AS TO THE ADMISSIBILITY OF

Application No. 19570/92
by Rudolf HEGGLI
against Liechtenstein

The European Commission of Human Rights (First Chamber) sitting in private on 31 March 1993, the following members being present:

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

Mrs. M.F. BUQUICCHIO, 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 3 December 1991 by Rudolf HEGGLI against Liechtenstein and registered on 2 March 1992 under file No. 19570/92;

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 1949, is a Swiss national and resident at Ruggell in Liechtenstein. He is a businessman by profession. Before the Commission he is represented by Mr. W.E. Seeger, a lawyer practising in Schaan.

A. Particular circumstances of the present case

On 1 December 1989, following a first set of trial and successful appeal proceedings brought by the applicant, the Vaduz Criminal Court (Kriminalgericht), having further taken evidence, convicted the applicant of fraud under S. 146 of the Liechtenstein Penal Code in the version of 1987 which had entered into force on 1 January 1989. He was sentenced to three months' imprisonment on probation. The Vaduz Criminal Court found that in 1982 the applicant had fraudulently induced Mrs. S. to buy a carpet at a price by far exceeding its market value and thereby caused damage of an amount of approximately SFR 50,000.

Both the applicant and the Public Prosecutor's Office (Staatsanwaltschaft) appealed against this judgment.

On 21 March 1990 the Vaduz High Court (Obergericht), upon the appeal (Berufung) of the Public Prosecutor's Office, quashed the Criminal Court's judgment and convicted the applicant of aggravated fraud (schwerer Betrug) under SS. 146, 147 para. 2 of the Penal Code. The applicant was sentenced to five months' imprisonment on probation. The applicant's appeal was dismissed.

The High Court, in its reasoning, noted that, due to the short period of prescription applying to simple fraud offences, the applicant could no longer be prosecuted solely under S. 146 of the Penal Code.

The High Court found that the applicant had committed an aggravated fraud in that he had caused a particularly serious damage (besonders großer Schaden) within the meaning of S. 147 para. 2 of the Penal Code. In this respect, the High Court proceeded on the findings of the Criminal Court according to which the damage caused by the applicant had not exceeded SFR 50,000 and considered that it had not been less than SFR 40,000.

The High Court deviated from its earlier judgment where the global value of stolen objects of between SFR 42,000 and SFR 45,000 had not been regarded as particularly important value demanding a conviction of aggravated theft. It stated that since the reform of the Penal Code in 1987 there had been some uncertainty as regards offences against property on the ground that no value limits had been included. The High Court had regard to the travaux préparatoires according to which a draft of 1984 had adopted the Austrian system of value limits and classified simple cases of fraud with a damage not exceeding SFR 1,000 and fixed SFR 20,000 as minimum limit for aggravated fraud. However, such pecuniary limits had finally not been regarded as appropriate, the Penal Code of 1987 circumscribed the aggravated fraud with the term "particularly serious damage".

The High Court, taking into account the considerations at the time of the reform and the penalty incurred in other offences against property, considered that in the present case the limits towards aggravated fraud had been passed.

On 15 October 1990 the Liechtenstein Supreme Court (Oberster Gerichtshof) dismissed the applicant's appeal on points of law (Revision).

The Supreme Court confirmed the findings of the High Court as to the reasons of the Liechtenstein legislator not to qualify aggravated cases of various offences on the basis of value limits. It considered that, in order to afford the necessary protection in the area of fraud, the term "particularly serious damage" had to be interpreted in an economically reasonable manner. Such a reasonable criterion was the yearly income of a worker or employee in an average professional position. If a fraudulent act caused damage exceeding such an amount, there was a particularly serious damage irrespective of the financial situation of the victim concerned. This yearly income had amounted to SFR 30,000 at the time of the offence in 1982, and amounted to SFR 40,000 in 1990. The applicant had therefore correctly been convicted of aggravated fraud.

Finally, the Supreme Court observed that the relevant provisions of the Penal Code in force in 1982, the time when the applicant had committed the fraud in question, had not been more favourable to him.

On 2 May 1991 the Liechtenstein Court of State (Staatsgerichtshof) dismissed the applicant's complaint (Beschwerde). The Court of State found that the applicant's constitutional rights had not been violated and that S. 147 para. 2 of the Penal Code of 1987 could not be objected to from a constitutional point of view. The approach taken by the Liechtenstein legislator, namely not to fix value limits in order to qualify an aggravated case of fraud, but to refer to the term

of a "particularly serious damage" which had to be interpreted and applied by the criminal courts, did not violate the principle of 'nulla poena sine lege'. The interpretation of this term in the present case did not appear arbitrary. This judgment was served on 4 June 1991.

