

In the case of Lechner and Hess*,

* Note by the Registrar: The case is numbered 11/1985/97/145. The second figure indicates the year in which the case was referred to the Court and the first figure its place on the list of cases referred in that year; the last two figures indicate, respectively, the case's order on the list of cases and of originating applications (to the Commission) referred to the Court since its creation.

The European Court of Human Rights, sitting, in accordance with Article 43 (art. 43) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and the relevant provisions of the Rules of Court, as a Chamber composed of the following judges:

Mr. R. Ryssdal, President,
Mr. Thór Vilhjálmsson,
Mr. F. Matscher,
Mr. L.-E. Pettiti,
Mr. C. Russo,
Mr. J. Gersing,
Mr. A. Spielmann,

and also of Mr. M.-A. Eissen, Registrar, and Mr. H. Petzold, Deputy Registrar,

Having deliberated in private on 25 October 1986 and on 25 March 1987,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The present case was brought before the Court on 17 October 1985 by the European Commission of Human Rights ("the Commission"), within the three-month period laid down in Article 32 para. 1 and Article 47 (art. 32-1, art. 47) of the Convention. The case originated in an application (no. 9316/81) against the Republic of Austria lodged with the Commission on 18 February 1981 under Article 25 (art. 25) by three Austrian citizens, Siegfried and Rosalia Lechner (husband and wife) and Mrs. Rosalia Hess, the wife's mother.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the Austrian declaration recognising the compulsory jurisdiction of the Court (Article 46) (art. 46). Its purpose is to obtain a decision as to whether or not the facts of the case disclose a breach by the respondent State of its obligations under Article 6 para. 1 (art. 6-1) of the Convention.

2. In response to the enquiry made in accordance with Rule 33 para. 3 (d) of the Rules of Court, the applicants stated that they wished to take part in the proceedings pending before the Court and designated the lawyer who would represent them (Rule 30).

3. The Chamber of seven judges to be constituted included ex officio Mr. F. Matscher, the elected judge of Austrian nationality (Article 43 of the Convention) (art. 43) and Mr. R. Ryssdal, the President of the Court (Rule 21 para. 3 (b)). On 25 October 1985, in the presence of the Registrar, the President of the Court drew by lot the names of the other five members, namely Mr. W. Ganshof van der Meersch, Mr. Thór Vilhjálmsson, Mr. L.-E. Pettiti, Mr. J. Gersing and Mr. A. Spielmann (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43). Subsequently, Mr. C. Russo, substitute judge,

4. Mr. Ryssdal assumed the office of President of the Chamber (Rule 21 para. 5) and, through the Deputy Registrar, consulted the Agent of the Austrian Government ("the Government"), the Commission's Delegate and the applicants' lawyer on the need for a written procedure (Rule 37 para. 1). On 20 January 1986, he decided that the said lawyer should have until 14 March to file a memorial, to which the Delegate should be entitled to reply in writing within two months of the day on which the Registrar forwarded it to him.

On 18 April, the Secretary to the Commission informed the Registrar that the Commission's Delegate did not think it necessary to submit any observations at that stage.

5. Having consulted - through the Deputy Registrar - the Agent of the Government, the Commission's Delegate and the applicants' lawyer (Rule 38), the President directed that the hearing should take place on 21 October 1986.

There appeared before the Court:

Mr. H. Türk, Legal Adviser, Ministry of Foreign Affairs, Agent,

Mr. P. Reindl, Ministry of Justice, Advisers;

Mr. A. Weitzel, Delegate;

Mr. H. Gussenbauer, Rechtsanwalt, Counsel,

Mrs. R. Lechner, Applicants.

- from the Commission, a number of documents either at the President's request or of its own accord;

- from the applicants, further particulars of their claims for just satisfaction in respect of costs and expenses;

- from the Commission's Delegate and subsequently the Agent of the Government, comments on the said claims;

- the applicants' replies to these comments.

AS TO THE FACTS

8. The applicants, a married couple, Siegfried and Rosalia Lechner, and Mrs. Lechner's mother, Mrs. Rosalia Hess, are Austrian citizens who were born in 1935, 1939 and 1910 respectively and live in Vienna.

A. Background

9. On 7 August 1970, the applicants purchased a house in Vienna from Mr. and Mrs. Josef Mayer. In order to pay the price of 650,000 Austrian schillings, they had to sell a house and a flat they owned.

Mr. and Mrs. Mayer were involved in divorce proceedings at the time the contract was concluded; Mrs. Mayer's lawyer, Mr. Weiser, played an active part in their negotiations with the applicants and represented the vendors in all the subsequent proceedings. The applicants, on the other hand, frequently changed their lawyers.

10. The applicants moved into the house on 9 September 1970. A few weeks later, however, Mr. Mayer informed them that the planning department (Baubehörde) had not given him permission for the house to be occupied (Benützungsbewilligung) but that this was a pure formality.

