AS TO THE ADMISSIBILITY OF

Application No. 17595/90
by J. R.
against Austria

The European Commission of Human Rights (First Chamber) sitting in private on 8 March 1994, the following members being present:

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

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 1990 by Josef Reifetshamer against Austria, and registered on 21 December 1990 under file No. 17595/90;

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

Having regard to :

- the Commission's Partial Decision dated 1 July 1992;

- reports provided for in Rule 47 of the Rules of Procedure of the Commission;

- the observations submitted by the respondent Government on 6 November 1992 and the observations in reply submitted by the applicant on 31 December 1992;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is an Austrian citizen born in 1921. He lives in Mehrnbach in Upper Austria. He is represented before the Commission by Mr. W. Ratt, a lawyer practicing in Mauerkirchen.

The facts of the case may be summarised as follows.

From 1963 until 1984 the applicant and his former wife were involved in several disputes concerning their neighbours and various dealings with credit institutions which were intended to resolve financial problems. In March 1984 the applicant's marriage was dissolved; in May 1984 the applicant's former wife requested division of certain matrimonial property. After proceedings before the Ried District Court (Bezirksgericht, 9 November 1984) and the Ried Regional

Court (Kreisgericht, 29 January and 7 May 1985), the Supreme Court (Oberster Gerichtshof) on 13 June 1985 quashed the decision of 7 May 1985 and remitted the question of an interlocutory decision (decision of 9 November 1984) to the Ried Regional Court. The interlocutory decision, as several others, had dispensed with the applicant's consent to sales of parcels of land to adjoining landowners. The Supreme Court's decision of 13 June 1985 established that the interlocutory decision could not bind purchasers of the land from the applicant's former wife if, at the end of the proceedings, the applicant were successful.

A further appeal (außerordentlicher Revisionsrekurs) lodged by the applicant in August 1985 was rejected by the Supreme Court and received by the Ried District Court on 5 November 1985.

On 13 May 1986 the Ried Regional Court rejected a challenge by the applicant to the presiding judge at the Ried District Court.

On 17 February 1987 the Ried Regional Court quashed a decision of the Ried District Court of 5 September 1986. It remitted the case to the District Court. The applicant's former wife appealed on 25 March 1987 to the Supreme Court which, on 19 May 1988, refused the appeal. The Supreme Court's decision was served on the parties on 8 June 1988.

On 22 February 1989 the Ried District Court took a decision on the merits of the case. The applicant's appeal to the Ried Regional Court was rejected on 9 May 1989. On 11 August 1989 the applicant made a further appeal (Revisionsrekurs) to the Supreme Court which, on 18 January 1990, rejected part and declared inadmissible the rest of the appeal. According to the records of the Ried District Court, the Supreme Court's decision was served on the parties on 20 March 1990. According to the applicant's copy of the decision, it was served on 2 April 1990.

COMPLAINTS

The applicant complains of the length of the various proceedings in which he has been involved. He alleges a violation of Article 6 para. 1 of the Convention.

PROCEEDINGS BEFORE THE COMMISSION

On 1 July 1992 the Commission decided to declare the application partly inadmissible and to communicate the remainder to the respondent Government for their observations on the admissibility and merits. The respondent Government submitted their observations on 6 November 1992 and the applicant submitted his observations in reply on 31 December 1992.

On 2 December 1992 the Commission decided to grant legal aid to the applicant.

THE LAW

The applicant complains of the length of the proceedings for division of matrimonial property brought by his former wife. Article 6 para. 1 (Art. 6-1) of the Convention provides, so far as relevant, as follows:

> "1. In the determination of his civil rights and obligations ... , everyone is entitled to a fair and public hearing within a reasonable time ..."

The Commission notes that the applicant's former wife introduced the proceedings in May 1984 and that the final decision in the case is the decision of the Supreme Court of 18 January 1990, received by the

applicant on 20 March 1990 or 2 April 1990.

According to the applicant, the length of the proceedings - a period of almost six years - is in breach of the "reasonable time" requirement of Article 6 para. 1 (Art. 6-1) of the Convention. The Government take the opposite view.

The Commission recalls that according to the criteria established by the case-law of the Convention institutions, the question of "reasonable time" is assessed by reference to the complexity of the case, the applicant's conduct and that of the competent authorities.

The Commission notes that the case concerned the division of matrimonial property requested by the applicant's former wife. The Commission finds that, although this necessitated valuation of the various assets and determination of an appropriate distribution, the case cannot as such be regarded as complex. The case did however become more involved due to the interlocutory decisions taken by the Ried District Court, which were intended to enable the sale off of parcels of land during the proceedings, but which in fact could only be valid if the proceedings terminated in the applicant's former wife's favour, as the Supreme Court pointed out on the applicant's appeal.

Whilst the applicant made use of a large number of the procedural avenues available to him, the Commission notes that as a result of his appeals, certain of the first and second instance decisions were amended (for example the Supreme Court's decision of 13 June 1985). The Commission notes that civil disputes such as the present one frequently involve antagonisms between the parties which contribute to the length of the proceedings. Whilst the applicant cannot be reproached for the appeals he and his former wife pursued, the fact remains that such matters must be dealt with and more time will thereby be spent on the case than had those appeals not been taken.

As to the conduct of the domestic courts, the Commission notes, as the Government point out, that the Ried Regional Court had to deal with the case as a court of appeal on nine occasions. The Supreme Court was seized of the case on at least four occasions.

Notwithstanding certain periods of inactivity in the case, in particular the period of 14 months the case was pending before the Supreme Court from March 1987 to June 1988, the Commission finds, taking all the circumstances of the case into consideration, that the proceedings in the present application did not exceed the "reasonable time" requirement of Article 6 para. 1 (Art. 6-1) of the Convention (cf. Cesarini judgment of 12 October 1992, Series A no. 245-B).

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 REMAINDER OF THE APPLICATION INADMISSIBLE.

Secretary to the First Chamber President of the First Chamber

(M.F. BUQUICCHIO) (A. WEITZEL)