AS TO THE ADMISSIBILITY OF

Application No. 21985/93
by Elisabeth GIRARDI
against Austria

The European Commission of Human Rights (First Chamber) sitting in private on 17 May 1995, the following members being present:

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

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 10 April 1993 by Elisabeth Girardi against Austria and registered on 7 June 1993 under file No. 21985/93;

Having regard to the report provided for in Rule 47 of the Rules of Procedure of the Commission;

Having regard to the observations submitted by the respondent Government on 31 October 1994, after an extension of the time-limit and the observations in reply submitted by the applicant on 8 December 1994;

Having deliberated;

Decides as follows:

THE FACTS

The facts, as they have been submitted by the parties, may be summarised as follows.

The applicant, an Austrian citizen, born in 1951, is living in Vienna. The applicant is the mother of three children born in wedlock in 1973, 1974 and 1976, respectively. The spouses separated in 1982. The custody over the children born in 1973 and 1974 was assigned to the applicant, the custody over the child born in 1976 to his father.

Since April 1977 proceedings relating to custody and other matters concerning the children are pending before the Floridsdorf District Court (Bezirksgericht).

On 31 December 1988 the applicant, on behalf of her children born in 1973 and 1974, applied with the Floridsdorf District Court that her divorced husband be ordered to increase his maintenance payments by AS 600 per month and per child, as from 1 January 1989, as compared

with the amount of AS 4550 per child fixed by the Court on 12 August 1986. Her request was received at the Court on 3 January 1989.

On 16 February 1989 the applicant challenged the judicial officer (Rechtspfleger) at the Floridsdorf District Court dealing with her case for bias, which she withdrew on 5 May 1989.

On 10 August 1989 the Floridsdorf District Court took a decision on various earlier requests of the applicant regarding the increase of the maintenance payments in respect of periods in 1987 and 1988, and other financial matters. The amounts of increase for these periods varied between AS 200 and AS 1100 per month. The Court also stated that the applicant's request regarding the maintenance payments as from 1 January 1989 would be dealt with following further investigations.

On 25 August 1989 the applicant appealed against the decision of 10 August 1989 with the Vienna Regional Court (Landesgericht).

On 1 September 1989 the applicant amended her claims regarding the period as from January 1989 to amounts of increase between AS 950 and AS 2000 per month.

On 29 November 1989 the Vienna Regional Court (Landesgericht), upon the applicant's appeal (Rekurs), amended the District Court's decision, granting a higher increase in respect of four months in 1987, and dismissed the remainder of the appeal. The decision and the files were received at the District Court on 28 December 1989.

In the beginning of 1990 the files were forwarded to the Vienna Juvenile Court (Jugendgerichtshof) in the context of proceedings to withdraw the applicant's custody in respect of her child born in 1973. The applicant's custody was withdrawn in April 1990, the proceedings were disposed of by declaring the child of full age in January 1991, decision which became final in October 1992. Proceedings regarding further financial matters, in particular the applicant's obligation to pay maintenance for the child concerned, continued to be pending before the Vienna Juvenile Court. In May 1993, the Juvenile Court returned the files.

On 22 October 1993 the Floridsdorf District Court partly granted the applicant's request of 31 December 1988 as amended in September 1989, to the extent that it concerned the child born in 1974. The Court granted an increase which varied between AS 200 and AS 1550 per month and dismissed the remainder of her claims.

On 7 December 1993 the Vienna Regional Court rejected the applicant's appeal on behalf of her child, born in 1974, meanwhile an adult, and dismissed the appeal brought by this child on its own.

COMPLAINTS

The applicant complains that her request relating to a rise of maintenance payments for her children as from 1 January 1989 was not dealt with within a reasonable time.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 10 April 1993 and registered on 7 June 1993.

On 29 June 1994 the Commission decided to communicate the application to the respondent Government for observations on the admissibility and merits.

On 31 October 1994, after an extension of the time-limit, the Government submitted their observations. The observations in reply by

the applicant were submitted on 8 December 1994.

THE LAW

1. The applicant complains about the length of the proceedings regarding her request of 31 December 1988 for an increase of maintenance payments in respect of two of her children.

Article 6 para. 1 (Art. 6-1), so far as relevant, provides that "in the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time".

2. The proceedings at issue concerned maintenance claims and fall to be examined under Article 6 para. 1 (Art. 6-1) of the Convention. The Commission notes that the applicant brought the proceedings on behalf of her children, who were minor at the relevant time. The Commission, taking into account the applicant's position in these proceedings and the impact of their outcome on her own financial situation, finds that the applicant is entitled to complain about the length of the proceedings.

3. The Government maintain that the applicant failed to exhaust, as required by Article 26 (Art. 26) of the Convention, the remedies available to her under Austrian law. They submit that the applicant failed to complain about the length in the course of the domestic court proceedings and did not lodge a request under S. 91 of the Court Organisation Act 1990 (Gerichtsverfassungsgesetz) that, in view of the alleged delay, the superior court should fix an appropriate time-limit for the conduct of the court proceedings.

According to Article 26 (Art. 26), the "Commission may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law".

The Commission notes that S. 91 of the Austrian Court Organisation Act, which entitles the parties to court proceedings to lodge a request with the superior court to fix a time limit in respect of a delayed procedural step, entered into force on 1 January 1990 when the proceedings in question were already pending for one year. At that stage, the District Court had already been dealing with the applicant's request of December 1988 and, in its decision of 10 August 1989, postponed the examination thereof, and the Regional Court had decided on the applicant's appeal on 29 November 1989.

The Commission finds that it is thus not faced with the issue of an alleged absence of any reaction of the competent court to a procedural request (cf. No. 19369/92, Dec. 8.1.93, not published). In the circumstances of the present case, a request under S. 91 of the Court Organisation Act cannot be considered as an effective remedy to ensure, regarding the proceedings as a whole, a determination of the applicant's civil rights and obligations within a "reasonable time" within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention.

The application cannot, therefore, be rejected for non-compliance with the condition as to the exhaustion of domestic remedies under Article 26 (Art. 26) of the Convention.

4. As regards the merits of the complaint, the Government, referring to the case-law of the Convention organs, argue that the length of the proceedings was mainly due to the complexity of the case. In this respect, they refer to the numerous other matters related to the proceedings at issue, and the proceedings before the Vienna Juvenile Court. They consider that no substantial delays were imputable to the Austrian authorities. According to the Government, the applicant herself was responsible for the delays in that she filed numerous submissions and thereby caused difficulties to survey the file and to decide upon all of her requests in due time.

The Commission considers, in the light of the criteria established by the case-law of the Convention institutions on the question of "reasonable time" (the complexity of the case, the applicant's conduct and that of the competent authorities), and having regard to all the information in its possession, that a thorough examination of this complaint is required, both as to the law and as to the facts.

For these reasons, the Commission unanimously

DECLARES THE APPLICATION ADMISSIBLE,
without prejudging the merits of the case.

Secretary to the First Chamber — President of the First Chamber

(M.F. BUQUICCHIO) — (C.L. ROZAKIS)