

AS TO THE ADMISSIBILITY OF

Application No. 21090/92  
introduced on 15 October 1992  
by Karl Eckart HEINZ  
against the Contracting States party to the  
European Patent Convention insofar as they are High  
Contracting Parties to the European Convention on  
Human Rights, i.e. Austria, Belgium, Denmark,  
France, Germany, Greece, Ireland, Italy,  
Liechtenstein, Luxembourg, Netherlands, Norway,  
Portugal, Spain, Sweden, Switzerland and the United  
Kingdom

The European Commission of Human Rights sitting in private on  
10 January 1994, the following members being present:

- MM. A.S. GÖZÜBÜYÜK, Acting President  
C.A. NØRGAARD  
S. TRECHSEL  
A. WEITZEL  
G. JÖRUNDSSON  
J. -C. SOYER  
H.G. SCHERMERS  
H. DANELIUS  
F. MARTINEZ  
Mrs. J. LIDDY  
MM. L. LOUCAIDES  
M.P. PELLONPÄÄ  
B. MARXER  
G.B. REFFI  
M.A. NOWICKI  
I. CABRAL BARRETO  
B. CONFORTI  
N. BRATZA  
I. BÉKÉS  
J. MUCHA  
E. KONSTANTINOV  
D. SVÁBY
- Mr. H.C. KRÜGER, Secretary to the Commission

Having regard to Article 25 of the Convention for the Protection of  
Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 15 October 1992 by  
Karl Eckart HEINZ against Germany and registered on 16 December 1992  
under file No. 21090/92;

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 applicant is a German citizen, born in 1937 and residing in

Bonn, Germany.

The facts of the present case, as submitted by the applicant, may be summarised as follows:

The applicant filed a European patent application with the European Patent Office in Munich and paid the requested fees.

On 30 April 1992 the European Patent Office invited the applicant to pay a renewal fee of 2.000 DM.

The applicant requested an extension of time for payment, invoking his difficult financial situation.

On 15 June 1992 the European Patent Office informed the applicant that, in accordance with Article 86 para. 2 of the European Patent Convention, the renewal fee could be validly paid within six months of the due date, provided that an additional fee was paid at the same time. In his case the annual renewal fee amounted to 2.000 DM and the additional fee to 200 DM. An extension of the time-limit was refused. The European Patent Office referred to Article 86 para. 3 of the European Patent Convention according to which:

"If the renewal fee and additional fee have not been paid in due time the European patent application shall be deemed to be withdrawn. The European Patent Office alone shall be competent to decide this."

#### COMPLAINTS

The applicant considers that the High Contracting Parties to the European Convention on Human Rights are responsible for a breach of his property rights for having drawn up Article 86 of the European Patent Convention. This provision, according to which a European patent application shall be deemed to be withdrawn if the renewal fees have not been paid, constitutes, in his opinion, an expropriation contrary to Article 1 of Protocol N° 1.

#### THE LAW

The applicant complains under Article 1 of Protocol N° 1 (P1-1) that, in accordance with Article 86 para. 3 of the European Patent Convention, his European patent application will be deemed to be withdrawn unless he pays the renewal and additional fees. According to him it is incompatible with his right to the peaceful enjoyment of his possessions that the Contracting States to the European Convention on Human Rights draw up a patent convention providing that property rights are automatically abolished for non-payment of certain fees.

Article 1 of Protocol N° 1 (P1-1) provides as follows:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding paragraphs shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or

penalties."

The Commission must first consider whether it is competent to examine complaints about the decisions of other European institutions, whose membership is in whole or in part composed of High Contracting Parties to the Convention. In this connection, it recalls its case-law according to which it is not competent *ratione personae* to examine proceedings before or decisions of organs of the European Communities, the latter not being a Party to the European Convention on Human Rights (see in particular N° 13258/87, *M. & Co. v. the Federal Republic of Germany*, Dec. 9.2.90, D.R. 64 pp. 138, 144). The Commission finds that this case-law also applies to the European Patent Office. The decisions taken by the European Patent Office do not involve the exercise of national jurisdiction within the meaning of Article 1 (Art. 1) of the Convention.

The Commission notes that by drawing up the European Patent Convention the Contracting States who are also High Contracting Parties to the European Convention on Human Rights created a system of law common to the Contracting States for the grant of European patents. The European patent has, in each of the Contracting States for which it is granted, the effect of and is subject to the same conditions as a national patent granted by that State. To this extent these States have transferred their powers in this area to the European Patent Office.

It has to be observed in this context that the Convention does not prohibit a High Contracting Party from transferring powers to international organisations. Nonetheless, the Commission recalls that "if a State contracts treaty obligations and subsequently concludes another international agreement which disables it from performing its obligations under the first treaty it will be answerable for any resulting breach of its obligations under the earlier treaty" (N° 235/56, Dec. 10.6.58, *Yearbook* 2 pp. 256, 300). Thus the transfer of such powers does not necessarily exclude a State's responsibility under the Convention with regard to the exercise of those powers. Otherwise the guarantees of the Convention could wantonly be limited or excluded and thus be deprived of their peremptory character.

The object and purpose of the Convention as an instrument for the protection of individual human beings requires that its provisions be interpreted and applied so as to make its safeguards practical and effective (see *Eur. Court H.R., Soering judgment of 7 July 1989, Series A n° 161, p. 34, para. 87*). Therefore the transfer of powers to an international organisation is not incompatible with the Convention provided that within that organisation fundamental rights will receive an equivalent protection (see the above-mentioned N°13258/87, D.R. 64 p.145).

The Commission notes that the European Patent Convention contains detailed provisions on substantive patent law covering patentability, the persons entitled to apply, the term, the rights and equivalence of a European patent and patent applications, the application as an item of property, the procedure for grants, opposition procedures etc..

The Commission also notes various procedural safeguards contained in the European Patent Convention. For example, Article 21 of that Convention provides for an appeals procedure. Boards of appeal shall be responsible for the examination of appeals and, in accordance with Article 22, an Enlarged Board of Appeal shall be responsible in particular for deciding points of law referred to it by Boards of Appeal. These Boards are composed of legally qualified members and technically

qualified members. The members are independent (Article 23).

In the circumstances of the present case, the Commission concludes that it is not competent to examine the applicant's complaints under Article 1 of Protocol N° 1 (P1-1) concerning the fees imposed by the European Patent Office in his case.

It follows that the application is incompatible *ratione materiae* with the provisions of the Convention and must be rejected pursuant to Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission by a majority

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Commission

Acting President of the Commission

(H.C. KRÜGER)

(A.S. GÖZÜBÜYÜK)