

AS TO THE ADMISSIBILITY OF

Application No. 22287/93
by O.L.
against Austria

The European Commission of Human Rights (First Chamber) sitting in private on 1 December 1993, the following members being present:

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

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 28 May 1993 by O.L. against Austria and registered on 20 July 1993 under file No. 22287/93;

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 is an Austrian citizen, born in 1942 and residing in Graz. She owns a private trading company in Graz. Before the Commission she is represented by Mr. H. Pausch, a lawyer practising in Graz.

A. The particular circumstances of the case

On 7 June 1990, the Graz Industrial Safety Office (Arbeitsinspektorat) inspected the premises of the applicant's company and controlled whether the relevant safety rules were complied with.

On 21 May 1991 the Graz Executive Council (Magistrat) found that the applicant, in her position as employer, had committed several infractions of the Industrial Safety Act (Arbeitnehmerschutzgesetz), the Industrial Safety Regulations (Allgemeine Arbeitnehmerschutzverordnung), the Child and Juvenile Labour Act (Kinder- und Jugendbeschäftigungsgesetz) and the Working Time Act (Arbeitszeitgesetz). The Council imposed a fine of ATS 9,000.

In its decision, the Council, proceeding from the findings of the

Graz Industrial Safety Office of 7 June 1990, noted that the applicant had failed to record the inspections of the fire extinguishers, that no copies of the Industrial Safety Act as well as other relevant regulations had been posted at a place easily accessible. Moreover, one of the employees spent most of her working time in a room without aeration or ventilation. The applicant had also failed to keep a separate record on the personal data of a particular juvenile employee and to post a copy of the Child and Juvenile Working Act and other relevant provisions at a place easily accessible. Finally, two of her employees had exceeded on several occasions the maximum of ten working hours per day, and there had been no records on the hours worked.

In these and the following proceedings the applicant was represented by Mr. Pausch.

On 6 April 1992 the Office of the Styrian Regional Government (Amt der Landesregierung) dismissed the applicant's appeal (Berufung).

On 1 December 1992 the Austrian Constitutional Court (Verfassungsgerichtshof) declined to entertain the applicant's constitutional complaint about a violation of her right to respect for her domicile, her right to equality, her right to a hearing in accordance with the law and the freedom of profession. The Constitutional Court found that the most of the applicant's submissions did not raise any constitutional issues. To the extent that constitutional questions were concerned, the Constitutional Court found that, having regard to the tasks of the Industrial Safety Office, her complaints had no prospect of success. The case was referred to the Administrative Court.

The Constitutional Court's decision was served on 18 January 1993.

The proceedings before the Administrative Court are still pending.

B. Relevant domestic law

According to S. 1 of the Austrian Industrial Safety Act (Arbeitnehmerschutzgesetz), this Act contains provisions on the protection of the life and health of employees in the context of their employment and the protection of morals according to age and sex of the employees. S. 2 provides that the precaution to be taken extends to all measures in order to prevent occupational accidents and diseases, or measures which otherwise result from hygienic necessities or considerations of morals. Enterprises must be equipped, run and managed accordingly. Details concerning inter alia the workrooms, the technical equipment, the fitness of employees and special safety measures, further concerning the duties of employers and employees are regulated in the ensuing provisions. According to S. 24, regulations govern further details.

The Working Time Act (Arbeitszeitgesetz) lays down, inter alia, that the normal working time should not exceed eight hours per day, or, in case of an increased volume of work, not exceed ten hours per day.

The Child and Juvenile Labour Act (Kinder- und Jugendbeschäftigungsgesetz) provide for a special protection of juveniles at work.

The Industrial Safety (Proceedings) Act 1974 (Arbeitsinspektionsgesetz, published in the Federal Gazette 1974/143) governs the control of the legal provisions on industrial safety by the Industrial Safety Office (Arbeitsinspektion).

According to S. 3 of the Industrial Safety (Proceedings) Act, safety officers have the right to enter and inspect the premises of an enterprise at any time in order to control its compliance with the provisions on industrial safety. The safety officer has to inform the employer or his representative about his presence in the enterprise, but this should not unnecessarily delay the inspection. There should be no such information, if such information could render the inspection ineffective. The employer or his representative are entitled to accompany the safety officer upon his inspection; upon his request, they are obliged to do so. The employer has to make sure that during his absence an employee gives the opportunity to the safety officer to enter the enterprise premises.

The Industrial Safety Office is entitled to request the institution of criminal proceedings in case that a safety officer establishes contravention against safety rules (S. 6). The Office may also request that particular measures to ensure the industrial safety in a given enterprise are ordered, or, in case of urgency, order such measures itself (S. 7). The Office participates in all administrative proceedings involving questions of the protection of employees (S. 8).

