AS TO THE ADMISSIBILITY OF

Application No. 18882/91
by Stefan ZIEGLER
against Austria

The European Commission of Human Rights (First Chamber) sitting in private on 17 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. 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 17 July 1991 by Stefan ZIEGLER against Austria and registered on 1 October 1991 under file No. 18882/91;

Having regard to:

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

- the Commission's decision of 6 April 1994 to communicate the application;

- the observations submitted by the respondent Government on 18 July 1994 and the observations in reply submitted by the applicant on 30 September 1994;

Having deliberated

Decides as follows:

THE FACTS

The applicant is an Austrian citizen born in 1959 and living in Vienna. He is represented by Mr. M. Subarsky, a lawyer practising in Vienna.

On 14 September 1988 the applicant made a request to be authorised to run an employment agency. On 15 March 1989 the office of the Vienna Regional Government (Amt der Wiener Landesregierung) rejected this request. The decision was served on the applicant on 7 April 1989.

It is stated in the decision that, according to Sec. 323 (a) of the amended Trade Act (Gewerbeordnung) the running of an employment agency required, since 1 July 1988, a licence, even if the agency had

lawfully been operating before that date without a licence. However, in the latter case the agency could continue its operations until the request for a licence was decided upon by final decision. According to Sec. 89 (1) of the Trade Act licences could be withdrawn in case of improper management. The applicant, so it is further stated, had been running an employment agency since 14 April 1982. However, the Chamber for Workers and Employees (Kammer für Arbeiter und Angestellte) had, in response to enquiries from the licensing authorities on the subject of the applicant's management, taken a negative stand alleging that cases had come to light in which the applicant had not respected legislation for the protection of workers and employees in relation to social security and holiday regulations. Also the Vienna Labour Office (Landesarbeitsamt) had been opposed to the applicant's request on the ground that various investigations had had to be carried out in the past against the applicant on suspicion of his having violated labour regulations. Furthermore, information received from the Labour and Social Court in Vienna had shown that 21 different actions involving the applicant as either plaintiff or defendant had resulted in judgments against the applicant. It further followed from a judgment given on 27 January 1987 by the Supreme Court (Oberster Gerichtshof) against the applicant that he had withheld wages and manipulated the contractual relationship with the worker or employee in question to the disadvantage of the latter.

In view of all these circumstances the authorities concluded that the applicant was not reliable within the meaning of Sec. 89 (1) of the Trade Act.

On 18 April 1989 the applicant lodged an appeal (Berufung) with the Federal Ministry of Economic Affairs.

On 31 May 1990 the applicant complained to the Administrative Court (Verwaltungsgerichtshof) about the length of the appeal proceedings (Säumnisbeschwerde) as no decision had been taken in the appeal proceedings by the Federal Ministry of Economic Affairs within the prescribed time-limit of 6 months.

On 27 November 1990 the Administrative Court decided on the merits of this appeal and rejected his request to be admitted as an employment agent.

The Administrative Court considered that the denial of the applicant's request for a licence was justified in view of the irregularities committed by the applicant according to the findings of the Supreme Court in the judgment of 27 January 1987 referred to by the lower authorities. The applicant had not contested the finding of the Supreme Court but only argued that he could not be blamed for having violated the law as he was not a jurist but an entrepreneur who had to take risks. The Administrative Court considered however that in the case decided by the Supreme Court the applicant had unlawfully shifted his entrepreneur's risk onto the person seeking employment and had thereby violated labour regulations set up for the protection of workers and employees. The applicant therefore did not fulfil the requirement of reliability required of employment agencies.

Insofar as the applicant had complained of not having been given, in the proceedings before the licensing authorities, the opportunity to submit comments in reply to the observations submitted by the Chamber for Workers and Employees and the Vienna Labour Office, the Administrative Court pointed out that this shortcoming had been remedied in the appeal proceedings and that in any event the findings of the Supreme Court, which were decisive in the applicant's case, were uncontested.

