AS TO THE ADMISSIBILITY OF

Application No. 24426/94
by Günter, Margreth and Learco TEWS
against Austria

The European Commission of Human Rights (First Chamber) sitting in private on 16 January 1996, 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. 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 24 March 1994 by Günter, Margreth and Learco TEWS against Austria and registered on 17 June 1994 under file No. 24426/94;

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 first applicant, born in 1956, is a lawyer practising in Linz. The second applicant, born in 1955, is his wife. The third applicant, born in 1988, is the son of the second applicant and the adopted son of the first applicant. All three applicants are Austrian citizens and reside in Linz. The first applicant represents the second and third applicants in the proceedings before the Commission.

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

In 1991 the first applicant's previous marriage was dissolved and custody of the two children from this marriage, E.T. and R.T., was granted to the applicant's former wife, C.T.

On 17 May 1991 the first applicant married the second applicant and subsequently adopted the third applicant.

On 9 January 1993 during the exercise of his right of access to the children of his first marriage, the first applicant's daughter E.T. was injured and had to be treated in hospital. Subsequently, a dispute arose between the second applicant and C.T. This incident lead to criminal proceedings being instituted against C.T. for having caused bodily harm to the second applicant.

On 14 January 1994 the Linz District Court (Bezirksgericht), after a court hearing conducted in public, acquitted C.T. of the charge of having caused bodily harm to the second applicant. In these criminal proceedings the second applicant participated as a private party and the first and second applicants were heard as witnesses.

The District Court based its judgment on a detailed account of the facts. It noted that the first applicant's marriage was dissolved in 1991 and that two children resulted from this marriage. One month after the divorce the first applicant had married the second applicant, a housewife without income. She had a child born out of wedlock whose father was probably a foreigner. Meanwhile the first applicant had adopted the third applicant. On 9 January 1993, while the first applicant exercised his right of access to his children, his daughter E.T. hurt herself in the first applicant's apartment because a rocking horse fell apart. The District Court added that it did not transpire from the file whether criminal proceedings for negligently causing bodily harm had been instituted.

The first and second applicants brought E.T. to the hospital where she received medical treatment. Her mother was then informed of the incident and went to the hospital. She refused to leave E.T. at the hospital and signed the relevant form (Revers). She was informed by the doctor that the child should be put to bed and kept under observation. The first applicant refused to return E.T. to her mother. Only after having been asked to do so by the doctor did the first applicant agree to bring E.T. to C.T.'s home. He did not want to let E.T. drive with her mother because he had the impression that C.T. was too excited. However, the first applicant did not drive E.T. to C.T.'s apartment but brought her together with the second applicant to his own apartment. The District Court noted that it was not fully clear why the first applicant did not immediately bring E.T. to her mother's home. One possible explanation which transpired from the statements of the second applicant but which the District Court found rather extraordinary was that the first and second applicants had the habit of changing R.T.'s and E.T's clothes on the visiting days. While the second applicant's child born out of wedlock was always perfectly dressed, the two children of the first applicant always wore dirty dresses on visiting days.

C.T. followed the first and second applicants to their home. She repeatedly requested the first applicant to give her back E.T., but was insulted by the second applicant. C.T. attacked the second applicant whereupon they both fell to the ground. The first applicant separated them and kept C.T. on the ground. The second applicant meanwhile brought E.T. to the first applicant's parents. At this moment the police intervened. C.T. and the second applicant went to the hospital for a medical check. C.T. had scratches to the face while the second applicant had a bruise on the temple. For several days the second applicant continued to receive treatment in the department of otolaryngology of the hospital. In this respect the District Court found that it was not proven that the second applicant actually suffered from an injury, as the medical certificates submitted by her were contradictory and not supported by the report of a court appointed expert.

The District Court concluded that C.T. had acted in legitimate self defence when she attacked the second applicant as at that time the first applicant no longer had the right to withhold E.T. from her mother. Although it was pedagogically unwise that C.T. had started a fight with the present wife of E.T.'s father in front of the daughter, this did not render her conduct unlawful. In any event, C.T.'s conduct was not punishable as the injuries of the second applicant were minor and C.T.'s guilt was negligible.

When the judgment was pronounced, the Public Prosecutor filed a

plea of nullity which was, however, subsequently withdrawn.

On 14 March 1994 Judge R.S., who had given the judgment of 14 January 1994, transmitted the written text of the judgment to two judges at the Linz District Court who were dealing with cases pending before the District Court between the first applicant and C.T. He also transmitted the text of the judgment to two trainee lawyers (Rechtspraktikanten) who had been assigned to him for training and who had participated in the trial as court clerks (Schriftführer).

