AS TO THE ADMISSIBILITY OF

Application No. 26991/95
by Hendricus van der PEET
against Germany

The European Commission of Human Rights (First Chamber) sitting in private on 12 April 1996, the following members being present:

Mr. C.L. ROZAKIS, President
Mrs. J. LIDDY
MM. E. BUSUTTIL
A. WEITZEL
M.P. PELLONPÄÄ
B. MARXER
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 11 December 1994 by Hendricus van der PEET against Germany and registered on 6 April 1995 under file No. 26991/95;

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 presented by the applicants, may be summarised as follows.

The applicant, born in 1945, is a Dutch national and resident at Eichenau. He is a patent examiner and a permanent member of staff of the European Patent Office.

On 1 May 1990 the applicant applied for special leave in respect of his absence for four days in April 1990, when he attended a hearing in Dutch court proceedings. His request was dismissed by the President of the European Patent Office on 11 May 1990.

On 25 June 1990 the applicant applied for special leave of four days in order to attend a hearing in Dutch court proceedings on 5 July 1990. His request was dismissed by the President of the European Patent Office on 28 June 1990.

On 26 July 1990 the applicant requested that he be graded A3, step 8, as from 1 July 1990. He further requested compensation. His requests were dismissed by the President of the European Patent Office on 21 August 1990.

The applicant thereupon instituted proceedings before the Munich

Administrative Court (Verwaltungsgericht) against the European Patent Office, claiming that the above decisions be quashed and the defendant organisation be ordered to grant his respective requests.

In the administrative court proceedings, the defendant organisation relied on their immunity from jurisdiction.

On 19 December 1990 the Munich Administrative Court, following a hearing, declared the applicant's action inadmissible.

The Administrative Court, referring to SS. 18-20 of the Court Organisation Act (Gerichtsverfassungsgesetz), considered that the defendant organisation had validly relied on its immunity from jurisdiction. The Court observed that, in accordance with the European Patent Agreement and the Protocol on its Privileges and Immunities, the European Patent Office was not subject to German jurisdiction in respect of its official activities, including all administrative acts affecting their permanent staff. In case of dispute regarding any act adversely affecting them, staff members of the European Patent Office are entitled to appeal to the Administrative Tribunal of the International Labour Organisation, in accordance with the relevant provisions of the European Patent Agreement and the Service Regulations. Referring to the case-law of the Federal Constitutional Court (Bundesverfassungsgericht), the Administrative Court further observed that the legal protection afforded in the appeal proceedings before the Administrative Tribunal of the International Labour Organisation satisfied the minimum standards of fairness required by the rule of law.

SS. 18 to 20 of the German Court Organisation Act (Gerichtsverfassungsgesetz) regulate the immunity from jurisdiction in German court proceedings.

SS. 18 and 19 concern the members of diplomatic and consular missions, and S. 20 para. 1 representatives of other States staying in Germany upon the invitation of the German Government.
S. 20 para. 2 provides that other persons have immunity from jurisdiction according to the general rules of international law, e.g. foreign States in the exercise of public authority, or according to international agreements or other legal rules.

On 13 November 1991 the Bavarian Administrative Court of Appeal (Bayerischer Verwaltungsgerichtshof) dismissed the applicant's appeal (Berufung).

On 16 March 1992 the Administrative Court of Justice (Bundesverwaltungsgericht) dismissed the applicant's request for leave to appeal on points of law (Beschwerde gegen die Nichtzulassung der Revision).

On 1 December 1994 the Federal Constitutional Court (Bundes-verfassungsgericht) refused to admit the applicant's constitutional complaint (Verfassungsbeschwerde).

COMPLAINTS

The applicant complains that the German administrative courts refused to decide on the merits of his actions against the European Patent Office. He considers that these decisions amount to discrimination as compared to civil servants in the German civil servants. He further complains that the Federal Constitutional Court did not give reasons for its decision of 1 December 1994. He invokes Articles 1, 3, 6, 10, 13 and 14 of the Convention.

