AS TO THE ADMISSIBILITY OF

Application No. 29989/96
by Brigitte BEKERT
against Austria

The European Commission of Human Rights (First Chamber) sitting in private on 27 February 1997, the following members being present:

Mrs. J. LIDDY, President
MM. M.P. PELLONPÄÄ
E. BUSUTTIL
A. WEITZEL
C.L. ROZAKIS
L. LOUCAIDES
B. MARXER
B. CONFORTI
N. BRATZA
I. BÉKÉS
G. RESS
A. PERENIC
C. BÎRSAN
K. HERNDL
M. VILA AMIGÓ
Mrs. M. HION
Mr. R. NICOLINI

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 12 June 1995 by Brigitte BEKERT against Austria and registered on 26 January 1996 under file No. 29989/96;

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 an Austrian national, born in 1947 and residing in Micheldorf (Austria). In the proceedings before the Commission she is represented by Messrs. Themmer, Prunbauer and Toth, lawyers practising in Vienna.

The facts, as submitted by the applicant, may be summarised as follows.

The applicant is the sole statutory heir of her aunt, who had been the owner of an apartment in Vienna. J.G., the defendant in the first proceedings, obtained from the aunt before her death a special power of attorney (Vollmacht) authorising him to conclude on her behalf a sales contract in respect of the apartment. On 6 February 1982 the aunt died. On 30 December 1982 the contract on the sale of the apartment was concluded and J.G. was soon thereafter registered as its owner in the land register (Grundbuch).

Meanwhile, the applicant had instituted proceedings to have the sales contract declared null and void, to have cancelled the registration of J.G. as the owner in the land register, to have herself registered as the owner and to obtain the factual power to dispose of the apartment (Verfügungsgewalt).

On 14 August 1990 she was registered in the land register as the owner of the apartment after having been put as statutory heir into the possession of the estate. Nevertheless, litigation between the applicant and J.G. continued, as the later refused to accept the applicant's rights.

In the following the different procedural steps taken by or against the applicant are set out.

a. The proceedings to have cancelled the registration of J.G. as the owner in the land register

In October 1983 the applicant brought an action against J.G. to cancel the registration of J.G. as the owner of the apartment in the land register (Löschungsklage) on the ground that her aunt had lacked legal capacity when she had signed the special power of attorney authorising J.G. to conclude sales contracts on her behalf. The applicant claimed that the sales contract of her aunt's apartment was consequently null and void.

On 21 December 1984 and 15 March 1985 hearings took place before the Vienna District Court (Bezirksgericht). On 30 December 1985 the applicant was put into the possession of the estate. Between 31 April 1986 and 30 June 1987 further hearings took place before the District Court.

On 19 July 1987 the District Court declared J.G.'s ownership of the apartment null and void and ordered that his registration as the owner in the land register be cancelled.

On 12 April 1988 the Vienna Regional Court (Landesgericht) dismissed J.G.'s appeal.

On 8 February 1990 the Supreme Court (Oberster Gerichtshof) rejected J.G.'s extraordinary appeal on points of law (außerordentlicher Revisionsrekurs).

On 14 August 1990 the Vienna District Court, acting as Land Register Court (Grundbuchsgericht) registered the applicant as the owner of the apartment in the land register (grundbücherliche Einverleibung des Eigentumsrechtes).

b. Re-opening of the proceedings for having J.G. cancelled as owner

On 2 April 1990 J.G. brought an action for the re-opening of the proceedings by which his registration had been cancelled as the owner of the apartment in the land register (Wiederaufnahmsklage). He submitted that he was in the possession of new evidence which he had not been able to use in the previous proceedings.

On 27 June 1990 the Vienna District Court rejected this action as it considered that J.G. had not given sufficient reason for his request for the re-opening of the proceedings.

On 23 April 1991 the Vienna Regional Court dismissed J.G.'s appeal.

On 26 September 1991 the Supreme Court granted J.G.'s extraordinary appeal on points of law (außerordentlicher

Revisionsrekurs), quashed the Regional Court's decision and ordered the District Court to take evidence. It found that contrary to the view of the lower courts the witnesses proposed by J.G. had to be heard in order to get a full picture of the legal capacity of the aunt at the relevant time.