The Administrative Court's decision of 27 November 1990 was served on the applicant on 31 January 1991.

On 11 March 1991 the applicant also lodged a constitutional complaint which the Austrian Constitutional Court (Verfassungsgerichtshof) rejected on 13 March 1991 as being inadmissible. The decision was served on the applicant's representative on 4 April 1991. The Constitutional Court stated that it was not competent to deal with a complaint against a decision of the Administrative Court.

COMPLAINTS

The applicant complains of the length of the proceedings relating to his request to be authorised to run an employment agency. He considers that the proceedings in question lasted from 14 September 1988 when his request was submitted to the authorities until 31 January 1991 when the Administrative Court decision was served on him.

He also complains of the decisions denying him access to the profession of employment agent which he had exercised since 1982. He submits that he was denied a fair hearing as he was allegedly not given any opportunity to inspect the files and to submit counter-observations. Furthermore, he considers the denial of a licence to be arbitrary as it is based on a Supreme Court judgment relating to a dispute which occurred several years before and which, by itself, does not justify considering him to be unreliable. He also feels discriminated against as the new licensing regulation favours newcomers to the profession while those who have exercised it before are judged on the basis of previous behaviour and not solely on the basis of whether or not they respect the new regulations. He invokes Articles 6, 9 of the Convention and Article 1 of Protocol No. 1 as well as Article 14 read in conjunction with the preceding provisions.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 17 July 1991 and registered on 1 October 1991.

On 6 April 1994 the Commission decided to communicate the application to the respondent Government, pursuant to Rule 48 para. 2 (b) of the Rules of Procedure.

The Government's written observations were submitted on 18 July 1994, after an extension of the time-limit fixed for that purpose. The applicant replied on 30 September 1994.

THE LAW

1. The applicant first complains about the length of the proceedings instituted against the decision of the competent Austrian authorities denying him a licence to run an employment agency.

Article 6 para. 1 (Art. 6-1) of the Convention provides, so far as relevant, that "In the determination of his civil rights and obligations ... everyone is entitled to a ... hearing within a reasonable time...".

According to the jurisprudence of the European Court of Human Rights, Article 6 (Art. 6) is applicable to proceedings relating to the question of whether a person was lawfully or not denied authorization to practise a certain profession (Kraska judgment of 19 April 1993, Series A no. 254-B, p. 48, para. 24-27).

The Government have neither disputed the applicability of Article 6 (Art. 6) nor have they raised objections relating to the requirements of Article 26 (Art. 26).

As to the relevant period to be considered under Article 6

para. 1 (Art. 6-1), it started on 18 April 1989 when the applicant lodged his appeal with the office of the Vienna Regional Government and it ended when the Administrative Court's decision was served on the applicant on 31 January 1991. The proceedings thus lasted one year, nine months and nearly two weeks.

The reasonableness of the length of proceedings must be assessed in the light of the particular circumstances of the case and with the help of the following criteria: the complexity of the case, the conduct of the parties and the conduct of the authorities dealing with the case (see Eur. Court H.R., Vernillo judgment of 20 February 1991, Series A no. 198, p. 12, para. 30). On the latter point, the importance of what is at stake for the applicant in the litigation has to be taken into account (cf. Eur. Court H.R., Allenet de Ribemont judgment of 10 February 1995, Series A no. 308, paras. 47, 57).

The Government point out that pending the proceedings in question, the applicant was authorized to continue running his employment agency. He was therefore not affected by the length of the proceedings. On the contrary he profited thereby and consequently could not be considered as a victim.

In any event the proceedings had not been unreasonably delayed taking into account that numerous investigations were necessary and that a large number of similar appeals had to be dealt with in consequence of the application of the new legislative regulation. The latter fact had created a provisional and exceptional increase in workload. Once the matter had been referred to the Administrative Court it was decided within only a few months which according to the respondent Government is an unobjectionable period of time.