The applicants approached the said department in order to obtain the necessary permission, but without success because the house had several defects. On 20 March 1972, the department did however issue them with a permit to occupy the house except for the garage and the veranda above it; the first floor and the attic were not included in the list of rooms they could use.

On 5 April 1972, the applicants appealed to the Vienna City authorities against this decision and requested a permit that would be valid for the whole of the building, although they also mentioned a number of structural defects.

After the applicants had announced, more than six months later, that they intended to appeal to the Administrative Court (Verwaltungsgerichtshof) against the planning department's failure to act, the existing permit was withdrawn by the City authorities for technical reasons (on 3 July 1973); this was tantamount to prohibiting them from occupying the house either in whole or in part.

They continued to live there, however, until October 1978 (see paragraph 31 below).

B. Proceedings from which the present case arose

1. Civil action against the vendors

11. On 15 May 1972, the applicants brought an action against the vendors in the Vienna Regional Civil Court (Landesgericht für Zivilsachen) claiming rescission of the contract of sale, repayment of the purchase price and simultaneous return of the property to the vendors, plus compensation. They argued that they had been deliberately misled by the vendors as regards the fact that permission had not been granted for the house to be occupied. They gave further particulars of their claims on 28 March 1973. Earlier, the Regional Civil Court had held several hearings, and had taken evidence, notably in the form of testimony; it had also on 7 September 1972 and on

several subsequent occasions asked the planning department to produce the file on the building in issue, but in vain. Eventually, officials from the planning department were examined on 14 December 1972 and 28 March 1973. It emerged that the documents in question were in their possession, but neither the Regional Civil Court nor the parties gained access to them.

12. The Regional Civil Court dismissed the applicants' claims on 1 June 1973. They might indeed have had reason to believe that a permit to occupy the house had been issued, as the vendors had lived in it for a long time, but the planning department had inspected the house before the vendors left it and had found that there were a number of defects. The applicants had failed to remedy these after the contract of sale had been concluded, and it was therefore their own fault that the permit had been refused. Furthermore, there was no evidence of any misrepresentation to their detriment.

On 21 November 1973, the Vienna Court of Appeal (Oberlandesgericht) set aside this judgment on an appeal lodged by the applicants on 31 August 1973, and remitted the case to the Regional Civil Court, which received the Court of Appeal's judgment on 20 December 1973.

13. On 5 February 1974, the applicants challenged the judge hearing the case, alleging bias and that he had behaved arbitrarily with regard to the substantive issues in the case. The Regional Civil Court dismissed the challenge on 14 March 1974.

Hearings were held on 16 April and 19 June 1974, and at the second of these the applicants amended their pleadings by requesting the court to order, additionally, that the vendors should put at their disposal a house that was similar but built in conformity with the existing regulations.

14. A further hearing took place on 5 December 1974, which the applicants' lawyer had unsuccessfully tried to have set down for an earlier date. In accordance with a common practice in the Austrian courts, and at the vendors' request, the Regional Civil Court adjourned the proceedings until the criminal proceedings which the purchasers had meanwhile taken against them for fraud were concluded (see paragraph 20 below).

This decision was served on the applicants on 27 January 1975, and on 6 February they appealed against it to the Vienna Court of Appeal and requested that the civil proceedings should be resumed. On 1 July, they complained to the President of the Court of Appeal about the fact that it had not yet given its decision.

The Court of Appeal dismissed the applicants' appeal on 7 July on the grounds that the civil court could not obtain the planning department's files earlier than the criminal court (Landesgericht für Strafsachen), and that the outcome of the criminal proceedings would provide guidance for the civil proceedings.

On 30 July, the President of the Court of Appeal informed the applicants that their complaint of 1 July had not given rise to any supervisory orders.

15. After they had dropped their private prosecution against the vendors (see paragraph 28 below), the applicants requested the Regional Civil Court (on 27 December 1976) to resume the proceedings. It began by asking the criminal court to produce the files on the criminal and civil proceedings. These reached it on 22 March 1977, and on that same day the court ordered the applicants to attend a hearing on 17 May 1977. On that occasion the new judge in charge of the case ordered further inquiries to be made and adjourned the case sine die. On 20 May 1977, the file on the civil proceedings was forwarded to the disciplinary committee of the Vienna Bar for the

purposes of a complaint the applicants had lodged against one of their lawyers, and it remained with the committee until 19 July. On 22 July, it was sent to the Vienna District Criminal Court (Strafbezirksgericht), which was dealing with the prosecution for defamation brought against Mr. and Mrs. Lechner by the vendors and their lawyer, Mr. Weiser (see paragraphs 18 and 19 below). The file was not returned until 1 February 1978, after several reminders.

A further hearing took place on 25 April 1978 before a third judge, the previous judge having retired. A few days earlier (on 19 April), the house in issue had been sold by auction in connection with enforcement proceedings by the municipality of Vienna against the applicants, in which other creditors had joined (see paragraph 31 below).