Subsequently the District Court heard six witnesses as well as the parties and obtained a further court expert report by a psychiatrist. On 29 December 1992 it dismissed J.G.'s action as it found that there were no sufficient reasons for re-opening the proceedings.

On 6 July 1993 the Vienna Regional Court dismissed J.G.'s appeal and on 21 October 1993 the Supreme Court rejected J.G.'s further extraordinary appeal on points of law.

c. Eviction proceedings against J.G.

On 7 June 1990, after the proceedings to cancel the registration of J.G. as the owner of the apartment had been terminated, the applicant brought an action for eviction (Räumungsklage) against J.G. who had rented out the apartment to a third person and was still in possession. In these proceedings J.G. claimed that a tacit tenancy contract had been concluded between the applicant and himself, since the applicant had not previously requested him to leave the apartment.

On 21 December 1990 and 21 January 1991 two hearings took place before the Vienna District Court.

On 22 April 1991 the applicant approached the tenant of the apartment and requested him to move out and to hand the keys over to her. The tenant agreed, left the apartment and gave her the keys.

In the court hearing of 14 May 1991 the applicant confined her claim to the costs incurred in the eviction proceedings, because she had, due to the moving out of the tenant, succeeded in obtaining possession of the apartment. This initiative, however, lead to further sets of proceedings against her (see d. and g. below).

On 3 October 1991 the applicant amended her claim and now requested the Court to declare that J.G had no right to be in the possession of the apartment or to dispose of it.

On 21 April 1992 the District Court decided to suspend the proceedings for eviction until the final decision haad been taken in the application to re-opening the proceedings (see b. above). In its decision the Court found that the outcome of the re-opening proceedings was essential for the eviction proceedings, as the latter proceedings presupposed that the applicant was actually the owner of the apartment.

On 25 May 1992 the applicant appealed against this decision.

On 28 July 1992 the Vienna Regional Court dismissed the appeal.

After the District Court, on 8 September 1995, had discontinued enforcement proceedings instituted by J.G. against the applicant (see g. below), she requested, at an unspecified date, that the proceedings be resumed and subsequently concluded a settlement with J.G. concerning the costs of the proceedings.

d. Proceedings for interference with possession

As the applicant had obtained the possession of the apartment by getting the keys from the tenant, J.G., in May 1991, lodged an action against the applicant for interference with his possession (Besitzstörungsklage). He claimed that the applicant's initiative was unlawful. On 12 July 1991 the applicant commented on the action and

on 13 August 1991 the Vienna District Court held a hearing.

On 8 October 1991 the District Court dismissed the action.

On 11 November 1991 J.G. appealed and on 20 December 1991 the applicant commented on the appeal.

On 17 February 1992 the Regional Court dismissed J.G.'s appeal. It found that J.G. lacked a serious interest in receiving legal protection and that he had exercised his right for the sole purpose of causing prejudice to the applicant.

e. Re-opening of the proceedings for interference with possession

On 27 April 1992 J.G. brought an action for the re-opening of the proceedings for interference with his possession. He submitted that the Regional Court had not taken into consideration that the proceedings in his action to re-open the proceedings relating to the cancelling of his registration as the owner of the apartment in the land register (see b. above) had not yet become final. On 3 September 1992 the applicant commented on J.G.'s action.

On 28 September 1992 the Vienna Regional Court decided to re-open the proceedings for interference with possession and found that the applicant had interfered with J.G.'s possession. It ordered the applicant to restore J.G.'s possession by transferring the apartment to him.

Subsequently J.G. instituted enforcement proceedings against the applicant as she refused to transfer the apartment to him (see g. below).

f. Proceedings for a declaratory judgment that J.G. had no right to possession

In response to the enforcement proceedings instituted by J.G. against the applicant on the basis of the Regional Court's decision of 28 September 1992 (see e. above and g. below), the applicant, on 21 April 1993, filed an action for a declaratory judgment (Feststellungsklage) that J.G. had no right to possession of the apartment.

On 12 September 1993 the Regional Court decided to suspend the proceedings for a declaratory judgment until a final decision had been given in the application to re-open of the proceedings to cancel J.G.'s registration as owner in the land register (see b.).

