AS TO THE ADMISSIBILITY OF

Application No. 16898/90
by W.M.
against Austria

The European Commission of Human Rights (First Chamber) sitting in private on 18 October 1994, the following members being present:

MM. A. WEITZEL, President
C.L. ROZAKIS
F. ERMACORA
E. BUSUTTIL
Mrs. J. LIDDY
MM. M.P. PELLONPÄÄ
B. MARXER
G.B. REFFI
B. CONFORTI
N. BRATZA
I. BÉKÉS
E. KONSTANTINOV
G. RESS

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 14 May 1990 by W.M. against Austria and registered on 19 July 1990 under file No. 16898/90;

Having regard to:

- the reports provided for in Rule 47 of the Rules of Procedure of the Commission;

- the observations submitted by the respondent Government on 13 October 1992 and the observations in reply submitted by the applicant on 13 December 1992;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is an Austrian citizen born in 1953. He runs a taxi firm.

Following a police report of 6 August 1987 that a tyre on one of the applicant's taxis had too low a tread, the applicant was fined AS 500 by the Vienna Federal Police Authority (Bundespolizeidirektion) on 20 September 1988 for failure to comply with his duties as the registered owner of a motor vehicle. The applicant's appeal to the Vienna Provincial Governor (Landeshauptmann) was dismissed on 21 April 1989 and his further complaint to the Administrative Court (Verwaltungsgerichtshof) was dismissed on 13 December 1989.

COMPLAINTS

The applicant alleges a violation of Article 6 of the Convention. In particular, he claims that he did not have a fair hearing, that witnesses were not heard and that other evidence offered by him was not

taken.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 14 May 1990 and registered on 19 July 1990.

On 13 February 1992 the Commission (Second Chamber) decided to request the parties to submit their written observations on the admissibility and merits of the application.

The respondent Government submitted their observations on 13 October 1992 and the applicant submitted his observations in reply on 6 December 1992.

THE LAW

The applicant alleges violation of Article 6 (Art. 6) of the Convention in connection with the proceedings which were brought against him for failure to comply with his obligations as the registered owner of a motor vehicle.

The Government submit that the Austrian reservation to Article 5 (Art. 5) of the Convention prevents the Commission from entertaining the complaint. In particular, they submit that substantially the same provisions of administrative criminal law were in force at the time the reservation was made, as Sections 7 and 86 of the Motor Vehicles Act 1955. As to exhaustion of domestic remedies, the Government accept that an application to the Constitutional Court would have had no prospect of success in connection with an Article 6 (Art. 6) complaint as such, but state that it would have been open to the applicant, in the light of the decisions of the European Court of Human Rights on the question of the precision with which reservations have to be made in the cases of Belilos and Weber (Eur. Court H.R., judgments of 29 April 1988 and 22 May 1990, Series A nos. 132 and 177), to have raised this point with the Constitutional Court. They consider that he complained to the Administrative Court not of the structure of that body, but rather of questions concerning the hearing of witness and a reference to certain administrative convictions. They further point out that Article 6 (Art. 6) of the Convention is complied with if, in administrative "criminal" matters, a last instance decision is taken by an independent and impartial tribunal (Eur. Court H.R., Öztürk judgment of 21 February 1984, Series A no. 73), and consider that the Administrative Court and the Constitutional Court together comply with the requirements of Article 6 (Art. 6).

The applicant does not accept that the Austrian reservation to Article 5 (Art. 5) of the Convention can affect the substance of the case, because the Motor Vehicles Act is not referred to in the reservation, because the provision of Section 103 (1) (which only entered into force in 1968) is not the same as Section 86 of the 1955 Act in that the earlier provision relates to the duties of the "owner" of the vehicle to maintain his vehicle in conformity with the regulations, whereas the new provision refers to the duties of the "registered owner", and the earlier legislation in any event did not provide for a fixed minimum tread for tyres. The applicant also considers that, by the institution of Independent Administrative Tribunals (Unabhängige Verwaltungssenate) the Government have accepted that the system in force in his case did not comply with the Convention.

The Commission has considered the Government's argument that the applicant could have put to the Constitutional Court a plea concerning the validity of reservations based on the judgments of the European Court of Human Rights in the cases of Belilos and Weber.

The Commission notes that the case of Weber was decided by the

European Court of Human Rights on 22 May 1990 (Series A no. 177), post-dating the Vienna Provincial Governor's decision of 21 April 1989 by over a year. It follows that the applicant could not have referred to the Weber case in the domestic proceedings.

It is true, as the Government submit, that it would have been open to the applicant in the light of the findings of the European Court of Human Rights in the case of Belilos (judgment of 29 April 1988, Series A no. 132), to submit to the Constitutional Court that that Court's traditional reasoning as to the Austrian reservation to Article 5 (Art. 5) of the Convention should be re-considered. However, although the Convention has the status of constitutional law in Austria, the domestic courts are not formally bound by the findings of the Strasbourg organs, and the Government have not indicated how the findings of the European Court of Human Rights in a Swiss case involving an interpretative declaration to Article 6 (Art. 6) of the Convention could have led to the Constitutional Court amending its long-standing case-law on the Austrian reservation to Article 5 (Art. 5) of the Convention (cf. Demicoli v. Malta, Dec. 15.3.89, D.R. 60, p. 243, 248 with further references).

The Commission finds that the applicant was not required by Article 26 (Art. 26) of the Convention to put his case to the Constitutional Court. Accordingly, the application cannot be declared inadmissible for non-exhaustion of domestic remedies.

As to the substance of the application, the Commission finds that the case raises complex issues of law under the Convention, including questions concerning the Austrian reservations to Articles 5 and 6 (Art. 5, 6) of the Convention, the determination of which must be reserved for an examination on the merits. It cannot therefore be declared manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention. No other ground for declaring it inadmissible has been established.

For these reasons, the Commission, by a majority,

DECLARES THE APPLICATION ADMISSIBLE, without prejudging the merits of the case.

Secretary to the First Chamber — President of the First Chamber

(M.F. BUQUICCHIO) — (A. WEITZEL)