16. On 3 June 1978, Mrs. Lechner complained to the Federal Ministry of Justice about the slowness of the proceedings.

She also wrote on 7 June to the parliamentary ombudsman (Volksanwalt). He replied on 5 July that although the civil proceedings had indeed been delayed owing to the manner in which the first two judges had dealt with the case before their retirement, the proceedings were now being supervised by the President of the Regional Civil Court and that the Federal Minister of Justice would monitor their progress. Mrs. Lechner again applied to the Minister on 18 August 1978.

17. After hearings on 19 September and 20 December 1978, the Regional Civil Court dismissed the applicants' action on 22 December 1978. It held that the action could not succeed because they were no longer in a position to restore the house to the vendors. The judgment did not deal with the request for rescission of the contract of sale.

On 23 January 1979, the applicants appealed to the Vienna Court of Appeal against this judgment, which had been served on them on 10 January. The Court of Appeal affirmed the judgment on 27 June.

On 1 October, the applicants lodged an appeal on points of law (Revision) which the Supreme Court (Oberster Gerichtshof) dismissed on 27 May 1980. It held that they had not taken the opportunity afforded by the Regional Civil Court to clarify their pleadings. The sole issue remaining to be determined was the applicants' claim to be given another house and to return the one they had bought, since they had not complained to the Court of Appeal of the Regional Civil Court's failure to give a decision on their claim for rescission of the contract of sale and such a matter could not be raised for the first time at the Revision stage.

The judgment was served on the applicants on 3 September 1980.

2. Prosecution of the vendors

(a) Origin of the action

18. At the hearing of the civil action on 14 December 1972 Mrs. Lechner had called the vendor, Mr. Mayer, a crook. He accordingly brought a private prosecution against her for defamation in the Vienna District Criminal Court. On 5 February 1973, the court acquitted her on the ground, inter alia, that the vendors' behaviour was such as to justify her statement. Additionally, the court made an order (Verfügung) on 8 February to the effect that the minutes of the hearing and a copy of the judgment should be forwarded to the Vienna Public Prosecutor's Office (Staatsanwaltschaft). It further suggested to Mrs. Lechner that she should herself prosecute the vendors for fraud.

On an appeal by Mr. Mayer, the Vienna Regional Criminal Court set

aside this judgment on 17 April 1973 and remitted the case to the District Court with the direction that further evidence should be obtained. The case was discontinued on 26 April 1979.

19. In connection with this prosecution, Mr. Mayer's lawyer had also instituted criminal proceedings for defamation against Mr. Lechner. These proceedings ended with the latter's being convicted by the Vienna District Criminal Court on 26 April 1979.

(b) Main proceedings

20. After the minutes of the hearing on 5 February 1973 and a copy of the judgment given the same day had been sent to the Public Prosecutor's Office (see paragraph 18 above), the applicants in their turn laid an information against the vendors on 13 March, alleging fraud.

On 7 September, the Public Prosecutor's Office informed them that it could not find sufficient grounds for bringing a prosecution. Mrs. Lechner complained about this to the Federal Ministry of Justice on 23 October.

21. In a letter of 19 September 1973 to the Vienna Regional Criminal Court the applicants applied, in the context of a private prosecution in which they claimed civil damages, to have an investigation commenced in respect of the vendors. The court had a new file compiled by the investigating judge, who sent it to the Public Prosecutor's Office (under Articles 48 para. 1 and 49 para. 1 of the Code of Criminal Procedure). The latter returned the file to the court on 28 December 1973 with a request to be kept informed.

On 28 January 1974, the applicants complained to the Vienna Court of Appeal and to the Public Prosecutor's Office about the Regional Criminal Court's failure to act.

Three days later, they lodged an appeal to the same end with the President of the Court of Appeal.

On 12 March, the Court of Appeal, exercising its supervisory jurisdiction, asked the Regional Criminal Court to give a decision as quickly as possible on the applicants' application for a preliminary investigation. It approved the investigating judge's action in sending the file to the Public Prosecutor's Office, since the latter might have decided to prosecute the vendors itself. However, the investigating judge ought to have ensured that the file was returned to him sooner and, despite the complexity of the case, should have urged the Regional Criminal Court to take a rapid decision.

22. On 22 March 1974, the Regional Criminal Court granted the application for a preliminary investigation to be commenced but suggested to the investigating judge that he should await the outcome of the civil proceedings against the vendors and the criminal proceedings against Mrs. Lechner (see paragraphs 11 and 18 above).

On 16 April, the applicants entered an objection to that suggestion by requesting the Court of Appeal to exercise its supervisory jurisdiction: in their view the commencement of a preliminary investigation had already been unduly delayed. They simultaneously made the same complaint to the Regional Criminal Court.

23. On 24 April, the Public Prosecutor's Office said in reply to the applicants' letter of 28 January 1974 (see paragraph 21 above) that it was not proposing to bring a prosecution and that the applicants had no right to see its file notes.