On 23 December 1993 the applicant, referring to the Supreme Court's decision of 21 October 1993 (see b. above), the applicant requested that the proceedings be resumed.

On 29 September 1994 the Regional Court gave a declaratory judgment finding that J.G. had no right to possession of the apartment. It further decided that the applicant had the exclusive right to possession of the apartment.

On 28 February 1995 the Vienna Court of Appeal (Oberlandesgericht) dismissed J.G.'s appeal. J.G. lodged a further extraordinary appeal on points of law (außerordentliche Revision) with the Supreme Court.

On 27 June 1995 the Supreme Court rejected the extraordinary appeal. The Supreme Court found that the applicant had a valid interest in a declaratory judgment since the protection of possession by the law also included protection of the factual possessor (Naturalbesitzer) against persons who had a right to possession. Since the applicant had already been the factual possessor of the apartment the

only avenue for her had been an action for a declaratory judgment. The effect of the findings of a court in such proceedings went beyond any finding in enforcement proceedings, as a declaratory judgment finally settled who was the lawful possessor of a given object. Moreover, the applicant had not been prevented from filing an action for a declaratory judgment by the fact that proceedings for eviction had also been instituted because after the claim had been reduced to one for procedural costs such proceedings could no longer determine the issue of lawful possession.

g. Enforcement proceedings against the applicant

After the Regional Court, on 28 September 1992, had found that the applicant had interfered with J.G.'s possession and as she refused to comply with this decision, J.G., at an unspecified date, instituted enforcement proceedings against her.

On 23 December 1993 the applicant, referring to the Supreme Court's decision of 21 October 1993 finally rejecting J.G.'s claim for re-opening the ownership proceedings (see b. above), requested that the enforcement proceedings against her be discontinued.

On 29 April 1994 the Vienna District Court discontinued the enforcement proceedings against the applicant.

On 26 July 1994 the Regional Court, granted J.G.'s appeal against the District Court's decision and dismissed the applicant's request to discontinue the enforcement proceedings against her. It found that the decision establishing the applicant's ownership did not automatically grant her a right to evict J.G. This issue had to be settled in the eviction proceedings which were still pending (see c. above). Since J.G. had claimed in the eviction proceedings that he had a right to retention due to the investments made by him (Zurückbehaltungsrecht) there was no reason to deny him legal protection.

On 30 November 1994 the Supreme Court confirmed the Regional Court's decision. The Supreme Court also stated that the applicant's allegation that J.G. had introduced enforcement proceedings for the sole purpose of causing prejudice to her could not be taken into consideration in proceedings for discontinuation of enforcement proceedings. Rather, this issue should be raised in an action for opposing enforcement (Oppositionsklage). The Supreme Court's decision was served on the applicant on 22 February 1995.

In April 1995 the applicant brought an action against J.G. in the District Court opposing enforcement of the Regional Court's decision of 28 September 1992 (see e. above).

On 26 May 1995 the District Court decided to suspend the proceedings until the termination of the proceedings for a declaration that J.G. had no right to possession (see f.).

Following the Supreme Court's decision of 27 June 1995 (see f. above), the applicant requested again that the enforcement proceedings against her be discontinued.

On 8 September 1995 the Vienna District Court discontinued the enforcement proceedings.

COMPLAINTS

The applicant complains that the above proceedings had not been terminated within a reasonable time as required by Article 6 para. 1 of the Convention.

She further complains that several decisions given by the

Austrian courts in the proceedings for interference with possession and the ensuing enforcement proceedings deprived her of her right to possession and violated her right under Article 1 of Protocol No. 1 to peaceful enjoyment of her possessions.

THE LAW

1. The applicant complains that the proceedings for obtaining ownership and possession over an apartment which she had inherited from her aunt had not been terminated within a reasonable time as required by Article 6 para. 1 (Art. 6-1) of the Convention.

Article 6 para. 1 (Art. 6-1) of the Convention provides, as far as relevant, as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a ... hearing within a reasonable time ..."

