AS TO THE ADMISSIBILITY OF

Application No. 13017/87
by P.
against Austria

The European Commission of Human Rights sitting in private on 14 December 1988, the following members being present:

MM. C.A. NØRGAARD, President
J.A. FROWEIN
G. SPERDUTI
E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H.G. SCHERMERS
H. DANELIUS
H. VANDENBERGHE
Mrs. G.H. THUNE
Sir Basil HALL
MM. F. MARTINEZ
C.L. ROZAKIS
Mrs. J. LIDDY

Mr. H.C. KRÜGER Secretary to the Commission

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 18 May 1987 by P. against Austria and registered on 15 June 1987 under file No. 13017/87;

Having regard to:

- observations submitted by the respondent Government on 13 June 1988 and the observations in reply submitted by the applicant on 29 June 1988;

Having deliberated;

Decides as follows:

THE FACTS

The facts of the case may be summarised as follows.

The applicant, born in 1945, is an Austrian national and resident in Freistadt. He is a businessman by profession. Before the Commission he is represented by Mr. G. Tews and Mr. C. Slana, lawyers practising in Linz.

On 13 May 1982 the Linz Police Office (Bundespolizeidirektion) questioned the applicant as regards the purchase of a stolen car on 30 August 1981. The applicant denied that he knew about the origin of the car and alleged that he had bought it from an unknown person.

In June 1982 the Klagenfurt Public Prosecutor's Office (Staatsanwaltschaft) opened investigation proceedings against K and others on the ground that they were suspected of having stolen numerous cars, removed the identification marks and replaced them by the marking of wrecked cars.

On 2 July 1982 the Klagenfurt Public Prosecutor's Office started investigations against the applicant, the suspicion being that he had received stolen goods (Hehlerei). The preliminary investigations (Voruntersuchung) were opened in September 1982. The investigations against the applicant and those against K and others were apparently joined.

On 23 September 1982 the applicant was arrested on the basis of a warrant of arrest issued by the Klagenfurt Regional Court (Landesgericht) on 14 September 1982. On 25 September 1982 he was taken into detention on remand. Since 7 October 1982 the applicant was represented by counsel. Following proceedings to review his detention on remand the applicant was released on bail (100,000 AS) on 28 February 1983.

In March 1983 the case against K and others and the case against the applicant were separated. The vendors of the applicant's car were convicted by the Klagenfurt Regional Court on 24 April 1984 and 18 July 1984, respectively.

On 22 March 1984 the applicant's new defence counsel requested the Klagenfurt Regional Court to transfer the case to the Linz Regional Court. The applicant was apparently at that time residing in Linz.

On 9 May 1984 the Klagenfurt Public Prosecutor's Office preferred an indictment (Anklageerhebung) against the applicant on charges of receiving stolen goods and failure to pay maintenance (Verletzung der Unterhaltspflicht) to his child born out of wedlock. The Court received the bill of indictment on 11 May 1984.

On 20 September 1984 the Austrian Supreme Court (Oberster Gerichtshof) dismissed the applicant's request to transfer the case to the Linz Regional Court.

On 21 November 1984 the Klagenfurt Regional Court fixed 14 December 1984 as the date for the opening of the trial.

On 24 November 1984 MM. Slana and Tews presented themselves as the applicant's defence counsels. On 27 November 1984 the applicant requested the Regional Court to call further witnesses and to adjourn the trial. On 17 December 1984 the trial was fixed for 25 January 1985.

On 25 January 1985 the Klagenfurt Regional Court opened the trial against the applicant. The trial was adjourned in order to take further evidence as requested by the Prosecutor's Office and the applicant's defence counsel. In February 1985 a technical expert was appointed and submitted his written opinion.

On 29 March 1985 the Klagenfurt Regional Court resumed the trial against the applicant. He was convicted of receiving stolen goods and sentenced to eight months' imprisonment. He was acquitted of the charge of failure to pay maintenance. The Court ordered that the period of his detention on remand be deducted from the sentence. The Court found in particular that the applicant had known that the car was stolen. His defence that he had bought the car from K without knowing about its origin was considered untrustworthy on the ground that he had first alleged to have bought the car from an unknown person. He had only changed his defence in a written statement of 14 October 1982. The judgment was served upon the applicant in August 1985.

On 10 August 1985 the Klagenfurt Regional Court dismissed the applicant's request to have his bail paid back. On 31 October 1985 the Graz Court of Appeal (Oberlandesgericht), upon the applicant's appeal (Beschwerde), quashed that decision.