24. On 2 and 17 June, the investigating judge dealing with the case - who on 15 February had ordered further inquiries to be made, in

particular regarding the vendors' police record and the civil proceedings - received two applications from the applicants. In the first of these they asked that Mr. and Mrs. Mayer should be questioned, and in the second they sought their arrest because of the risk that evidence would be destroyed. The investigating judge dismissed the second application on 21 August and reserved his decision on the first application until such time as the applicants clarified their appeal of 16 April 1974 (see paragraph 22 above).

The applicants appealed against that decision on 5 September and the Regional Criminal Court quashed it on 10 October 1974 but refused to order the vendors' arrest, as evidence might already have been destroyed during the interval that had elapsed since the sale. It also noted that an order had been made in the meantime for the Mayers to be questioned.

25. In fact, on 27 September 1974, the Court of Appeal, exercising its supervisory jurisdiction, had asked the investigating judge to complete his task as soon as possible. While stating that it could not encroach on the powers of the investigating judge or the Regional Criminal Court, the Court of Appeal considered that the proceedings had taken too long. The investigating judge had failed in his duty to establish the facts and obtain the necessary evidence, because the Regional Criminal Court's suggestion - that he should await the outcome of other proceedings (see paragraph 22 above) - was not binding on him and did not absolve him from his duty to proceed with the preliminary investigation. It was certainly for him to decide what measures should be taken, but there seemed to be a need to question the vendors and to inform them that a preliminary investigation was to commence and that they had a right of appeal against that decision. The Court of Appeal also criticised him for having delayed taking a decision on the applications made by the applicants on 2 and 17 June 1974 (see paragraph 24 above). Moreover, he had no power to reserve his decision on whether or not to question the vendors; he should have left that decision to the Regional Criminal Court.

As to the appeal of 16 April 1974 (see paragraph 22 above), the Court of Appeal noted that the applicants had succeeded in having a preliminary investigation commenced and that it had ordered that this investigation should be proceeded with. That being so, the applicants should be urged to specify the nature of their claims and, if appropriate, be encouraged to withdraw them in order to avoid any further unnecessary delay.

26. On 11 November 1974, Mrs. Lechner laid an information with the Vienna Public Prosecutor's Office against the Mayers' lawyer, alleging fraud; she claimed that he had fraudulently abetted the conclusion of the contract of sale. On 25 November, she requested that these criminal proceedings and those pending against the vendors should be joined (see paragraphs 20-25 above). On 28 November, the Regional Criminal Court dismissed that application on the ground that the two cases were at different stages. On 6 February 1975, the Public Prosecutor's Office informed the applicants that it could not find sufficient grounds for bringing a prosecution.

27. Pursuant to the decisions of the Regional Criminal Court and the Court of Appeal (see paragraphs 24 and 25 above), Mr. Mayer was questioned on 11 November 1974, Mrs. Lechner on 15 November, and Mr. Lechner on 13 December; according to the Government, the latter did not sign the record of his examination until later.

On 2 January 1975, the investigating judge informed the applicants that he had not yet been able to interview Mrs. Mayer, in the first instance because of an administrative error and subsequently because she had failed to appear. The interview eventually took place on 7 January 1975.

On 12 May, the applicants again asked the judge to question the vendors.

28. The Vienna Regional Criminal Court closed the preliminary investigation on 8 June 1976. It informed Mr. and Mrs. Lechner that they could prefer an indictment (Anklageschrift) against the vendors within two weeks. They did not do so; on the other hand, they requested the court on 24 June and 13 July to complete the investigation, as they maintained that despite the steps they had taken, the judge had not obtained the relevant testimony. The court refused this request on 28 October, and decided on 25 November to stay the criminal proceedings against the vendors, as the applicants had not lodged any indictment within two weeks of being served with the decision of 28 October.

3. Action for damages against the municipality of Vienna

29. On 6 August 1975, the applicants claimed 2,500,000 schillings in compensation from the municipality of Vienna for breach of its obligations. They alleged that owing to the unlawful conduct of the planning department, the vendors had been able, without a permit, to occupy for fifteen years a building which, despite its structural defects, was entered in the land register. Furthermore, the planning department had consistently refused to part with its file, and this had delayed a good many of the court proceedings that were pending. Given the impossibility of bringing the house into line with the applicable regulations, the applicants demanded in exchange a house that was similar but did conform to the regulations.

On 21 October, the municipality of Vienna refused to recognise any right to compensation.

30. The applicants consequently brought an action for damages in respect of liability of public authorities against the municipality in the Vienna Regional Civil Court.

The Regional Civil Court dismissed the action on 31 August 1976, finding that the amount claimed by the applicants was not substantiated. The applicants appealed against this judgment on 8 October, but the Court of Appeal upheld it on 6 December on the ground that the complaints against the municipality of Vienna were of a subsidiary nature: since the main civil proceedings had not yet been concluded, it was impossible to know whether the applicants had sustained damage corresponding to the amount claimed.