The Commission considers that the applicant's complaint about the length of the proceedings refer to seven sets of proceedings. The subject matters in the various proceedings instituted by and against the applicant were different. The first set of proceedings, which had been instituted by the applicant, concerned the cancelling of J.G.'s registration as owner of an apartment in the land register and its purpose was to bring about the registration of the applicant as owner of that apartment in the land register (see a. of "The Facts"). The second set of proceedings, instituted by J.G., concerned the reopening of these proceedings (see b. of "The Facts"). The third set of proceedings, eviction proceedings instituted by the applicant against J.G., had the purpose of confering on her the right of possession of the apartment (see c. of "The Facts"). Since the applicant had meanwhile obtained possession of the apartment J.G. instituted a fourth set of proceedings, namely proceedings for interference with possession, which had the purpose of having possession of the apartment retransferred to him (see d. of "The Facts"). The fifth set of proceedings concerned the re-opening of these proceedings (see e. of "The Facts"). The sixth set of proceedings concerned the applicant's action for a declaratory judgment and its purpose was to have her de facto possession of the apartment recognised in law (see f. of "The Facts"). Lastly, J.G. introduced proceedings for the enforcement of the decision taken in the proceedings for interference with possession (see g. of "The Facts").

The Commission finds that it has to examine the above mentioned different sets of proceedings separately.

a. As regards the proceedings tor cancel the registration of J.G. in the land register as owner of the apartment at issue (see a. of "The Facts") and the proceedings instituted by J.G. for their re-opening (see b. of "The Facts"), the Commission observes that these proceedings ended with the Supreme Court's decision of 8 February 1990 and the Supreme Court's decision of 21 October 1993 respectively.

However, the applicant introduced her application with the Commission on 12 June 1995 and the Commission, under Article 26 (Art. 26) of the Convention, may only deal with the matter after all domestic remedies have been exhausted and within a period of six months from the date on which the final decision was taken.

It follows that in this respect the applicant has not complied with the time limit stipulated by Article 26 (Art. 26) of the Convention. This part of the application must, therefore, be rejected under Article 27 para. 3 (Art. 27-3) of the Convention.

b. As regards the remaining sets of proceedings the Commission

observes that the proceedings for interference with possession were terminated on 17 February 1992, the re-opening proceedings relating thereto on 28 September 1992, the proceedings for a declaratory judgment on 27 June 1995 and the enforcement proceedings on 8 September 1995. As regards the eviction proceedings against J.G., the Commission observes that these proceedings, after they had been suspended on 21 April 1992, did not lead to a final court decision but merely to settlement between the parties regarding the costs of the proceedings which took place at an unspecified date after 8 September 1995.

However, the Commission need not determine whether or not the applicant has complied in this respect with the six months' time-limit under Article 26 (Art. 26) of the Convention because, for the following reasons the application is, in any event, manifestly ill-founded.

2. The Commission recalls that 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 HR, Vernillo v. Italy judgment of 20 February 1991, Series A no. 198, p. 12, para. 30).

a. As regards the proceedings for interference with possession and the ensuing enforcement proceedings, the Commission finds that these proceedings started in May 1991, when J.G. filed an action for interference with possession, and - assuming that the enforcement proceedings constituted a second stage and natural extension of them - ended on 8 September 1995, when the District Court discontinued the enforcement proceedings against the applicant. Thus, they lasted for approximately four years and four months. The Commission finds, however, that the period from 17 February 1992, when the Regional Court dismised J.G.'s appeal, to 27 April 1992, when J.G. brought an action for re-opening of the proceedings, has to be subtracted (see Eur. Court HR, Poiss v. Austria judgment of 23 April 1987, Series A no. 117-C, p. 103, paras. 51-53). The period relevant under Article 6 para. 1 (Art. 6-1) of the Convention was therefore approximately four years and one month.

The Commission finds that the case was not particularly complex.

As regards the conduct of the authorities, the Commission observes that the action was filed in May 1991, the District Court decided on 8 October 1991 and the Regional Court on 17 February 1992. After having decided to re-open the case, the Regional Court, on 28 September 1992, decided again. The Commission therefore finds that the authorities have dealt speedily with the case.

