AS TO THE ADMISSIBILITY OF

Application No. 24397/94
by Wilfried Ludwig WEH
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 6 June 1994 by Wilfried Ludwig WEH against Austria and registered on 15 June 1994 under file No. 24397/94;

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 facts of the case as they have been submitted by the applicant may be summarised as follows.

The applicant, born in 1952, is an Austrian national. He is a lawyer practising in Bregenz/Vorarlberg.

A. Particular circumstances of the case

On 5 July 1991 the applicant requested the Vorarlberg Bar Association (Rechtsanwaltskammer) to issue a formal decision on his membership contributions in 1991, indicating that he intended to lodge an appeal with regard to the question of his obligatory membership.

On 8 October 1991 the Bar Association sent him a reminder (Rückstandsausweis) according to which both his annual membership fee of AS 8,000 and his contribution to the Practising Lawyers Pension Fund of AS 20,000, as fixed by the general assembly of the Bar, were outstanding. He paid on 10 October 1991.

On 29 July 1992 the applicant requested the Supreme Appeal and Disciplinary Commission for Lawyers (Oberste Berufungs- und Disziplinarkommission) to decide on his request of 5 July 1991. He

argued that, in the absence of a formal decision by the Bar Association, the Commission as superior authority had acquired competence.

On 16 November 1992 the Commission for Lawyers dismissed his request on the ground that the Code of General Administrative Procedure (Allgemeines Verwaltungsverfahrensgesetz), providing for a transfer of competence in case of belated decisions, did not apply to proceedings before the Bar.

On 28 September 1993 the Constitutional Court (Verfassungs-gerichtshof) dismissed the applicant's complaint. It found that the decision of 16 November 1992 did not violate his right of access to court, as the Commission for Lawyers had correctly denied its competence, the provisions of the Code of General Administrative Procedure being inapplicable to proceedings before public law professional institutions such as the Bar Association. Moreover, the contributions could be challenged in the enforcement proceedings.

B. Relevant domestic law

The Practising Lawyers Act (Rechtsanwaltsordnung, Imp. Law Gazette No. 96/1868 as amended) regulates in particular the conditions for practising as a lawyer, the rights and duties of practising lawyers, the Bar Association (Rechtsanwaltskammer) and its Committee (Ausschuß), the suspension of the right to practise as a lawyer, the Federation of the Austrian Bar Association (Österreichischer Rechtsanwaltskammertag), the appointment of official defence counsel, the lump sum payment by the Austrian Government for services in legal aid cases and the Practising Lawyers Pension Fund.

SS. 1 and 5 of the Practising Lawyers Act provides that in order to practise as a lawyer in Austria, a lawyer must be entered on the register of the Committee of the Bar Association competent for the area in which the lawyer concerned intends to practise.

According to S. 22 of the Practising Lawyers Act, the Bar Associations are composed of all practising lawyers entered on the register who have their law offices in the area of the Bar Association concerned. The Bar Associations are public law institutions (Körperschaften des öffentlichen Rechtes). The Bar Associations fulfil their functions on the occasions of general assemblies (Plenarversammlungen) or by their Committee.

The Plenary Assembly is competent to fix the annual contributions of the members of the Bar Association for administrative and humanitarian purposes (S. 27 of the Practising Lawyers Act), as well as the contributions to, and pension rights under, the Lawyers Pension Fund (Versorgungseinrichtung) which have to be established by each Bar Association (SS. 49-54 of the Practising Lawyers Act).

S. 33 of the Practising Lawyers Act provides that the lawyers profession (Rechtsanwaltsstand) is independent of the judiciary and that disciplinary powers in respect of lawyers are to be exercised by organs of the profession in proceedings laid down by the Austrian legislature in the Disciplinary Code for Lawyers (Disziplinarstatut).

According to Article II para. 2 of the Introductory Law of the Administrative Procedure Laws (Einführungsgesetz zu den Verwaltungsverfahrensgesetzen) the Code of General Administrative Procedure does not apply, inter alia, to proceedings before public law professional institutions.

S. 1 of the Enforcement Regulations (Exekutionsordnung) lists among the titles for execution (Exekutionstitel) for the purposes of the Enforcement Regulations reminders on outstanding taxes or fees (Rückstandsausweise), including reminders issued inter alia by Bar

Associations.