On 19 December 1985 the Austrian Supreme Court (Oberster Gerichtshof), upon the applicant's appeal (Berufung) and plea of

nullity (Nichtigkeitsbeschwerde), quashed the judgment of 29 March 1985 insofar as he had been convicted. The case was referred back to the Regional Court. The Supreme Court found that the Regional Court had not taken sufficient evidence as regards the question whether or not the applicant had known that the car was stolen. The judgment was received by the Klagenfurt Regional Court on 5 February 1986.

On 6 March 1986 the Graz Court of Appeal dismissed the expert's appeal (Beschwerde) against the Klagenfurt Regional Court's decision of 7 October 1985 fixing his fees.

On 25 August 1986 the Klagenfurt Regional Court set the date for a new trial for 20 October 1986.

On 10 October 1986 the Klagenfurt Public Prosecutor's Office requested the Klagenfurt Regional Court to transfer the case to the Linz Regional Court where in June 1986 preliminary investigations had been instituted against the applicant in respect of assault. The Klagenfurt Regional Court transferred the case to the Linz Regional Court on 15 October 1986.

On 4 November 1986 the Linz Regional Court decided to transfer the case back to the Klagenfurt Regional Court. It found that having regard to the different stages of the two cases they had to be dealt with separately in order to avoid unnecessary delays. The files were sent back to the Klagenfurt Regional Court on 16 February 1987 when the Linz Regional Court held the trial against the applicant, convicted him of assault and sentenced him to eight months' imprisonment.

On 5 March 1987 the Klagenfurt Regional Court, having regard to the applicant's appeal against his conviction by the Linz Regional Court, again sent the files to the Linz Regional Court and requested it to take over the Klagenfurt case. On 17 March 1987 the Linz Regional Court declined this and sent the files back.

On 14 April 1987 the Klagenfurt Regional Court fixed the trial for 19 May 1987. The Court was then informed by several post offices that one witness summons could not be served and that the applicant had changed address. On 12 May 1987 the hearing was cancelled.

On 14 May 1987 the Judge GF at the Klagenfurt Regional Court informed the President of the Court that she was disqualified to take part in the proceedings against the applicant. It appears that GF had acted as investigating judge. The case was assigned to the substitute judge on 10 June 1987.

On 23 June 1987 the Klagenfurt Regional Court fixed the date for the trial for 15 July 1987. The hearing was adjourned on that date, as two witnesses had not appeared, and in order to produce the files concerning the case before the Linz Regional Court. The Linz Regional Court was requested twice to send the files.

On 29 September 1987 the Linz Regional Court informed the Klagenfurt Regional Court that the Linz case was terminated; the Linz Court of Appeal had reduced the sentence and imposed a fine of 108,OOO AS on 11 June 1987.

On 16 October 1987 the Klagenfurt Regional Court fixed the trial for 4 November 1987.

On 4 November 1987 the Klagenfurt Regional Court convicted the applicant of negligent receiving (fahrlässiges Ansichbringen) and sentenced him to 18,000 AS. In fixing the sentence, the Court took the sentence imposed by the Linz Court of Appeal and the applicant's detention on remand into account.

On 23 December 1987 the Klagenfurt Regional Court, upon the

applicant's request, corrected the record of the hearing of 4 November 1987.

On 29 March 1988 the Supreme Court dismissed the applicant's plea of nullity (Nichtigkeitsbeschwerde). The applicant withdrew his appeal against the sentence (Berufung).

In April 1988 the Klagenfurt Public Prosecutor's Office agreed that the bail be paid back to the applicant.

COMPLAINTS

The applicant complains under Article 6 para. 1 of the Convention of the length of the criminal proceedings against him before the Klagenfurt Regional Court. He considers that the proceedings were delayed, in particular due to the late indictment and the course of action taken by the Klagenfurt Regional Court after the appeal proceedings in 1985.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 18 May 1987 and registered on 15 June 1987.

On 8 March 1988 the Commission decided that, in accordance with Rule 42 para. 2 (b) of the Rules of Procedure, notice should be given to the Austrian Government of the application and that the Government should be invited to submit written observations on the admissibility and merits of the case.

After an extension of the time-limit, the Government's observations were submitted on 13 June 1988. The applicant's observations in reply were submitted on 29 June 1988.

SUBMISSIONS OF THE PARTIES

A. The Government

The Government maintain that the criminal proceedings against the applicant were not unreasonably delayed.

They submit that the length of the proceedings was due to the complexity of the investigations and the conduct of the applicant. The proceedings against the applicant formed part of complicated investigations against numerous suspects who had stolen cars. Moreover, in the beginning of the preliminary investigations, the applicant made misleading statements concerning the charges against him. He committed another criminal offence pending the proceedings which the Klagenfurt Regional Court had to take into account. The applicant also lodged several appeals.

