AS TO THE ADMISSIBILITY OF

Application No. 18287/91
by Helmut HARRAUER
against Austria

The European Commission of Human Rights (First Chamber) sitting in private on 19 February 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

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 17 December 1990 by Helmut HARRAUER against Austria and registered on 30 May 1991 under file No. 18287/91;

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 applicant, may be summarised as follows.

The applicant, born in 1944, is an Austrian national and resident at Traun. He is a farmer by profession. Before the Commission he is represented by Mr. K. Puchmayr, a lawyer practising in Linz.

On 25 July 1984 Mrs. S. instituted civil proceedings before the Wels Regional Court (Kreisgericht) against Mr. H. and the applicant which related to the transfer of real property. The plaintiff claimed a declaratory judgment concerning the validity of a contract of 1982 on the purchase of the real property concerned, which had been concluded between Mr. H., herself and her meanwhile deceased husband. In these court proceedings, the applicant was represented by counsel.

In the course of the proceedings at first instance, the parties further negotiated on the transfer of the property in question, and in particular the applicant took further steps to implement his property rights. Thus his contract with Mr. H. concerning the purchase of the agricultural property in question was administratively authorised in May 1985, and he subsequently was entered as owner into the land registry. The plaintiff several times amended her claims.

On 29 July 1987 the Wels Regional Court passed a declaratory judgment according to which, first, the contract of November 1982 between Mr. H. on the one side, and the plaintiff as well as her husband on the other side, which concerned the transfer of real property (Übergabevertrag), was valid; and, second, the entry in the land registry of the applicant's property rights as regards this real property was invalid and had to be quashed.

In its detailed judgment, the Regional Court found in particular that Mr. H. had been the sole owner of the agricultural property concerned. In November 1982, following unsuccessful negotiations with other persons interested in the property, Mr. H. as vendor, and the plaintiff and her husband as purchasers, signed a notarial contract concerning the purchase of the property concerned. On the part of the purchasers, the negotiations had been conducted by one Mr. B. who had expressed an interest in acquiring the property himself and told Mr. H. that the plaintiff and her husband had only been named as purchasers in order to secure the authorisation under the Real Property Transactions Act (Grundverkehrsgesetz). The plaintiff's husband died in January 1983, the plaintiff being the sole heir. In January 1984 the purchase by the plaintiff was authorised under the Real Property Transactions Act, and in July 1984 the plaintiff was entered into the land registry. Already in June 1984 Mr. H. had informed the plaintiff that he intended to withdraw from the contract. In July 1984 Mr. H. and the applicant concluded a notarial contract concerning the purchase of the property concerned. In May 1985, in the context of agricultural land settlement proceedings (landwirtschaftliches Siedlungsverfahren), the contract between Mr. H. and the applicant was authorised, and the applicant was entered into the land registry.

The Regional Court proceeded from numerous documents in respect of the negotiations between the parties, and their correspondence with third persons, which mainly dated from 1982 until 1985, some from 1986 and January 1987. It also consulted files of other court proceedings, e.g. between the plaintiff and Mr. B., and heard eight witnesses.

The Regional Court considered that it was irrelevant whether or not the contract of 1982 constituted a fiduciary transaction for a third person in order to circumvent provisions of the Real Property Transactions Act, as such agreements would not render the purchase of the real property as such null and void. Further objections of the defendants as to the validity of the purchase were dismissed. Thus the applicant, who had later concluded a contract with Mr. H. on the transfer of the property concerned on the condition that the first contract was void, had been incorrectly entered in the land registry.

The value in dispute (Streitwert) was fixed at AS 1,150,000, i.e. the price of the real estate fixed in the contract of 1982. The judgment was served on 27 August 1987.

On 14 October 1988 the Linz Court of Appeal (Oberlandesgericht) dismissed the appeal (Berufung) of Mr. H. Upon the applicant's appeal, the order for costs was amended, but the remainder of his appeal was dismissed. As regards the value in dispute in the appeal proceedings, the Court of Appeal, having regard to the tax value (Einheitswert) of the real estate in question, indicated that it was above AS 60,000, but below AS 300,000. The judgment was served on 10 November 1988.

On 27 April 1989 the Austrian Supreme Court (Oberster Gerichtshof), upon both defendants' appeals on points of law (Revisionen), quashed the judgment of 14 October 1988 and sent the case back to the Court of Appeal. The Supreme Court, referring to its case-law, considered in particular that transactions intended to circumvent legal provisions, e.g. an authorisation under the Real Property Transactions Act, were not necessarily null and void, but in abeyance until termination of the authorisation proceedings in respect of the real, not the fiduciary transaction. However, the plaintiff had claimed a declaratory judgment of her unconditional property right, the Court of Appeal should have, therefore, clarified in how far the contract of 1982 constituted a fiduciary transaction. The judgment was apparently served in June 1989.

