CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

THIRD SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 33505/96
by H. E.
against Austria

The European Court of Human Rights, sitting on 28 August 2001 as a Chamber composed of

Mr J.-P. COSTA, *President*,
Mr W. FUHRMANN,
Mr L. LOUCAIDES,
Sir Nicolas BRATZA,
Mrs H.S. GREVE,
Mr K. TRAJA,
Mr M. UGREKHELIDZE, *judges*,
and Mr T.L .EARLY, *Deputy Section Registrar*,

Having regard to the above application introduced with the European Commission of Human Rights on 14 October 1996 and registered on 21 October 1996,

Having regard to Article 5 § 2 of Protocol No. 11 to the Convention, by which the competence to examine the application was transferred to the Court,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr H.E., an Austrian national, was born in 1941. He is represented before the Court by Mr P. Gatternig, a lawyer practising in Vienna. By letter of 15 April 2000, the applicant's counsel informed the Court that the applicant had died and that his three adult children, who are his heirs, wished to pursue their father's application.

The applicant owned a house in Vienna which is subject to rent control under the Rent Act 1981.

On 21 March 1985, he applied to the Vienna Arbitration Board (*Schlichtungsstelle*) for an increase in the rent payable by his tenants to enable repairs to the house. The increase was granted on 25 June 1985.

On 28 June 1985, several tenants filed an appeal against this decision with the Hernals District Court (*Bezirksgericht*). The court held hearings on 25 October 1985, 24 January and 28 February 1986. On 27 May 1986, the court determined the classification of the respective apartments for the purposes of rent calculation under the Rent Act. It dismissed one tenant's request to render an interlocutory decision on a preliminary issue as it could be joined to the merits. On 18 November 1987, the Vienna Regional Civil Court (*Landesgericht für Zivilrechtssachen*) dismissed that tenant's appeal concerning an interlocutory decision.

The District Court held a further hearing on 26 August 1988. It appointed an expert on 8 September and, after this expert had declared bias, appointed another expert on 5 October 1988. On 2 March 1989, following two extensions of the time-limit set for this purpose, the applicant submitted documents required by the court. On 16 May 1989 the expert submitted his opinion. Thereupon, further hearings were held on 5 October 1989, 23 January, 18 May and 18 October 1990 and 6 February 1991. A hearing which had been scheduled for 16 May 1991 had to be postponed to 9 August 1991 as the court had failed to serve the applicant's submissions on the other parties in time. At the hearing of 9 August 1991 the judge closed the taking of evidence.

On 16 March 1992, the proceedings were resumed for the taking of further evidence and hearings were held on 8 July and 18 December 1992, and on 20 April 1993 when the proceedings were adjourned for delivery of a written judgment. The applicant was ordered to submit further documents which he did on 11 May 1993.

Throughout the District Court proceedings the judge responsible for dealing with the case changed four times. The parties made numerous requests for the taking of evidence. One tenant in particular filed numerous objections against the minutes of the hearings.

On 29 June 1994, the applicant filed an application under section 91 of the Courts Act (*Gerichtsorganisationsgesetz*) for a time-limit to be fixed for the delivery of the written judgment. On 20 October 1994, the Vienna Regional Civil Court granted this application and set a time-limit of six weeks.

On 12 June 1995, the District Court dismissed the applicant's claim for a rent increase. The applicant's appeal against the decision of 1 July 1995 was dismissed by the Vienna Regional Civil Court on 12 December 1995.

On 16 April 1996, the Supreme Court (*Oberster Gerichtshof*) dismissed the applicant's appeal on points of law, noting that the conditions of section 528 § 1 of the Code of Civil Procedure were not met. According to this provision, an appeal on points of law against the decision of an appellate court is only admissible if it raises a legal issue of particular importance for the uniformity, certainty, or further development of the law. The judgment was served on 24 May 1996.

COMPLAINTS

The applicant complains under Article 6 § 1 of the Convention about the length of the proceedings.

The applicant also complains under Article 6 § 1 about the alleged unfairness of the proceedings. In particular, he submits that the Supreme Court failed to give reasons for its decision. Further, he alleges that the courts wrongly applied the law in that they made an *ex post* assessment of the rent paid instead of an *ex ante* calculation of potential rent when assessing whether an increase of rent was justified for carrying out repair works. In this respect the applicant also invokes Article 1 of Protocol No. 1.

THE LAW

The applicant complains under Article 6 § 1 of the Convention about the length and alleged unfairness of the proceedings. Article 6 § 1, so far as relevant, provides as follows:

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

1. The Court notes at the outset that the applicant died after the introduction of the application and that the applicant's counsel has informed the Court that the applicant's three children who are also his heirs wish to pursue the application.

The Court recalls that it has accepted on a number of occasions that the close relatives of a deceased applicant may be entitled to take his or her place (see for instance the Scherer v. Switzerland judgment of 25 March 1994, Series A no. 287, p. 14-15, § 31 with further references). In the present case, the Court accepts that the applicant's children may pursue the application.

2. As to the applicant's complaint about the length of the proceedings, the Court considers that the case started on 21 March 1985, when the applicant applied to the Arbitration Board, which was a necessary prerequisite for bringing judicial proceedings, and ended on 24 May 1996 when the Supreme Court's judgement was served. They thus lasted more than eleven years and two months over four levels of jurisdiction, with interim procedural matters and an appeal. For nearly ten years the proceedings were pending before the District Court.

According to the applicant, the length of the proceedings is in breach of the "reasonable time" requirement laid down in Article 6 § 1 of the Convention.

The Government reject the allegation and maintain that the case was complex and that the delays are mainly attributable to the parties' conduct.

The Court considers, in the light of the criteria established in its case-law 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 an examination of the merits of this complaint is required.

3. As to the applicant's complaint about the alleged unfairness of the proceedings, the Court recalls that it is not its task to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention (*Garcia Ruiz v. Spain* [GC], no. 30544/96, ECHR 1999-I § 28). The Court finds no indication of a violation of Article 6 in the present case. In particular, having regard to the fact that the applicant's case has been examined in hearings and judgments given in two instances, the Court finds it acceptable under Article 6 § 1 for a supreme court to dismiss an appeal on points of law by mere reference to the relevant legal provisions governing the admissibility of such appeals (cf. *Sawoniuk v. the United Kingdom* (dec.), no. 63716/00, 29.5.2001).

It follows that this part of the application must be rejected as being manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

4. The applicant also invokes Article 1 of Protocol No. 1 as regards his complaint that the courts wrongly applied the relevant law. However, the complaint as submitted by the applicant does not disclose any indication of a violation of the applicant's property rights.

It follows that this part of the application must also be rejected as being manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares admissible, without prejudging the merits, the applicant's complaint relating to the length of the proceedings;

Declares inadmissible the remainder of the application.

T.L. EARLY
Deputy Registrar

J.-P. COSTA
President