AS TO THE ADMISSIBILITY OF

Application No. 15198/89
by Johann BUCHINGER
against Austria

The European Commission of Human Rights (First Chamber) sitting in private on 13 January 1992, the following members being present:

MM.J.A. FROWEIN, President of the First Chamber
F. ERMACORA
G. SPERDUTI
E. BUSUTTIL
A.S. GÖZÜBÜYÜK
SirBasil HALL
Mr.C.L. ROZAKIS
Mrs.J. LIDDY
MM.M. PELLONPÄÄ
B. MARXER

Mr.M. de SALVIA, Secretary to the First 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 7 April 1989 by Johann BUCHINGER against Austria and registered on 4 July 1989 under file No. 15198/89;

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 parties, may be summarised as follows.

The applicant, born in 1950, is an Austrian national and resident in Vienna. He is receiving a disability pension. Since 20 September 1990 he has been represented by Ms. I. Preclik, a lawyer practising in Vienna.

On 17 March 1981 the applicant lodged an action with the St. Pölten Labour Court (Arbeitsgericht) against his parents, claiming AS 1.203.703 with interest. He submitted that from July 1964 until August 1979 he had gratuitously worked on his parents' farm as agriculturist. He had been promised that he would later take over the farm. However, in August 1979 his parents had stated that that they were passing the farm on to his sister and her family.

On 24 April 1981 the Court held a first hearing (erste Tagsatzung) in the case.

On 30 April 1981 the applicant requested legal aid. The defendants filed comments on 3 June 1981. At the next hearing on 12 June 1981 the applicant was requested to reply to the defendants' submissions within four weeks. On 17 June 1981 he was granted legal aid. Counsel was appointed on 24 June 1981.

On 8 September 1981, after an extension of the time-limit, the

applicant made his submissions in reply and requested in particular the taking of evidence, inter alia the hearing of seventeen witnesses.

On 18 December 1981 the Court fixed the next hearing for 5 February 1982. Upon the request of the applicant's counsel, it was postponed until 19 February 1982.

In submissions of 18 February 1982 the defendants requested the hearing of five witnesses.

At the hearing of 19 February 1982 the Labour Court decided to take evidence, in particular on the scope of the applicant's work as well as expenses made by the defendants on his behalf. The Court decided to consult documents, to inspect localities, to have an expert opinion prepared and to hear numerous witnesses.

On 7 May 1982 the Court, upon the request of the applicant's counsel, postponed the next hearing fixed for 28 May 1982 until 25 June 1982.

At the hearing on 25 June 1982, the applicant increased his claim to AS 3,942,829. The proceedings were suspended in view of private settlement negotiations between the parties.

On 19 January 1983 the applicant requested that the proceedings be continued and that a date for an oral hearing be fixed.

On 23 March 1983, following further written submissions by the parties, the Court summoned them as well as three witnesses for a hearing on 6 May 1983.

On 5 May 1983 the applicant's sister and her husband joined the proceedings as co-defendants. By contract of February 1981 concerning the transfer of their parents' farm they had agreed to compensate them for any payments towards the applicant.

At the hearing of 6 May 1983, the parties unsuccessfully conducted further settlement negotiations. The hearing of the witnesses was postponed until 20 June 1983. The Court then heard one witness and the parties.

On 22 August 1983 the hearing was continued and six witnesses were heard. The Court fixed 11 October 1983 as further date to hear the parties. It also decided that the applicant should no longer be granted legal aid on the ground that he had sufficient income.

On 15 September 1983 the applicant lodged an appeal (Rekurs) against the refusal of legal aid, which was transmitted to the St. Pölten Regional Court (Kreisgericht). The Regional Court ordered inquiries concerning the applicant's income.

At the hearing of 11 October 1983, which the applicant could not attend due to a serious traffic accident, his counsel requested that the files be transmitted to the District Court, sitting in custody matters, in order to examine the applicant's capacity to sue (Prozeßfähigkeit).

On 27 October 1983 the St. Pölten Regional Court, upon the applicant's appeal, quashed the Labour Court's decision that he should no longer be granted legal aid. The decision was served on 15 December 1983 together with the summons for a hearing on 23 January 1984.

On 23 January 1984 the St. Pölten Labour Court, having heard the applicant, ordered the defendants to pay him AS 166.659 with interest, and dismissed the remainder of the action. The applicant was ordered to pay the defendants' legal expenses of AS 69,993 and the co-defendants' legal expenses of AS 180,656. The Court found that the

applicant had worked on his parents' farm from 1964 until 1979. He had had free board and lodging, and clothing, several cars and other goods of daily living had been financed by his parents. He had also received proceeds after the sale of cattle on several occasions, but no regular payment for his work. The Court assessed the applicant's claims for payment with regard to scales of minimum wages in the years concerned, and calculated a total claim of AS 184,659. It deducted the defendants' counterclaim of AS 18,000. The written judgment was served on 6 July 1984.