On 22 March 1994 the first applicant lodged a disciplinary complaint against Judge R.S. with the Federal Ministry of Justice (Bundesministerium für Justiz). He complained that the written judgment of 14 January 1994 contained several statements which were irrelevant and which referred to the applicants in a disparaging manner. These statements therefore violated Section 53 (3) of the Rules of Procedure for Courts of First and Second Instance (Geschäftsordnung für Gerichte I. und II. Instanz), according to which a judge had to refrain from statements which were irrelevant and which could unnecessarily harm third persons (Ausführungen, die nicht zur Sache gehören oder jemanden ohne Not verletzen könnten, sind unzulässig). In particular it was irrelevant whether the father of the third applicant was a foreigner or not. It was also irrelevant that nobody had been charged with having caused negligent bodily harm because of the accident which had happened to E.T. Lastly, when examining the reasons why the first and second applicants had gone to their apartment after having left the hospital with E.T., it had not been necessary to refer to the third applicant as born out of wedlock, since for the purpose of distinguishing the children it would have been sufficient to mention their names. The first applicant also complained that Judge R.S. had sent a copy of the written judgment to other judges and two trainee lawyers. In this respect he requested that criminal proceedings be instituted against Judge R.S. for abuse of authority and breach of official secrecy.

Subsequently the first applicant requested unsuccessfully to inspect the disciplinary file of Judge R.S and to receive the latter's comments on his disciplinary complaint.

On 17 May 1994 the Linz Public Prosecutor's Office informed the first applicant that his criminal information (Anzeige) against Judge R.S. had been filed without further action (zurückgelegt).

On 15 December 1994 the President of the Linz Court of Appeal (Oberlandesgericht) informed the first applicant that his complaint about Judge R.S. would be considered by the court, but that the result of these considerations could not be communicated to him.

On the same day the Linz Court of Appeal dismissed a further complaint lodged by the first applicant against Judge R.S., in which he had complained under Article 8 of the Convention about the transmission of the written text of the judgment of 14 January 1994 to other judges and trainee lawyers. The Court of Appeal noted that the trial in which the applicant had been heard as witness had been public and that no request for a hearing in camera had been made. Furthermore, the applicant had not availed himself of the right to refuse testimony against his divorced wife. The Court found that the right to respect for private and family life met its limits when private and family life matters were concerned which had to be examined in a trial which, according to Article 90 of the Federal Constitution, had to take place in public. Therefore the issues of the first applicant's private and family life which the District Court considered were bound to become known to third persons who e.g. were present at the trial as audience. Moreover, the first applicant had not used any legal remedies which could have prevented this. In any event, it was unobjectionable that copies of the written judgment were given for internal use to other judges and trainee lawyers in training at the

District Court.

COMPLAINTS

The applicants complain about a violation of their right to respect for their private and family life as guaranteed by Article 8 of the Convention. They submit that the District Court's judgment of 14 January 1994 contained statements concerning their private and family life which offended them and were not necessary for deciding the case. Since these statements were also in violation of Section 53 (3) of the Rules of Procedure for Courts of First and Second Instance, the interference was not provided for by law. Moreover, the responsible judge transmitted the written judgment to two trainee lawyers who did, at that time, no longer work at the District Court. The applicants further submit that no domestic remedy was available to them against the unnecessary and insulting remarks about their private and family life made in the judgment of 14 January 1994.

THE LAW

The applicants complain about a violation of their right to respect for their private and family life as guaranteed by Article 8 (Art. 8) of the Convention.

Article 8 (Art. 8) of the Convention reads as follows:

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

The applicants submit that the District Court's judgment of 14 January 1994 contained statements concerning their private and family life which offended them and were not necessary for deciding the case. Moreover the responsible judge transmitted the written judgment to two trainee lawyers who, at that time, no longer worked at the District Court.

The Commission observes that the statements which the applicants find offensive were made in a judgment which concerned a criminal charge against a third person. The Commission in examining the issue under Article 8 (Art. 8) of the Convention must also have regard to Article 6 (Art. 6) of the Convention which provides that "in the determination of his civil rights and obligations or of any criminal charge against him everybody is entitled to a fair and public hearing ... by an independent and impartial tribunal established by law" and that "judgment shall be pronounced publicly ...".

Insofar as issues of the applicants' private and family life had been considered by the Linz District Court and have been mentioned in the judgment, these issues, since they have been dealt with in public court proceedings, have to a certain extent become public issues (see mutatis mutandis No. 10038/82, Dec. 11.5.84, D.R. 38 p. 53). They do not enjoy therefore the same protection by Article 8 (Art. 8) of the Convention as matters of private and family life which have not been examined by a court in public proceedings. Thus, only under specific circumstances, when a judgment discloses particularly sensitive information concerning the private life of a person may an issue under Article 8 (Art. 8) of the Convention arise (No. 22009/93, Dec. 28.2.95, unpublished).

In the present case it must be taken into account that the accused was the first applicant's former wife, and the second applicant his present wife and that the accusation related to an incident which was closely related to the personal situation of all the persons involved namely the exercise of the first applicant's right of access to the children of his former marriage. Thus, the competent judge found it necessary to give in his judgment of 14 January 1994 a detailed account of the private and family situation of the persons involved and of the events which took place on 9 January 1993.

In these circumstances the Commission finds that the wording of the judgment of 14 January 1994 does not show any lack of respect for their private and family life within the meaning of Article 8 (Art. 8) of the Convention.

Moreover, the Commission finds that also the transmission to third persons of a judgment which according to Article 6 (Art. 6) of the Convention and the relevant provisions of the Austrian Code of Criminal Procedure had to be pronounced publicly, does not disclose any lack of respect for the applicants' private and family life as guaranteed by Article 8 (Art. 8) 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) — (C.L. ROZAKIS)