COMPLAINTS

The applicant complains under Article 8 of the Convention that the Austrian authorities inspected her firm without having had a written search warrant issued by a court.

THE LAW

The applicant complains that an official of the Graz Industrial Safety Office entered and inspected her firm without having had a written search warrant issued by a court. She invokes Article 8 (Art. 8) of the Convention.

Article 8 (Art. 8) of the Convention provides as follows:

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society ... for the protection of health or morals, or for the protection of the rights and freedoms of others."

The Commission, assuming exhaustion of the domestic remedies, as required by Article 26 (Art. 26) of the Convention, finds that the inspection effected by an official of the Graz Industrial Safety Office in the premises of the applicant's company could be regarded as an interference with her right under Article 8 para. 1 (Art. 8-1) of the Convention (Eur. Court H.R., Niemietz judgment of 16 December 1992, Series A no. 251-B, paras. 29-33).

Such interference is in breach with Article 8 (Art. 8), if it was not justified under paragraph 2 of Article 8 (Art. 8-2) as being in accordance with the law and necessary in a democratic society to achieve one of the aims listed in this provisions. In this respect, the Commission recalls that the entitlement of the Contracting States to "interfere" with the right under Article 8 para. 1 (Art. 8-1) might well be more far-reaching where professional or business activities or premises were involved than would otherwise be the case (Eur. Court H.R., Niemietz judgment, loc. cit., para. 31).

The Commission considers the legal basis for the challenged inspection was S. 3 of the Industrial Safety (Proceedings) Act. The

Austrian Constitutional Court, in its decision of 1 December 1992, found that, having regard to the tasks of the Industrial Safety Office, the applicant's complaint about a violation of her right to respect for her domicile had no prospect of success.

Furthermore, the Commission finds that the said Act, published in the Federal Gazette, is adequately accessible to the public. Moreover, given the field of industrial matters governed by the rules on industrial safety and the limited nature of the powers under S. 3 of the Act, the circumstances and procedures of routine checks in industrial enterprises are indicated with sufficient clarity to the employers to whom in particular this provision is destined. The absence of a judicial authorisation under S. 3 does not, regarding the nature and circumstances of such routine checks, affect their lawfulness within the meaning of Article 8 para. 2 (Art. 8-2) of the Convention.

The Commission also considers that the interference in question pursued the protection of health and morals and also of the rights of others, namely the employees, which are legitimate aims under paragraph 2 of Article 8 (Art. 8-2).

The Commission recalls that, in Article 8 para. 2 (Art. 8-2), as in several other provisions of the Convention, the phrase "necessary in a democratic society" implies the existence of a "pressing social need". The Contracting States enjoy a certain margin of appreciation in assessing whether such a need exists, but this goes hand in hand with a European supervision (Eur. Court H.R., *Silver and Others* judgment of 25 March 1983, Series A No. 61, pp. 37 - 38, para. 97; *Funke* judgment of 25 February 1993, Series A no. 256-A, para. 55).

In the present case, the Commission notes that the inspection of the premises of the applicant's company was effected as a routine check on her compliance, as employer, with the relevant rules on industrial safety and related matters, in the absence of any particular investigations directed against her.

It is true that the applicant does complain about the absence of any requirement of a judicial warrant regarding the inspections under S. 3 of the Industrial Safety (Proceedings) Act, without, however, pointing at any arbitrariness.

The Commission recalls that the domestic law permitting an interference with the right under Article 8 para. 1 (Art. 8-1) must afford adequate and effective safeguards against abuse (cf. Eur. Court H.R., *Klass and Others* judgment of 6 September 1978, Series A no. 28, p. 23, paras. 49-50; *Funke* judgment, loc. cit., para. 56). Thus, in the case of wide powers accorded to customs authorities to effect, in the context of criminal investigations, house searches and seizures in order to obtain physical evidence of tax offences and, where appropriate, to prosecute those responsible, the relevant legislation, in the absence of any requirement of a judicial warrant, was not regarded as being consistent with Article 8 (Art. 8) of the Convention (Eur. Court H.R., *Funke* judgment, loc. cit., para. 57).

In the present case, the Commission finds that, balancing the general nature of routine checks in the sphere of industrial safety, the limited rights accorded to the safety officer under S. 3 to enter and inspect industrial premises, and the conduct of such inspections, against the necessity to ensure industrial safety in the general interests of employees, there is no indication that the interference complained of was not proportionate to the legitimate aims pursued within the meaning of Article 8 para. 2 (Art. 8-2).

It follows that the application 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)