On 30 July 1984 the applicant lodged an appeal (Berufung), the co-defendants did so on 2 August 1984.

On 14 September 1984 the St. Pölten Regional Court fixed 10 October 1984 as date for a hearing of the appeals.

By letter of 24 September 1984 the applicant's counsel, after discussion of the case with the applicant, informed the Regional Court about his doubts as regards the applicant's capacity to sue, and requested that proceedings be instituted to appoint a guardian for the applicant, and to consider a suspension of the appeal proceedings.

On 2 October 1984 the St. Pölten Regional Court postponed the hearing sine die and submitted the files to the Hietzing District Court (Bezirksgericht) for opening of guardianship proceedings. The District Court was requested to prepare the necessary copies, to send the files back as soon as possible and to indicate about any measures that were taken.

On 11 April 1985 the St. Pölten Regional Court requested the Hietzing District Court for information about the state of the guardianship proceedings. On 23 April 1985 the District Court stated that the guardianship proceedings had been discontinued on 1 April 1985, and that the files would be send back as soon as this decision had become final. On 4 June 1985, after a reminder on 28 May, the files were received at the Regional Court.

On 2 July 1985, at the oral hearing before the St. Pölten Regional Court, the parties again conducted extensive settlement negotiations and agreed to have the proceedings again suspended. The files were thereupon sent back to the St. Pölten Labour Court, but returned in September 1985.

On 10 October 1985 the applicant requested the St. Pölten Regional Court to fix a hearing in order to reach a judicial settlement. On 18 October 1985 the hearing was fixed for 26 November 1985. At the hearing on 26 November 1985 the applicant was requested to specify his claims, and 17 January 1986 was fixed as date for the next hearing.

On 13 December 1985 the Regional Court requested other authorities to provide information relevant to the case.

On 15 January 1986 the applicant filed the requested information.

At the hearing on 17 January 1986 the Regional Court heard the applicant, and then postponed the hearing until 7 March 1986.

On 21 February 1986 the Regional Court postponed the hearing until 25 April 1986 on account of the Presiding Judge's absence for personal reasons. On 27 February 1986 one of the assisting judges stated that he would be absent on 25 April for professional reasons. On 2 April 1986 the hearing was fixed for 27 May 1986.

At the hearing of 27 May 1986 the St. Pölten Regional Court heard the defendants. The Court then decided to take expert evidence on the questions of how many working hours per year in the period from 1964

until 1979 had been necessary to manage the defendants' and co-defendants' farm, whether initiatives taken by the applicant during that period had resulted in higher production, and as regards the profitability of the farm in the period concerned. The parties agreed with the Court's proposal to appoint Mr. B. as expert.

On 19 June 1986 B. was appointed as expert and requested to deliver his opinion upon the above-mentioned questions within three months.

On 10 September 1986 the applicant reduced his claims to AS 1,700,415.

On 28 October 1986 the Presiding Judge requested the expert B. to indicate when he expected to submit the opinion. B replied that the opinion would be ready in some weeks time, due to holidays and his workload, it could not be prepared earlier.

On 5 November 1986 the expert inspected the localities at the defendants' and meanwhile co-defendants' farm.

On 3 December 1986 the Presiding Judge requested B. again to indicate when the opinion would be delivered and what circumstances delayed its preparation.

On 12 December 1986 the expert opinion as well as a supplement were received by the Regional Court. Together with the expert's bill of costs, it was served upon the parties for comments.

On 30 December 1986 the files were transmitted to the Vienna Court of Appeal (Oberlandesgericht), which became competent under a 1985 amendment of the Labour- and Social Courts Act (Arbeits- und Sozialgerichtsgesetz).

On 12 January 1987 the applicant filed his comments and requested that the expert B. should attend the next oral hearing. On 21 January 1987 the defendants and co-defendants filed their comments and requested that the opinion be supplemented.

On 10 March 1987 the Vienna Court of Appeal requested the expert B. to supplement, within three weeks, his opinion with regard to the parties' comments. The supplementary opinion and a further bill of costs were filed on 19 May 1987. On 24 June 1987 the Court of Appeal fixed the expert's costs, which were to be jointly borne by the parties.

On 29 September 1987 the Vienna Court of Appeal held an oral hearing and heard in particular the expert B. The applicant's request to have a second expert opinion prepared as well as further requests to take evidence were dismissed. In its written judgment of the same date, the Court of Appeal, upon the applicant's appeal, amended the Labour Court's judgment to the effect that the defendants were ordered to pay the applicant AS 400.000 with interest. The remainder of the appeal was dismissed. The Court of Appeal, having heard the parties and again established the facts, found that the applicant should be compensated for his gratuitous work and reassessed the amounts due with regard to collective agreements on wages for agricultural workers in the years concerned, the profitability of the farm and the payments in kind which the applicant had obtained. The judgment was served on 10 February 1988.