On 15 December 1989 the Linz Court of Appeal again dismissed the appeal of Mr. H., and upon the applicant's appeal, amended the order

for costs, but dismissed its remainder. The Court of Appeal, having heard a further witness, found in particular that the defendants had failed to prove the fiduciary nature of the contract of 1982. Having regard to the Supreme Court's case-law, the Court of Appeal rejected the defendants' requests to hear further witnesses on the ground that the evidence concerned could have been taken in the first set of proceedings and the defendants had not, or had unsuccessfully appealed in this respect. As regards the value in dispute in the appeal proceedings, the Court of Appeal indicated that it was above AS 60,000, but below AS 300,000. The Court of Appeal, having regard to its refusal to take further evidence, declared that the defendants could lodge an appeal on points of law. The judgment was served on 2 February 1990.

On 7 June 1990 the Supreme Court rejected the defendants' appeals on points of law, considering that the Court of Appeal had correctly applied the relevant provision of the Austrian Code of Civil Procedure (Zivilprozeßordnung). There was accordingly no relevant procedural question requiring an examination by the Supreme Court. The decision was served on 18 July 1990.

COMPLAINTS

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

2.Furthermore the applicant complains under Article 6 para. 1 and Article 7 of the Convention about the Austrian court decisions and the proceedings concerned. He submits in particular that the Court of Appeal arbitrarily fixed the value in dispute below the pecuniary limit for an appeal on points of law and thus prevented a review of the merits of his case by the Supreme Court.

THE LAW

1.The applicant complains about the length of the civil proceedings instituted against him and Mr. H. He invokes Article 6 para. 1 (Art. 6-1) of the Convention which guarantees that "in the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within reasonable time".

The proceedings were instituted on 25 July 1984 and lasted until 18 July 1990, i. e. six years.

The Commission examined the complaint about the length of the civil proceedings in the light of the criteria established in the case-law of the Convention organs on the question of "reasonable time" (cf. Eur. Court H.R., Vernillo judgment of 20 February 1991, Series A No. 198, para. 30).

The case related to the validity of a contract on the transfer of real property and involved questions of the fiduciary nature of the transaction, a possible circumvention of legal provisions and other objections against the validity of the contract. The Commission finds that the proceedings were of some complexity as regards the legal and factual issues.

As regards the conduct of the parties, the Commission notes that the plaintiff amended her action several times, apparently in accordance with the further legal steps taken by the applicant with regard to the purchase of the property concerned, in particular his request for authorisation and his entry into the land registry in May 1985. Some documentary evidence was only submitted at a later stage of the proceedings at first instance. Furthermore, the applicant did not show that at any stage, in particular in course of the proceedings at first instance, the parties acted with the necessary diligence in

order to accelerate the proceedings. Thus the parties contributed to the length of the proceedings.

The Commission has next examined the conduct of the Austrian judicial authorities.

The Commission notes that in the civil action against the applicant and Mr. H. the Austrian courts passed five judgments in two sets of proceedings during a period of six years. The proceedings were pending at first instance for about three years. The first round of appeal proceedings before the Linz Court of Appeal lasted for about one year and two months. The Supreme Court rendered its first judgment within approximately six months. The second set of proceedings before the Linz Court of Appeal lasted about seven months. Subsequently, the proceedings were terminated before the Supreme Court after less than four months.
The Commission finds that the applicant, who complains in general about the overall length of the proceedings, did not show any particular delay to be imputed to the Austrian judicial authorities. In particular, there is no indication of any considerable periods of inactivity or otherwise undue delays in the first set of proceedings before the Wels Regional Court, which lasted about three years. Rather, it appears that the Regional Court advanced the case in accordance with the repeated amendments of the plaintiff's claims and both parties' further submissions.

In these circumstances, the Commission considers that the length of the civil proceedings against the applicant did not exceed a reasonable time within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention.

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.

2.The applicant also complains under Article 6 para. 1 and Article 7 (Art. 6-1, 7) of the Convention about the Austrian court decisions and the judicial proceedings concerned.

With regard to these complaints, 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 Commission observes that Article 7 (Art. 7) of the Convention only applies to criminal cases, and considered the applicant's complaints under Article 6 para. 1 (Art. 6-1). The Commission finds that there is no indication that the applicant, who was represented by counsel, could not properly present his arguments, or that the proceedings were otherwise unfairly conducted. In particular, it does not appear that the Linz Court of Appeal arbitrarily fixed the value in dispute below the pecuniary limits for an appeal on points of law.

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

For these reasons, the Commission, by a majority,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the First Chamber | President of the First Chamber

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