The applicant, however, did not comply with the Regional Court's decision and J.G. therefore requested the enforcement of the Regional Court's decision. The Commission finds that the enforcement proceedings were brought about by the applicant's conduct and their length is entirely attributable to her.

The Commission therefore finds that in the above proceedings there is no appearance of a violation of the applicant's right under Article 6 para. 1 (Art. 6-1) to a hearing within a reasonable time.

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

b. As regards the proceedings for a declaratory judgment, the Commission notes that these proceedings started on 21 April 1993 when the applicant filed her action and ended on 27 June 1995, when the Supreme Court rejected J.G.'s extraordinary appeal on points of law.

Thus, the proceedings lasted for two years and three months.

The Commission finds that these proceedings were rather complex as they involved difficult questions of law, in particular whether the applicant in view of the different proceedings pending had a valid interest in a declaratory judgment.

As regards the conduct of the authorities and parties, the Commission notes that the applicant filed her action on 21 April 1993, the Regional Court, on 12 September 1993, decided to suspend proceedings pending the outcome of another set of proceedings, on 23 December 1993 the applicant requested that proceedings be resumed and on 23 September 1994 the Regional Court gave its judgment. On 28 February 1995 the Vienna Court of Appeal dismissed J.G.'s appeal and on 27 June 1995 the Supreme Court rejected his extraordinary appeal.

The Commission finds that the Austrian courts dealt speedily with the case, in particular, the suspension of the proceedings ordered by the Regional Court did not lead to any unreasonable delay.

The Commission therefore finds that in the above proceedings there is no appearance of a violation of the applicant's right under Article 6 para. 1 (Art. 6-1) to a hearing within a reasonable time.

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

c. As regards the eviction proceedings against J.G., the Commission observes that these proceedings started on 7 June 1990, when the applicant filed her action. As regards the date of the termination of the proceedings the Commission observes that they did not lead to a final judgment but were terminated by a settlement between the parties concluded at an unspecified date after 8 September 1995. The Commission finds that the proceedings at issue lasted some five years and three months.

In assessing the reasonableness of this duration, the Commission, however, cannot overlook that the eviction proceedings became devoid of their purpose after the applicant, on 22 April 1991, had obtained possession of the apartment. Thus, the purpose of these proceedings was no longer having J.G. evicted but merely the question who had to bear the costs incurred in these proceedings. Moreover, on 21 April 1992 these proceedings had been suspended in order to await the outcome of other proceedings. Although the latter proceedings were terminated on 21 October 1993, the applicant waited at least until 8 September 1995 before requesting the continuation of the eviction proceedings.

In these circumstances the Commission finds that there is no appearance of a violation of the applicant's right under Article 6 para. 1 (Art. 6-1) to a hearing within a reasonable time in the above proceedings.

It follows that also this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the convention.

3. The applicant further complains that several decisions given by the Austrian courts in the proceedings for interference with possession and the ensuing enforcement proceedings deprived her of her right to possession and violated her right under Article 1 of Protocol No. 1 (P1-1) to peaceful enjoyment of her possessions.

Article 1 paragraph 1 of Protocol No. 1 (P1-1) reads 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 Commission recalls that the mere fact that an individual was the unsuccessful party to private litigation concerning the possession or ownership of a thing is not sufficient to engage State responsibility for an alleged violation of Article 1 of Protocol No. 1 (P1-1) (No. 11949/86, Dec. 1.12.86, D.R. 51, p. 195).

The Commission observes that in the various proceedings instituted by the applicant against J.G. or by the latter against her the Austrian courts had to determine which of the two parties was the lawful possessor of an apartment and once this question had been settled, to grant enforcement of the court decision so reached. Moreover, after the applicant had obtained possession of the apartment at issue she remained in possession although, due to the fact that she had obtained possession without having recourse to the assistance of the law enforcing authorities, the lawfulness of this possession remained doubtful for some time.

In these circumstances the Commission finds that there is no appearance of a violation of the applicant's right to peaceful enjoyment of her possessions under Article 1 of Protocol No. 1 (P1-1).

It follows that also this part of 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.

M.F. BUQUICCHIO
Secretary
to the First Chamber

J. LIDDY
President
of the First Chamber