In March 1988 both parties lodged appeals on points of law (Revisionen) against the judgment of 29 September 1987. On 20 May 1988 the St. Pölten Regional Court transmitted the files to the Vienna Court of Appeal, which forwarded them to the Supreme Court (Oberster Gerichtshof) where they were received on 20 June 1988.

On 13 July 1988 the Supreme Court dismissed the applicant's appeal on points of law. Upon the defendants' appeal on points of law, the previous judgments were amended to the effect that the defendants were ordered to pay the applicant AS 283,530 with interest; that the remainder of the applicant's claim was dismissed and that the applicant had to compensate the defendants' procedural costs of about AS 500,000. The remainder of their appeal on points of law was dismissed. The Supreme Court found that the Court of Appeal had incorrectly assessed the amount of payments due in taking overtime into account, which did not follow from the needs of the farm in question. The decision was served on 14 October 1988.

Further decisions concerning the costs of the proceedings were taken by the St. Pölten Labour Court on 13 February 1989 and, upon the applicant's appeal (Rekurs), by the Vienna Court of Appeal on 19 April 1989.

COMPLAINTS

1.The applicant complains under Article 6 para. 1 of the Convention about the length of the labour court proceedings.

2. The applicant also complains under Articles 6, 13 and 14 of the Convention and Articles 1 and 2 of Protocol No. 1 to the Convention that the Austrian courts did not adjudicate an appropriate payment for his work, and that the proceedings concerned were unfair. He contends in particular that the courts incorrectly assessed the evidence before them.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 7 April 1989 and registered on 4 July 1989.

On 9 November 1989 the Commission decided to bring the application to the notice of the respondent Government and invite them to submit written observations on its admissibility and merits as regards the length of the Austrian court proceedings.

On 6 February 1990 the respondent Government submitted its observations, and the observations in reply were submitted by the applicant on 4 March 1990.

On 16 March 1990 the Commission decided to grant the applicant free legal aid.

The applicant made further submissions on 13 June and 19 July 1990 as well as on 18 January 1991.

On 8 January 1991 the Commission referred the application to the Second Chamber.

The applicant's representative submitted observations in reply to the Government's observations on 10 October 1991.

THE LAW

1.The applicant complains about the length of proceedings before Austrian labour courts. He relies upon Article 6 para. 1 (Art. 6-1) of the Convention which, insofar as relevant, provides:

"In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal

established by law."

According to the applicant, the length of the labour court proceedings instituted by him is in breach of the "reasonable time" requirement under Article 6 para. 1 (Art. 6-1). The Government take the opposite view.
The Commission finds that the applicant's complaint about the length of the labour court proceedings instituted by him raises questions of fact and law which require an examination of the merits. This part of the application is therefore not manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention. No other ground for declaring it inadmissible has been established.

2. The applicant also complains under Articles 6, 13 and 14 of the Convention and Articles 1 and 2 of Protocol No. 1 (Art. 6, 13, 14, P1-1, P1-2) to the Convention that the Austrian courts did not adjudicate an appropriate payment for his work, and that the proceedings concerned were unfair. He contends in particular that the courts incorrectly assessed the evidence before them.

With regard to the judicial decisions of which the applicant complains, the Commission recalls that, in accordance with Article 19 (Art. 19) of the Convention, its only task is to ensure the observance of the obligations undertaken by the Parties in the Convention. In particular, it is not competent to deal with an application alleging that errors of law or fact have been committed by domestic courts, except where it considers that such errors might have involved a possible violation of any of the rights and freedoms set out in the Convention (see e.g. No. 458/59, Dec. 29.3.60, Yearbook 3 pp. 222, 236; No. 5258/71, Dec. 8.2.73, Collection 43 pp. 71, 77; No. 7987/77, Dec. 13.12.79, D.R. 18 pp. 31, 45).

The applicant's submissions do not disclose any appearance of a violation of his right to a fair trial by an impartial court. There is no indication that the applicant, represented by counsel, could not properly present his arguments, or that the proceedings were otherwise improperly conducted. In particular, it does not appear that the taking and assessment of evidence by the Austrian courts were unfair and arbitrary.

Moreover, there is no indication of a violation of the other rights invoked by the applicant, in particular his right to education under Article 2 of Protocol No. 1 (P1-1).

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.

For these reasons, the Commission, unanimously,

DECLARES ADMISSIBLE the applicant's complaint about the length of the Austrian court proceedings
without prejudging the merits of the case;

DECLARES INADMISSIBLE the remainder of the application.

Secretary to the First ChamberPresident of the First Chamber

(M. de SALVIA)(J.A. FROWEIN)