The applicant argues that he was affected by the length of the proceedings in view of the uncertainty of their outcome. He submits that the increase in workload caused by the new legislative regulation was foreseeable but no measures were taken to cope with it.

The Commission proceeds on the basis that the applicant can be considered as an alleged victim within the meaning of Article 25 (Art. 25) of the Convention. It first finds that the present case was not particularly complex because the necessary investigations had been carried out by the Austrian authorities before the applicant lodged his appeal of 18 April 1989 against the denial of a licence to run an employment agency.

The applicant did not cause any delays in the proceedings.

The Federal Ministry of Economic Affairs however did not decide on the applicant's appeal within the time-limit of six months prescribed by domestic law and consequently the Administrative Court had to deal with the matter following the applicant's complaint about the inactivity of the authorities. The non-respect of time-limits provided for by domestic law does not per se constitute a violation of the right to obtain a decision within a reasonable time. The Commission notes that the Administrative Court gave its decision within six months of being seized by the applicant. Having regard to the suspensive effect of the proceedings, i.e. that the applicant was allowed to continue his business activities with his employment agency, the Commission concludes that the period of one year, nine months and about two weeks for two levels of jurisdiction does not in the particular circumstances of the case disclose any appearance of a violation of the right to speedy proceedings as guaranteed by Article 6 para. 1 (Art. 6-1) of the Convention.

This part of the application therefore has to be rejected in accordance with Article 27 para. 2 (Art. 27-2) of the Convention as being manifestly ill-founded.

2. Insofar as the applicant complains of the fairness of the proceedings and alleges in particular that he could not adequately defend his case as he was not given access to the files, the Commission notes that the reasons for the denial of a licence were stated in the decision given by the office of the Vienna Regional Government on 15 March 1989. The applicant thus did have the opportunity to submit his comments in the appeal proceedings. He has not shown that contrary to the statements in the judgment of the Administrative Court the alleged shortcomings of the proceedings before the authorities had not been remedied in the proceedings before the Administrative Court. In particular he has not shown that his counsel made a formal request to be allowed to inspect the court files and that such a request was rejected.

As for the applicant's remaining arguments, they are limited to a criticism of the decisions given in his case and the Commission points out that it is not competent to examine whether errors of law or fact were committed by domestic courts unless such errors reveal a violation of the right to a fair hearing.

After having examined this part of the application the Commission finds that there is no appearance of such a violation and this part of the application must likewise be rejected in accordance with Article 27 para. 2 (Art. 27-2) as being manifestly ill-founded.

3. The applicant finally invokes the right to peaceful enjoyment of possessions as guaranteed by Article 1 of Protocol No. 1 (P1-1) and considers that he has been discriminated against in the enjoyment of this right.

However para. 2 of Article 1 (Art. 1-2) does not impair the right of a State to enforce laws deemed necessary to control the use of property in accordance with the general interest.

Even assuming that the applicant can invoke a property right the denial of a licence must be considered as a measure of control within the meaning of para. 2. This measure was based on Austrian law which was enacted inter alia with the purpose of protecting the social rights of employment seekers against abuses. The law and its implementation in the applicant's case thus served the general interest and there is nothing to show that the measure in question, i.e. the denial of a licence was unjustified in the circumstances of the case or disproportionate to the aims pursued.

As regards the alleged discrimination the Commission first notes that the requirements under the domestic law to obtain a licence have without any distinction to be complied with by all licence seekers. Furthermore, while the requirement of proper management applies to all licence seekers it can by the nature of things be judged on the basis of past behavioural duty only in the case of those who had already exercised the profession before. This does not amount to any discriminatory treatment.

The Commission concludes that there is again no appearance of a violation of the provisions invoked by the applicant and this part of the application has therefore likewise to be rejected in accordance with Article 27 para. 2 (Art. 27-2) as being manifestly ill-founded.

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)