attorney General's Department, was not in contradiction with the principle of non-discrimination. The fact that a different decision had been taken in a possibly similar case did not disclose, as such, arbitrariness. Furthermore, the Court found that the consultation procedure with the Bar Association had been duly followed. The judgment was served on the applicant on 16 January 1996.

B. Relevant domestic law

According to S. 6 of the Bar Exam Act (Rechtsanwaltsprüfungs-gesetz), the President of the Bar Exam Commission decides on requests for admission to the bar exam. The law does not provide for a hearing to be held.

According to S. 8 of the Bar Exam Act, the Appeals Board decides on appeals against a refusal of admission to the bar exam. To these proceedings the General Code of Administrative Procedure (Allgemeines Verwaltungsverfahrensgesetz) applies. S. 40 of the said Code provides that oral hearings are to be held in presence of the parties.

S. 19 of the Constitutional Court Act (Verfassungsgerichtshof-gesetz) deals with public hearings before the Constitutional Court. Its paragraph 4 (as amended in 1984) provides that the Constitutional Court may decide not to hold a public hearing when it is apparent from the written pleadings submitted to it by the parties and from the files

relating to the earlier proceedings that a hearing is not likely to assist the Court in its understanding of the case. Further, this paragraph lists a number of cases in which the Constitutional Court, upon a proposal by the reporting judge, may decide at a private sitting without a hearing.

COMPLAINTS

The applicant complains under Article 6 para. 1 of the Convention about various aspects of the proceedings relating to his request for admission to the bar exam. Firstly, he submits that these proceedings lasted unreasonably long. Secondly, he complains about a lack of a public hearing. In this respect he submits that the relevant law does not provide for a public hearing either before the Bar Exam Commission or before the Appeals Board, and that the Constitutional Court also failed to hold a public hearing. Thirdly, the applicant alleges that the authorities were biased in that their decision in his case differed from the decision taken in a similar case concerning a politician. Finally, he complains that the Constitutional Court failed to deal with his arguments and to give reasons for its decision.

THE LAW

The applicant complains under Article 6 para. 1 of the Convention about various aspects of the proceedings relating to his request for admission to the bar exam.

Article 6 para. 1, so far as relevant, reads as follows:

"In the determination of his civil rights and obligations ... , everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law ... "

The Commission, leaving open the question whether Article 6 can be seen to apply at all to the proceedings at issue, finds that the application is inadmissible for the following reasons.

a. The applicant complains about the length of the proceedings. The Commission notes that they lasted from 6 May 1992, when the applicant lodged his request for admission to the bar exam, until 16 January 1996, when the Constitutional Court's judgment was served on him, i.e. three years and eight months and ten days.

The Commission recalls that the reasonableness of the length of proceedings is to be determined with reference to the criteria laid down in the Court's case-law and in the light of the circumstances of the case, which in this instance call for an overall assessment (Eur. Court HR, Cesarini v. Italy judgment of 12 October 1992, Series A no. 245-B, p. 26, para. 17). Having regard to the fact that the case came before three levels of jurisdiction including the Constitutional Court, the Commission finds that the total length of the proceedings cannot be regarded as excessive.

b. The applicant further complains about the lack of a public hearing.

The Commission notes that the relevant law does not provide for a public hearing to be held either by the President of the Bar Exam Commission, deciding at first instance, or before the Appeals Board. However, in order to comply with the requirements of Article 6 □ 1 it is sufficient if that shortcoming is remedied in the course of subsequent control to be carried out by a "judicial body that has full jurisdiction" (see Eur. Court HR, Stallinger and Kuso v. Austria judgment of 23 April 1997, Reports 1997-II, p. 679, para. 46). The applicant was, thus, in principle entitled to a public hearing in the Constitutional Court, as none of the exceptions laid down in the second sentence of Article 6 para. 1 applied.

The Commission has first examined whether the Austrian reservation in respect of Article 6 prevents it from examining the applicant's complaint about the lack of a public hearing in the Constitutional Court. This is not the case, as the Constitutional Court's decision to deliberate in private was based on S. 19 para. 4 of the Constitutional Court Act, a provision which was not in force in 1958, when Austria ratified the Convention and made the reservation (Eur. Court HR, Pauger v. Austria judgment of 28 May 1997, Reports 1997-III, p. 895, paras. 53-54).

The Commission will next examine whether the applicant waived his right to a public hearing before the Constitutional Court. It recalls that any such waiver must be made in an unequivocal manner and must not run counter to any important public interest (Pauger judgment, op. cit, pp. 895-896, para. 58). The Commission finds that the applicant, who is a lawyer by profession, could have been expected to ask for a hearing in the Constitutional Court if he found it important that one be held. As he made no such request he must be considered to have unequivocally waived his right to a public hearing (Pauger judgment, op. cit, paras. 60-61). Moreover, there is no indication that the case raised a matter of public interest such as to warrant a public hearing. Consequently, there is no appearance of a violation of the applicant's right to a public hearing as guaranteed by Article 6.

c. As to the applicant's complaint that the authorities were biased, the Commission having regard to the Court's case-law (Pullar v. the United Kingdom judgment of 10 June 1996, Reports 1996-III, p. 792, para. 30), notes that the applicant has not raised any issue of subjective impartiality. His allegation that the decision in his case differed from a decision taken in an allegedly similar case does not suffice to show that his fear as regards a lack of impartiality of the authorities concerned, including the Constitutional Court, can be regarded as objectively justified. Therefore, the Commission finds no appearance of a violation of Article 6 in this respect either.

d. Finally, as to the applicant's complaint that the Constitutional Court failed to deal with his arguments and to give reasons for its decision, the Commission recalls that while Article 6 para. 1 obliges the courts to give reasons for their judgments, it cannot be understood as requiring a detailed answer to every argument adduced by a litigant (Eur. Court HR, Helle v. Finland judgment of 19 December 1997, Reports 1997-VIII, p. 2929,

para. 55). In the present case, the Constitutional Court dismissed the applicant's arguments as regards the alleged unconstitutionality of the relevant provisions by referring to its case-law. It also reviewed whether the application of these provisions in the applicant's case violated principles of constitutional law such as the right to non-discrimination. There is no indication that the Constitutional Court did not address the essential issues which were submitted to its jurisdiction. Accordingly, there is no appearance of unfairness of the proceedings at issue.

It follows that the application has to be rejected as being manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

M.F. BUQUICCHIO
Secretary
to the First Chamber

M.P. PELLONPÄÄ
President
of the First Chamber