COMPLAINTS

The applicant complains that he had no possibility to obtain - within a reasonable time - a decision of the Constitutional Court on the issues of his obligatory membership in the Bar, the obligatory contributions and their amount as well as the pension rights. He invokes Articles 6 and 13 of the Convention.

THE LAW

The applicant complains under Articles 6 and 13 (Art. 6, 13) of the Convention about the absence of a court review regarding the issues of his obligatory membership in the Bar, the obligatory contributions and their amount as well as the pension rights.

Article 6 (Art. 6), as far as relevant, provides as follows:

> "1. 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."

a. The Commission recalls that Article 6 para. 1 (Art. 6-1) guarantees to everyone the right to submit any dispute relating to his "civil rights and obligations" to a tribunal meeting the requirements of Article 6 para. 1 (Art. 6-1) (Eur. Court H.R., Golder judgment of 21 January 1975, Series A no. 18, p. 18, para. 36; Le Compte, Van Leuven and De Meyere judgment of 23 June 1981, p. 22, para. 50; Fayed judgment of 21 September 1994, Series A no. 294-B, pp. 49-50, para. 65).

b. In the present case, the applicant mainly argues that he had no access to the Austrian Constitutional Court with a view to a general constitutional review of the system of obligatory membership in the Bar and the related matters.

The Commission recalls that the task of the Convention organs is not to review the relevant legislation in the abstract, but to determine whether the manner in which they were applied to or affected the applicant gave rise to a violation of Article 6 para. 1 (Art. 6-1) (cf. Eur. Court H.R., Padovani judgment of 26 February 1993, Series A no. 257-B, p. 20, para. 24).

The Commission considers that the general constitutional review proceedings before the Constitutional Court, as envisaged by the applicant, go beyond the determination of a dispute regarding the applicant's "rights and obligations" under the Austrian legislation.

This part of the application is therefore incompatible with the provisions of the Convention within the meaning of Article 27 para. 2 (Art. 27-2).

c. As regards the applicant's contributions to the Vorarlberg Bar in 1991, the Commission, assuming that these contributions constituted a "civil obligation" within the meaning of Article 6 para. 1 (Art. 6-1), finds that no dispute arose between the applicant and the Vorarlberg Bar regarding the payment of the amounts in question. In this respect, the Commission notes that the applicant paid the outstanding contributions following an informal reminder by the Bar.

In any event, the complaint about a lack of access to a tribunal regarding the payment of the contributions to the Bar in 1991 was not lodged with the Commission within a period of six months, as required under Article 26 (Art. 26). The Commission considers that the period of six months started to run in October 1991, when the applicant was

informed about, and paid, the outstanding amounts. The application was however only introduced on 6 June 1994.

The proceedings subsequently instituted by the applicant before the Commission for Lawyers and the Constitutional Court did not affect the running of this period, as they cannot be regarded as effective remedies for the purposes of Article 26 (Art. 26). The applicant, pursuing his request for a formal decision on his obligation to pay contributions in 1991, claimed that the Commission for Lawyers had acquired competence in the matter. However, this remedy eventually failed on the ground that the Code of Administrative Procedure was not applicable to matters before the Bar. The applicant, a practising lawyer, was in a position to comprehend that this course of action, under the prevailing legislation, had no prospect of success. He was, therefore, not absolved from complying with the period of six months.

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

d. Moreover, the Commission notes that the proceedings before the Commission for Lawyers and the Constitutional Court related to the applicant's request of 5 July 1991 for a formal decision on his contributions to the Vorarlberg Bar, which he paid following an informal reminder in October 1991. In 1992 the applicant pursued his request for a formal decision, claiming that the Commission for Lawyers had acquired competence in the matter. The Commission observes that the Lawyers Regulations do not provide for a formal decision on the individual contributions to be paid by its members. Moreover, the Commission, referring to its above findings that these proceedings were limited to a procedural question, considers that they did not as such involve a determination of the applicant's "civil rights and obligations" within the meaning of Article 6 para. 1 (Art. 6-1).

The applicant's complaints under Article 6 para. 1 (Art. 6-1) regarding these proceedings are, therefore, incompatible ratione materiae with the provisions of the Convention within the meaning of Article 27 para. 2 (Art. 27-2).

e. Finally, the Commission considers that the applicant's submissions do not raise any separate issue under Article 13 (Art. 13) of the Convention. Consequently, this aspect of the application is likewise inadmissible under Article 27 (Art. 27) 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)