AS TO THE ADMISSIBILITY OF

Application No. 19116/91
by T.H.
against Austria

The European Commission of Human Rights (First Chamber) sitting in private on 13 October 1993, 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

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 17 September 1991 by T.H. against Austria and registered on 21 November 1991 under file No. 19116/91;

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 is an Austrian citizen residing in Oeynhausen. Before the Commission, she is represented by E. Proksch, a lawyer practising in Vienna.

The applicant manages a limited company in Lower Austria, which is transporting goods and employs about thirty truck drivers.

On 28 June 1989, the Baden District Administrative Authority (Bezirkshauptmannschaft) fined the applicant AS 8,800 for violation of its obligations under the Austrian Working Time Act (Arbeitszeit-gesetz). It held the applicant responsible for the failure of one of the company's truck drivers on several occasions to respect the maximum working hours.

On 19 June 1990 the Office of the Lower Austria Regional Government (Amt der niederösterreichischen Landesregierung) dismissed the applicant's appeal. The Office found that the applicant had failed to show, pursuant to S. 5 para. 1 of the Administrative Criminal Code, that she had established an efficient control system regarding the compliance of her employees with the Working Time Act. In this respect the Office noted the serious nature and the number of the offences at

issue in these proceedings as well as her numerous previous convictions of the same kind. The Office therefore concluded that there was negligence on the part of the applicant.

S. 5 para. 1 of the Administrative Criminal Code provides that, in the absence of any provision to the contrary, negligent behaviour incurs criminal responsibility. However, the mere contravention of a rule entails responsibility if the elements of the administrative offence do not include a damage or a danger; if the administrative provision concerned does not make any reference to criminal intent, and if the offender does not show that, through no fault of his own, he could not comply with the administrative provision in question.

On 25 September 1990, the Austrian Constitutional Court (Verfassungsgerichtshof) refused to deal with the applicant's constitutional complaint and referred the case to the Austrian Administrative Court (Verwaltungsgerichtshof).

On 4 March 1991 the Administrative Court dismissed the applicant's appeal. The Court, referring to S. 5 para. 1 of the Administrative Criminal Code, found in particular that the applicant had failed to show that she had established a control system in the company concerned, which could have effectively secured compliance by the employees with the Working Time Act, and that she was not, therefore, responsible for the offences in question.

COMPLAINTS

The applicant complains under Article 6 para. 2 of the Convention that she had to prove her innocence and was in fact punished in the absence of personal guilt.

THE LAW

The applicant complains under Article 6 para. 2 (Art. 6-2) of the Convention that the decision of the Baden District Administrative Authority of 28 June 1989, as confirmed by the Office of the Lower Austria Regional Government and the Austrian Administrative Court, amounted to a violation of the presumption of innocence.

Article 6 para. 2 (Art. 6-2) of the Convention provides that "everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law".

The Commission notes that the applicant, in her position as employer, was fined under the Working Time Act on the grounds that one of the employees had exceeded the maximum of working hours on several occasions. The authorities found that she had failed to show that there had been an effective control in the company as to compliance with the Working Time Act.

The Commission recalls that Article 6 para. 2 (Art. 6-2) of the Convention requires States to confine presumptions of fact or of law within reasonable limits which take into account the importance of what is at stake and maintain the rights of the defence (cf., Eur. Court H.R., Salabiaku judgment of 7 October 1988, Series A no. 141, p. 16, para. 28).

The Commission considers that the applicant, as an employer, was not held responsible for the offences under the Working Time Act, irrespective of personal guilt, but taking into account the fact that there had been a lack of sufficient control, which made the offences imputable to her on account of personal negligence.

The Commission considers that, in the circumstances of the

present case, there is no appearance that the application of the Working Time Act having regard to S. 5 para. 1 of the Administrative Criminal Code conflicted with the presumption of innocence, as guaranteed by Article 6 para. 2 (Art. 6-2) of the Convention.

It follows that the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission unanimously

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the First Chamber — President of the First Chamber

(M.F. BUQUICCHIO) — (A. WEITZEL)