The appeal on points of law which the applicants lodged on 4 January 1977 was unsuccessful too. The Supreme Court dismissed it on 16 February 1977, holding that even if the Court of Appeal's reasoning was open to doubt, the claim for compensation had to be rejected on another ground, namely that the damage suffered by the applicants was a direct consequence of the vendors' conduct and not of that of the authorities. The applicants were ordered to pay the court costs and the costs of the municipality of Vienna.

4. Administrative proceedings and enforcement proceedings brought against the applicants by the municipality of Vienna

31. On 24 September 1975, the Vienna municipal authorities imposed a fine of 1,000 schillings on the applicants for having occupied their house without a permit. The authorities subsequently applied for enforcement proceedings to be instituted against Mr. Lechner, and this application was granted by the Hietzing District Court on 24 February 1977. Furthermore, three lawyers who had represented the applicants became parties to the proceedings. On 10 January 1978, the applicants asked the municipal authorities to stay the proceedings pending the outcome of the applicants' civil action against the

vendors. On 22 January, Mr. Lechner wrote to the Federal Chancellor to ask his support for this request.

As the applicants were unable to pay the sum of 500,000 schillings claimed by their creditors, the house was sold by auction on 19 April 1978 for 821,000 schillings. The applicants were evicted from it on 31 October 1978.

32. Since then, several actions for the recovery of debts have been taken against the applicants by the Austrian State, by the vendors and by the lawyers who had dealt with the case. The applicants claim that their debts amount to 1,300,000 schillings, that they have lost all their assets and that Mrs. Hess's pension and Mr. Lechner's salary have been attached.

PROCEEDINGS BEFORE THE COMMISSION

33. The applicants applied to the Commission on 18 February 1981. They complained of the length of the civil and criminal proceedings they had instituted against Mr. and Mrs. Mayer, arguing that they had exceeded the "reasonable time" stipulated in Article 6 para. 1 (art. 6-1) of the Convention.

34. The Commission declared the application (no. 9316/81) admissible on 11 October 1984. In its report of 2 July 1985 (made under Article 31) (art. 31), it expressed the unanimous opinion that there had been a breach of Article 6 para. 1 (art. 6-1). The full text of its opinion is reproduced as an annex to this judgment.

AS TO THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 PARA. 1 (art. 6-1)

35. In the applicants' submission, the length of the civil and criminal proceedings they had instituted against Mr. and Mrs. Mayer exceeded the "reasonable time" stipulated in Article 6 para. 1 (art. 6-1) of the Convention, which provides:

"In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal"

The Government contested this claim, while the Commission accepted it in substance.

A. The period to be considered

36. The period to be considered is not in dispute: it began on 15 May 1972, when the applicants brought their action in the Vienna Regional Civil Court (see paragraph 11 above), and ended on 3 September 1980, with the notification of the Supreme Court's judgment (see paragraph 17 above). It accordingly amounted to eight years, three months and nineteen days.

37. As the Government pointed out, the period contains two phases.

38. The first of these ran from 15 May 1972 to 20 December 1973, when the Court of Appeal's judgment of 21 November remitting the case to the Regional Civil Court reached the latter court (see paragraphs 11-12 above), that is to say a little over a year and a half. It is not open to criticism, more especially as it included several hearings and other procedural steps at two levels of jurisdiction (see paragraph 11 above).

39. On the other hand, a problem does arise concerning the second phase, which lasted for almost seven years, from 20 December 1973 to 3 September 1980 (see paragraphs 13-17 above).

While the duration of the appeal and the Revision proceedings - five and eleven months respectively - appears normal in the circumstances, the same may not be true of the proceedings in the Vienna Regional Civil Court, which took five years (20 December 1973 - 10 January 1979). Prima facie, such a period seems excessive. It has to be noted, however, that the court adjourned the proceedings on 5 December 1974 to await the outcome of the applicants' prosecution of the vendors for fraud.

These criminal proceedings had begun on 8 February 1973; they gave rise to several supervisory orders by the Vienna Court of Appeal (see paragraphs 21-22 and 25 above). They are relevant here, however, only in so far as they had a bearing on the course of the civil proceedings, which were resumed more than two years after the adjournment.

B. Reasonableness of the length of the proceedings

40. The reasonableness of the length of proceedings is to be assessed according to the particular circumstances of the case and having regard to the criteria laid down in the case-law of the Court (see, *inter alia*, the Zimmermann and Steiner judgment of 13 July 1983, Series A no. 66, p. 11, para. 24).

41. The Government relied on the fact that civil proceedings in Austria are founded on the principle that new matters cannot be raised on appeal (*Neuerungsverbot*): the higher court is restricted to reviewing the impugned decision on the basis of the material before the court below, so that the examination of the facts of the dispute is essentially carried out by the trial court, which accordingly must generally be allowed extra time to reach a decision.

Without minimising the relevance of this factor, the Court does not believe it to be of such weight as to absolve the lower court from having to comply with the requirements of Article 6 para. 1 (art. 6-1) regarding the conduct and expeditiousness of trial (see, *mutatis mutandis*, the Buchholz judgment of 6 May 1981, Series A no. 42, p. 16, para. 50, and the Guincho judgment of 10 July 1984, Series A no. 81, p. 14, para. 32).