THE LAW

1. The applicant complains about the German administrative court

decisions declaring his actions against the European Patent Office inadmissible on the ground that the defendant organisation had immunity from German jurisdiction, and also about the decision of the Federal Constitutional Court.

With regard to the judicial decisions of which the applicant complains, the Commission recalls that, in accordance with Article 19 (Art. 19) of the Convention, its only task is to ensure the observance of the obligations undertaken by the Parties to the Convention. In particular, it is not competent to deal with an application alleging that errors of law or fact have been committed by domestic courts, except where it considers that such errors might have involved a possible violation of any of the rights and freedoms set out in the Convention (cf. No. 21283/93, Dec. 5.4.94, D.R. 77 pp. 81, 88 and Eur. Court H.R., Van de Hurk judgment of 19 April 1994, Series A no. 288, p. 20, para. 61; Klaas judgment of 22 September 1993, Series A no. 269, p. 17, para. 29).

At the outset, the Commission observes that it is in accordance with international law that States confer immunities and privileges to international bodies which are situated in their territory, and that such a restriction of national sovereignty in order to facilitate the working of an international body does not, in principle, give rise to an issue under the Convention (No. 12516/85, Dec. 12.12.88, D.R. 58 p. 119).

Nevertheless the transfer of powers to an international organisation is only compatible with the Convention provided that within that organisation fundamental rights will receive an equivalent protection (see No. 13258/87 M & Co v. FRG, Dec. 9.2.90, D.R.64, pp. 138, 145 and No. 21090/92, Jan. 10, 1994, D.R.76A, pp. 125, 128). The Commission notes that the European Patent Agreement refers any dispute about administrative acts affecting members of the permanent staff to the Administrative Tribunal of the ILO, a tribunal competent to protect the rights of staff members.

Furthermore the Commission has considered whether the applicant's complaint could raise an issue under Article 6 para. 1 (Art. 6-1) of the Convention which comprises the right of access to court in respect of any claim relating to civil rights and obligations (Eur. Court H.R., Golder judgment of 21 February 1975, Series A no. 18, p. 18, para. 36).

As regards the question whether any of the applicant's civil rights were at stake, the Commission notes that his actions before the German administrative courts concerned decisions taken by the European Patent Office in the exercise of its powers to decide on matters concerning their personnel, namely requests for special leave as well as a request for an upgrading.

The Commission recalls that disputes relating to the recruitment, employment and retirement of civil servants are as a general rule outside the scope of Article 6 para. 1 (Art. 6-1) (Eur. Court H.R., Glasenapp and Kosiek judgments of 28 August 1986, Series A no. 104, p. 26 para. 49, and no. 105, p. 20, para. 35; Francesco Lombardo judgment of 26 November 1992, Series A no. 249-B, p. 26, para. 17; Massa judgment of 24 August 1993, Series A no. 265-B, p. 20, para. 26).

Such considerations also apply to disputes relating to the recruitment, employment and retirement of the permanent staff of international organisations such as the European Patent Office which are within the jurisdiction of the Administrative Tribunal of the International Labour Organisation.

The Commission finds that the European Patent Office when deciding on the applicant's requests exercised its powers in accordance with the international instruments concerned, and could not be compared

with an employer who is a party to a contract of employment governed by private law.

Consequently, the actions envisaged by the applicant did not relate to any "civil right" within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention.

It follows that this part of the application is incompatible ratione materiae with the provisions of the Convention within the meaning of Article 27 para. 2 (Art. 27-2).

2. As regards the above matter, the applicant further invokes Articles 3, 10, 13 and 14 (Art. 3, 10, 13, 14) of the Convention. However, insofar as the applicant's submissions in these respects have been substantiated and are within its competence, the Commission finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention.

It follows that this part of the application is also inadmissible under Article 27 (Art. 27).

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)