B. Relevant domestic law

S. 146 of the Liechtenstein Penal Code, as amended in 1987 and in force since 1989, provides that anybody who, by deception as to facts and with the intention unlawfully to enrich himself or a third person, induces a person to a specific behaviour, active or passive, causing damage to this or another person's property, shall be punished by imprisonment of a term not exceeding six months or by a fine not exceeding 360 daily rates.

S. 147 para. 2 provides that anybody who commits fraud and thereby causes a particularly serious damage ("wer durch die Tat einen besonders grossen Schaden herbeiführt") shall be punished by imprisonment of a term not less than one year and not to exceed ten years.

COMPLAINTS

The applicant complains under Article 7 para. 1 of the Convention that the term of a "particularly serious damage" in S. 147 para. 2 of the Penal Code, qualifying the offence of aggravated fraud, lacked sufficient precision.

THE LAW

The applicant complains under Article 7 para. 1 (Art. 7-1) of the Convention about his conviction by the Vaduz High Court on 21 March 1990 of aggravated fraud within the meaning of S. 147 para. 2 of the Liechtenstein Penal Code.

Article 7 para. 1 (Art. 7-1) of the Convention reads as follows:

> "No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed."

In the sphere of criminal law Article 7 para. 1 (Art. 7-1) confirms the general principle that legal provisions which interfere with individual rights must be adequately accessible, and formulated with sufficient precision to enable the citizen to regulate his conduct. Article 7 para. 1 (Art. 7-1) prohibits in particular that existing offences be extended to cover facts which previously clearly did not constitute a criminal offence (cf. No. 13079/87, Dec. 6.3.89, D.R. 60 p. 256).

The applicant was convicted by the Vaduz High Court, as confirmed by the Supreme Court and the Court of State, of aggravated fraud committed in 1982, under S. 147 para. 2 in conjunction with S. 146 of the Liechtenstein Penal Code, as amended in 1987 and in force since 1989.

Reflecting on the background of the reform of the penal provisions in question, the Vaduz High Court, in its judgment of 21 March 1990, stated that the Liechtenstein legislator, deviating from the former version of the Penal Code, had deliberately refrained from qualifying the aggravated fraud by means of pecuniary limits as to the damage caused. The flexible term "particularly serious damage", to be interpreted by the criminal courts, had been regarded as more

appropriate. The Liechtenstein Court of State held that S. 147 para. 2 of the Penal Code of 1987 could not be objected to from a constitutional point of view.

Both the High Court and the Supreme Court, in its judgment of 15 October 1990, found that, having regard to the damage caused by the applicant, namely between SFR 40,000 and SFR 50,000, his offence qualified as aggravated fraud. The High Court took into account the considerations at the time of the reform and the penalty incurred in other offences against property. The Supreme Court, as confirmed by the Court of State, considered that, in order to afford the necessary protection in the area of fraud, the term "particularly serious damage" had to be interpreted in an economically reasonable manner, namely the yearly income of a worker or employee in an average professional position.

The Commission considers that the reform of the Liechtenstein Penal Code with regard to the provisions on fraud, in particular the definition of aggravated fraud by the notion of "particularly serious damage" instead of pecuniary limits, cannot be objected to under Article 7 para. 1 (Art. 7-1) of the Convention. The Liechtenstein Courts, in detailed decisions, clarified this constituent element of the offence of aggravated fraud. The Commission finds that there is no indication that S. 147 para. 2 of the Penal Code 1987 was applied to circumstances which, regarding the damage caused, could not reasonably be brought under the concept of aggravated fraud.

Moreover, the Commission observes that the applicant did not submit that the sentence imposed upon him under SS. 146, 147 para. 2 of the Penal Code 1987 was heavier than the one which he would have incurred under its old version. In this respect, the Commission notes that, according to the Supreme Court, the relevant provisions of the Liechtenstein Penal Code in force in 1982, the time when the applicant had committed the fraud in question, had not been more favourable to him.

In these circumstances, the Commission finds that there is no appearance of a violation of Article 7 para. 1 (Art. 7-1) of the Convention.

It follows that 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.

Secretary to the First Chamber — President of the First Chamber

(M.F. BUQUICCHIO) — (J.A. FROWEIN)