

## AS TO THE ADMISSIBILITY OF

Application No. 20871/92  
by Theodor STROHAL  
against Austria

The European Commission of Human Rights (First Chamber),  
sitting in private on 7 April 1994, the following members being  
present:

MM. A. WEITZEL, President  
C.L. ROZAKIS  
F. ERMACORA  
E. BUSUTTL  
A.S. GÖZÜBÜYÜK  
Mrs. J. LIDDY  
MM. M.P. PELLONPÄÄ  
B. MARXER  
B. CONFORTI  
N. BRATZA  
I. BÉKÉS  
E. KONSTANTINOV

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 31 July 1992  
by Theodor STROHAL against Austria and registered on 30 October  
1992 under file No. 20871/92;

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 submitted by the applicant, may  
be summarised as follows.

The applicant, an Austrian national born in 1949 and

residing in Vienna, is a lawyer (Rechtsanwalt) and real estate administrator (Hausverwalter) by profession. The applicant, inter alia, acted as agent for the administration of an apartment building owned by Mr. K.

In 1992 a tenant of an apartment owned by Mr. K. introduced a civil law action for recovery of a premium (Ablöse) against the S. company, which had acted as real estate agent (Realitätenvermittler) for Mr. K.

On 2 April 1992 the Vienna District Court (Bezirksgericht) summoned the applicant as a witness in these proceedings. The defendant had requested the applicant to be heard as a witness to give evidence as to whether he had, in his capacity as real estate administrator of Mr. K.'s apartment building, received payment of 100,000 AS from the plaintiff.

In a hearing before the District Court on 27 August 1992 the applicant refused to give evidence, relying on Section 321 para. 1 (4) of the Code of Civil Procedure according to which a witness has the right to refuse to give evidence with regard to what has been confided to him by a client in his capacity as a lawyer. He considered the issue as to whether he had received payment from the tenant or not as confidential information received in his capacity as a lawyer. The District Court did not accept the applicant's refusal.

On 19 December 1991, after he had again refused to give evidence, the District Court pursuant to Section 325 of the Code of Civil Procedure, imposed on him a fine of AS 10.000 as a coercive measure (Beugestrafe). The District Court found that the question as to whether the applicant had received a payment in his capacity as real estate administrator could not be considered as covered by the duty of professional secrecy as a lawyer.

On 3 March 1992 the applicant's appeal was dismissed by the Vienna Regional Court (Landesgericht). It found that the applicant could only rely on his right not to give evidence as regards confidential information confided to him by a client in his capacity as lawyer. The question whether he, in his capacity as real estate administrator, had actually received a payment from a third person, the contract partner of Mr. K, could not be considered as such information.

## COMPLAINTS

The applicant complains under Article 6 of the Convention about the imposition of the coercive measure for having refused to give evidence. Such a measure was contrary to the principle of a fair trial because it would compel him to give evidence on confidential information received from a client.

## THE LAW

1. The applicant complains under Article 6 (Art. 6) of the Convention about the unfairness of the main civil law suit against the S. company, as a result of the courts not accepting his refusal to give evidence.

The Commission observes that these proceedings concerned a dispute between a tenant of Mr. K. and the S. company to which the applicant was not a party. Consequently, the applicant cannot, in this respect, claim to be a victim of an alleged violation of Article 6

(Art. 6) of the Convention within the meaning of Article 25 para.

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(Art. 25-1) of the Convention.

It follows that, in this respect, the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicant's complaint concerning the District Court's decision of 19 December 1991 could also be understood as a complaint under Article 10 (Art. 10) of the Convention. In this respect, the Commission recalls that the right to freedom of expression by implication also guarantees a "negative right" not to be compelled to express oneself, i.e. to remain silent (see *K. v. Austria*, Comm. Report 13.10.92, para. 45, loc. cit.).

The Commission, having regard to Section 325 of the Code of Civil Procedure, notes that the coercive fine imposed on the applicant was in accordance with Austrian law. Moreover, the coercive measure imposed on the applicant served a legitimate aim under paragraph 2 of Article 10 (Art. 10-2), namely the protection of the right of the defendant in the civil law proceedings. Furthermore the coercive measure imposed on the applicant cannot be regarded as disproportionate to the aim pursued.

It follows that the interference with the applicant's rights under Article 10 para. 1 (Art. 10-1) is justified under paragraph 2 of this provision and that the application in this respect 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)

(A. WEITZEL)