1. Complexity of the case

42. As the Commission pointed out, the case did not present any exceptional legal difficulties.

43. The Government rightly relied, amongst other things, on the complexity of the facts to be clarified, which obviously entailed extra work, particularly as the facts gave rise to controversy.

The applicants altered the basis of their claim on 19 June 1974 when they asked the civil court to order the vendors to put at their disposal a house that was similar but conformed to the regulations in force. The Court agrees with the Commission: although the new claim did not raise any complex legal problems, it was incompatible with the old claim, and this led to some confusion. The court could have indicated this at the outset, however, and thereby have avoided unnecessary delay.

44. To this must be added the intertwining of several sets of civil, criminal and administrative proceedings (see paragraphs 11, 18-20, 26 and 29 above); this made the task of the relevant courts - particularly the Vienna Regional Civil Court - more difficult.

2. The applicants' behaviour

45. Unlike the Commission, the Government considered that the

applicants' behaviour also had a bearing on the length of the proceedings. The applicants had, admittedly, attempted to complain about the length of the proceedings or to reduce it, but in the Government's view the measures they took were hardly suited to the circumstances of the case.

The applicants did indeed take a series of steps which, far from helping the courts to take a decision speedily, considerably complicated the dispute: the amendment of their original claim in June 1974 (see paragraph 43 above); the challenging of the judge dealing with the case (see paragraph 13 above); the continual changing of lawyers (see paragraph 9 above) and the disciplinary proceedings brought against one of them (see paragraph 15 above); the complaints of fraud against the vendors and their lawyer (see paragraphs 20 and 26 above); and, lastly, the applicants' attitude towards the vendors and their lawyer, which resulted in the applicants' being prosecuted for defamation (see paragraphs 18-19 above).

46. The Court does not consider that it has to go into the relevance and the purpose served by several of these steps; it merely notes that some of them had only a limited bearing on the course and duration of the proceedings. The application challenging the judge, for example, took scarcely more than a month to deal with (see paragraph 13 above). Similarly, the disciplinary committee of the Vienna Bar kept the file on the civil proceedings - which had been forwarded to it for study in connection with the applicants' complaint against their lawyer - for only two months (see paragraph 15 above).

47. As to the parallel criminal proceedings, a distinction must be made between Mr. and Mrs. Lechner's proceedings against the vendors and their lawyer and the vendors' and their lawyer's against Mr. and Mrs. Lechner.

Although the applicants may have brought the latter proceedings upon themselves through their attitude, it is uncertain whether they can be held responsible for the course those proceedings took; yet this delayed the proceedings in issue by at least six months (see paragraph 15 above).

The first set of criminal proceedings had an even greater impact on the length of the civil proceedings. At the vendors' request, the Regional Civil Court adjourned the latter to await the outcome of the criminal proceedings, and resumed them - at the applicants' request - on 27 December 1976, after an interval of more than two years (see paragraphs 14-15 above).

In the Commission's view, no criticism can be levelled at the applicants in relation to this set of proceedings. The Court notes that having acquitted Mrs. Lechner of the defamation charge, the Vienna District Criminal Court decided on 8 February 1973 to forward to the Public Prosecutor's Office the minutes of the hearing and a copy of the judgment of 5 February 1973 and at the same time suggested to Mrs. Lechner that she should bring a prosecution (see paragraph 18 above). The Public Prosecutor's Office, however, twice decided not to prosecute - in October 1973 and April 1974 (see paragraphs 20 and 23 above) - and it was only thanks to Mr. and Mrs. Lechner's persistence that on 22 March 1974 the Regional Criminal Court ordered a preliminary investigation to be undertaken (see paragraphs 21 and 22 above). Although this lasted until 8 June 1976 - more than two years, therefore - despite the steps taken by the applicants, they did themselves contribute to its prolongation by almost six months by asking the court on 24 June and 13 July 1976 for further inquiries to be made instead of preferring an indictment (see paragraph 28 above); in addition, Mr. Lechner refused for a while to sign the record of his examination (see paragraph 27 above) and did not appear at certain hearings, although he apologised for this.

48. The Court also considers, like the Commission, that the enforcement proceedings and the auctioning of the house resulted from the applicants' behaviour. They had not paid either the fine imposed on them by the Vienna municipal authorities in respect of the unlawful occupation of premises or their lawyers' fees (see paragraph 31 above). However, they had at the time disputed some of the relevant sums. Furthermore, these proceedings did not have any direct bearing on the length of the civil proceedings, although they affected their outcome. The same is true of the action for damages in respect of liability of public authorities that was brought against the municipality of Vienna.

