AS TO THE ADMISSIBILITY OF

Application No. 17887/91
by K.GmbH
against Austria

The European Commission of Human Rights sitting in private on 6 April 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
MM. M. PELLONPÄÄ
B. MARXER
G.B. REFFI

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 21 December 1990 by K.GmbH against Austria and registered on 11 March 1991 under file No. 17887/91;

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 submitted by the applicant, may be summarised as follows.

The applicant is a limited company domiciled at Wolfurt, Austria. Before the Commission it is represented by Dr. Paul Grossmann, a lawyer practising at Innsbruck.

In 1986 certain problems arose between the applicant and another company domiciled in Germany, concerning the acceptance of a bill of exchange (Wechsel). On 16 July 1986 the other company instituted proceedings against the applicant in the Regional Court (Landesgericht) of Feldkirch claiming payment of 723,606.27 ÖS.

Questions concerning evidence in the case were discussed during a court session held on 29 August 1986. Evidence was subsequently obtained, inter alia through commissions rogatory, in the District Courts (Amtsgericht) of Munich, Aichach and Hanover and further court sessions in Austria were held on 10 June and 4 November 1987, as well as on 29 January and 23 and 28 February 1988 when the proceedings in court were concluded.

On 30 August 1988 the District Court pronounced judgment in the case. On the basis of the evidence produced, which included the statements of the parties, the hearing of nine witnesses as well as documentary evidence, the Regional Court found against the applicant which was ordered to pay the sum mentioned above, plus interest and

costs. The judgment was received by the applicant on 20 September 1988.

On 17 October 1988 the applicant appealed against the judgment (berufung) to the Court of Appeal (Oberlandesgericht) of Innsbruck which, however, upheld the judgment on 14 December 1988. The applicant received the judgment on 19 January 1989. On 10 February 1989 the applicant lodged an appeal (revision) against this judgment.

On 31 May 1990 the Supreme Court (Oberster Gerichtshof) rejected the applicant's appeal as it had no prospects of success. The applicant submits that this decision was received on 26 July 1990.

COMPLAINTS

The applicant invokes Article 6 para. 1 of the Convention complaining that the proceedings were not fair in that the facts established were incomplete and wrong, that the evaluation of the evidence was wrong and that, therefore, the courts applied the law incorrectly. It furthermore complains that the case was not determined within a reasonable time.

THE LAW

With regard to the judicial decisions of which the applicant complains, 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. The Commission refers, on this point, to its established case-law (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).

It is true that in this case the applicant also complains that the case was not determined within a reasonable time. In this connection the applicant alleges a violation of Article 6 para. 1 (Art. 6-1) of the Convention which reads in its relevant parts as follows :

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

In the present case the Commission recalls that the case commenced on 16 July 1986 when proceedings were instituted against the applicant in the Regional Court of Feldkirch. They came to an end on 26 July 1990 when the applicant received the decision of the Supreme Court, accordingly lasting a total of four years and ten days.

The Commission further recalls that the reasonableness of the length of the proceedings must be assessed in the light of the particular circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the parties and the conduct of the authorities dealing with the case (see Eur. Court H.R., Vernillo judgment of 20 February 1991, Series A no. 198, p. 12, para. 30).

As regards these elements the Commission notes that the proceedings, in the Regional Court lasted approximately two years. During this period several court sessions were held and it became necessary to obtain evidence, inter alia through commissions rogatory, in the District Courts of Munich, Aichach and Hanover in Germany, an

element which by its very nature was time-consuming. Furthermore, the Commission notes that the proceedings in the Court of Appeal lasted only three months. Finally, although it has not overlooked that the proceedings in the Supreme Court lasted approximately one and a half years, the Commission recalls that the proceedings comprised a total of three court levels. Having regard to these circumstances, the Commission finds that the total period of time was not so long as to warrant the conclusion that it was excessive.

It follows that the application must be rejected as being 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.F. BUQUICCHIO) — (J.A. FROWEIN)