49. In the Government's submission, the Lechners complicated the proceedings by amending their initial claim and by lodging numerous appeals and applications (see paragraphs 13, 14 and 16 above). The Court has already dealt with the first of these points (see paragraph 43 above). As to the second point, the applicants cannot be blamed for making full use of the remedies available to them under domestic law, but their behaviour is an objective fact; it cannot be attributed to the respondent State and must be taken into account for the purpose of determining whether or not the "reasonable time" has been exceeded (see, *mutatis mutandis*, the Eckle judgment of 15 July 1982, Series A no. 51, p. 36, para. 82).

Even so, regard must also be had to the fact that several of the appeals in question were brought with the aim of expediting the proceedings. Thus, for instance, the applicants appealed against the decision to adjourn the proceedings and subsequently applied for them to be resumed when the criminal proceedings against the vendors were dropped (see paragraphs 14-15 above); they also requested the civil court on several occasions to give a decision before the house was auctioned. They can scarcely be held responsible for the failure of these endeavours.

50. However, an overall assessment leads to the conclusion that the different procedural measures taken on the applicants' behalf and their personal behaviour certainly contributed to the length of the proceedings. In this respect the Court does not share the view expressed by the Commission in paragraphs 87 and 100 of its report.

3. The Austrian authorities' behaviour

51. It remains to examine the behaviour of the Austrian authorities.

52. The applicants firstly blamed the Regional Civil Court for not having obtained the planning department's file within a reasonable time. In point of fact, the Regional Civil Court asked for the file on 7 September 1972 and on several subsequent occasions, but the department made no response (see paragraph 11 above); the responsibility for the resultant delay lies with the department and attaches, in the final analysis, to the State (see, amongst other authorities and *mutatis mutandis*, the above-mentioned Zimmermann and Steiner judgment, Series A no. 66, p. 13, para. 32).

53. The Commission also considered the adjournment of the proceedings in December 1974 to have been unnecessary. In its view, it would have been sufficient for the Regional Civil Court to have ruled in good time that the applicants' amended claim was without foundation (see paragraph 43 above). The Court notes, however, that the decision criticised by the Commission, which was upheld on appeal, was in conformity with the law (Article 191 of the Code of Civil Procedure) and with Austrian judicial practice (see paragraph 14 above).

In the instant case the applicants had chosen to bring first a civil action and then criminal proceedings against the vendors. It is

understandable that the Regional Civil Court should have preferred to adjourn the civil case to await the outcome of the prosecution the applicants had brought for fraud, so as to avoid any intertwining of simultaneous proceedings.

54. As to this same prosecution, attention has to be focused on the period running from the adjournment of the civil proceedings to their resumption (see paragraph 39 above). The preliminary investigation ordered in March 1974, which had already been repeatedly delayed (see paragraphs 21-22 and 24-25 above), made scarcely any headway after the adjournment. Admittedly, the judge dealing with the case took some evidence at the end of 1974 and early in 1975 and the applicants caused some delay by their behaviour (see paragraph 27 above), but that does not explain why the investigation was not concluded until 8 June 1976 (see paragraph 28 above).

55. As soon as the prosecution was discontinued on 25 November 1976, the applicants applied for the civil proceedings to be resumed. The civil court, however, did not receive the files from the criminal court until 22 March 1977 and on the same day it set the date for a hearing (the one of 17 May 1977), which was presided over by a new judge. At the second hearing - on 25 April 1978, that is to say nearly a year after the first hearing - a third judge dealt with the case (see paragraph 15 above). After two further hearings (in September and December 1978), he dismissed the applicants' action on 22 December (see paragraph 17 above). There was accordingly a lapse of two years between the request for the proceedings to be resumed and the delivery of the Regional Civil Court's judgment.

56. In the Government's submission, the Regional Civil Court's long period of inactivity between the first two hearings - eleven months - occurred because the file was not available. It was needed by the disciplinary committee of the Vienna Bar from 20 May to 19 July 1977 and then by the District Criminal Court from 22 July 1977 to 1 February 1978 (see paragraph 15 above). While not overlooking the applicants' share of responsibility for the involvement of those two tribunals (see paragraphs 46-47 above), the Court notes that the forwarding of the documents in the file entailed considerable losses of time.

57. Furthermore, the applicants on several occasions asked for a decision to be given on the merits before the auctioning of their house, which took place on 19 April 1978 (see paragraph 31 above), a few days before the second hearing. The court could therefore not have been unaware at the time of the constantly growing seriousness of what was at stake in the dispute. It is difficult to understand why it did not take steps to avoid any delay.

58. Undoubtedly, the repeated changes of judge slowed down the proceedings, because each of the judges had to begin by acquainting himself with the case; but that cannot exonerate the State, which is responsible for ensuring that the administration of justice is properly organised (see, *mutatis mutandis*, the above-mentioned Guincho judgment, Series A no. 81, p. 16, para. 38).

4. Conclusion

59. Looking at all the material available as a whole, the Court considers that, in the many court proceedings instituted by the applicants as well as the vendors during the period in question (15 May 1972 to 3 September 1980), two stages are open to criticism.

Firstly, as pointed out by the Court of Appeal already in September 1974, the investigation opened against the vendors at the applicants' request took a very long time, i.e., from 13 March 1973 to 8 June 1976. In particular, no explanation has been given as to what happened between 12 May 1975, when the applicants again asked the

investigating judge to question the vendors, and 8 June 1976, when the Vienna Regional Criminal Court closed the investigation.

Secondly, the Vienna Regional Civil Court ought to have conducted the civil proceedings, which were resumed at the applicants' request on 27 December 1976, more speedily, especially since it had the advantage of the lengthy investigation carried out in the first phase of the civil proceedings and in the second phase before they were adjourned, as well as of the file of the criminal proceedings.

This also seems to have been the opinion of the ombudsman (see paragraph 16 above). Apart from the considerable time the civil proceedings had already occupied before they were resumed, the judges responsible for the case should have given consideration to the possible serious consequences for the applicants of any further delay and, on that basis, have handled the case with special diligence. Account must also be taken of the attitude of the administrative authorities.

Although the Court agrees with the Government that the behaviour of the applicants and some of the methods chosen by their different lawyers had a regrettable impact on the Austrian courts' ability to settle the disputes before them with due expedition, it has come to the conclusion that the "reasonable time" stipulated in Article 6 para. 1 (art. 6-1) was exceeded and that this is a situation for which the Austrian authorities must be held partly responsible. There was accordingly a violation of Article 6 para. 1 (art. 6-1).

II. APPLICATION OF ARTICLE 50 (art. 50)

60. By Article 50 (art. 50),

"If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the ... Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party."

61. In their memorial of March 1986 the applicants asked that the Austrian Government should provide them with a property similar to the one they had lost. In the alternative, they claimed lump-sum compensation in an amount of approximately 3 million schillings plus appropriate compensation for non-pecuniary damage. In subsequent observations they also claimed full reimbursement of the costs they incurred in Austria in connection with proceedings relating directly or indirectly to the house concerned.

62. The Government submitted that the applicants had not suffered any pecuniary damage. At all events, the Government contended, there was no causal link between the length of the proceedings and either the auctioning of the house or the greater part of the costs and expenses mentioned. In particular, the applicants would have owed fees to their lawyers even if the civil tribunal had taken its decisions sooner.

The Commission saw, on the contrary, an indirect link: the auction deprived the applicants of any chance of winning their case and thus of avoiding having to pay court costs and lawyers' fees. In any event, part of these latter expenses could have been eliminated if the relevant tribunals had acted with proper expedition. In the Commission's view, the applicants were moreover entitled to compensation for non-pecuniary damage and to the reimbursement of their costs and expenses in so far as these were related to the subject-matter of their application.

63. The Court finds that the question is accordingly ready for

decision (Rule 53 para. 1, first sentence, of the Rules of Court).

64. As to the pecuniary damage, the material before the Court does not warrant the conclusion that compliance with Article 6 para. 1 (art. 6-1) would have prevented the auctioning of the house. On the other hand, the applicants did suffer, on account of the consequences of the length of the proceedings, some loss of real opportunities which justifies an award of just satisfaction in the present case (see, amongst other authorities, the *Sporrong and Lönnroth* judgment of 18 December 1984, Series A no. 88, p. 13, para. 25).

Furthermore, they lived in prolonged uncertainty and anxiety as to the outcome and financial repercussions of the proceedings.

As these factors do not lend themselves to precise quantification, the Court has taken them in together and, as required by Article 50 (art. 50), on an equitable basis (see, *inter alia*, the *Bönisch* judgment of 2 June 1986, Series A no. 103, p. 8, para. 13). It awards the applicants compensation in the amount of 200,000 schillings.

65. The applicants additionally claimed reimbursement of 1,395,622.78 schillings in respect of costs incurred before the national tribunals, including 591,256.69 schillings referable to the civil proceedings in question.

Having regard to the criteria the Court has adopted in previous cases (see, among many others, the above-mentioned *Zimmermann and Steiner* judgment, Series A no. 66, p. 14, para. 36), only the latter sum may be taken into consideration, at least to the extent that the length of the said proceedings, which was partly attributable to the behaviour of the authorities concerned (see paragraphs 52 and 54-59 above), occasioned the applicants additional expenses and that they attempted to shorten the proceedings by a number of their actions (see paragraph 49 in fine above).

As to the Strasbourg proceedings, the applicants presented their own case to the Commission and were granted free legal aid for the proceedings before the Court; under this head they claimed only compensation for the time spent on preparing their submissions.

As it is unable to make an exact assessment, the Court must again determine the matter on an equitable basis. It awards the applicants the sum of 150,000 schillings for costs and expenses.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Holds that there has been a breach of Article 6 para. 1 (art. 6-1);
2. Holds that the respondent State is to pay the applicants 200,000 (two hundred thousand) schillings for damage and 150,000 (one hundred and fifty thousand) schillings for costs and expenses;
3. Rejects the remainder of the claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 23 April 1987.

Signed: Rolv RYSSDAL
President

Signed: Marc-André EISSEN
Registrar