The Government contend that the Austrian courts had not been completely inactive for a longer period. Furthermore, referring to the Foti judgment of the Eur. Court H.R. of 10 December 1982 (Series A no. 56, p. 21, para. 64), they consider that delays do not necessarily entail a breach of Article 6 para. 1 of the Convention. Even assuming that there had been delays in the present case, such delays were justified on the grounds that the proceedings had been particularly complex and related to other proceedings. They submit in particular that the decisions of the Klagenfurt Regional Court to transfer the proceedings to the Linz Regional Court were appropriate and in accordance with the applicant's previous request. The hearing before the Klagenfurt Regional Court fixed for 19 May 1987 had to be postponed because two summonses could not be served. The next hearing was already fixed for 15 July 1987.

The Government request the Commission to declare the

application inadmissible as being manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

B. The applicant

The applicant submits that the delays in the criminal proceedings against him before the Klagenfurt Regional Court cannot be justified by their relation to the proceedings before the Linz Regional Court. The two sets of proceedings were only joined from 15 October until 4 November 1986. When the Linz Regional Court transferred the case back, it could have kept a copy of the files.

Furthermore the applicant alleges the following unreasonable delays: The Austrian authorities were inactive between March 1983 and April 1984. The judgment concerning his first conviction was only served upon him in August 1985. The delays pending the expert's appeal proceedings could have been avoided by sending a copy of the files to the Graz Court of Appeal. The second decision of 5 March 1987 to transfer the case was wrong on the ground that at that stage he had already been convicted by the Linz Regional Court and appeal proceedings were pending.

Moreover the Klagenfurt Regional Court was not required to await the outcome of the Linz proceedings; on the contrary, had the Klagenfurt proceedings been terminated within a reasonable time, the Linz Regional Court could have taken any sentence imposed by the Klagenfurt Regional Court into account. The applicant also considers that it was not necessary to cancel the hearing of 19 May 1987, as he had been informed about the date by his defence counsel and he would have agreed to use as evidence the written statements of the witness concerned.

The applicant denies that he contributed to the length of the proceedings by giving misleading statements on the charges against him. In fact, he had already changed his initial statement in October 1982 and then maintained his defence.

Finally he submits that the length of the proceedings before the Klagenfurt Regional Court was not only as such detrimental to him, but he also suffered financial losses in that his bail was only paid back more than three years later.

THE LAW

The applicant complains under Article 6 para. 1 (Art. 6-1) of the Convention that the criminal proceedings against him before the Klagenfurt Regional Court were not terminated within a reasonable time.

Article 6 para. 1 (Art. 6-1) of the Convention provides, inter alia, that in the determination of any criminal charges against him, everyone is entitled to a fair and public hearing within a reasonable time.

The respondent Government contend that the length of the proceedings was partly caused by the applicant. Any other delays were due to the complexity of the case and its relation to other proceedings. They submit that the application should be declared inadmissible as being manifestly ill-founded.

The Commission considers that the applicant's complaint about the length of the criminal proceedings against him, which lasted nearly six years, raises questions of fact and of law which are of such a complex nature that their determination requires an examination of the merits. The application cannot, therefore, be declared

manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention, but must be declared admissible, no other ground for declaring it inadmissible having been established.

For these reasons, the Commission

DECLARES THE APPLICATION ADMISSIBLE
without prejudging the merits of the case.

Secretary to the Commission — President of the Commission

(H. C. KRÜGER) — (C. A. NØRGAARD)

APPENDIX

History of the domestic proceedings

13.5.82	Applicant questioned by the Linz Police Office.
2.7.82	Klagenfurt Public Prosecutor's Office started investigations.
18.8.82	Applicant questioned by Linz Police Office.
1.9.82	Klagenfurt Federal Police Office laid information (Strafanzeige) against applicant concerning receiving a stolen car.
9.9.82	Request of Klagenfurt Public Prosecutor's Office for preliminary investigations, warrant of arrest and search warrant.
14.9.82	Warrant of arrest (danger of collusion) and search warrant.
23.9.82	Arrest.
25.9.82	Detention on remand.
1.10.82	Applicant questioned by investigating judge.
7.10.82	First defence counsel appointed.
5.11.82	Request for extension of detention on remand (unusual scale and difficulties of the investigations).
22.11.82	Applicant questioned by investigating judge.
19.11.82	Supplemented warrant of arrest (necessity to prevent fleeing).
9.12.82	Extension of detention on remand up to three months. Appeal and offer of bail (50,000 AS).
30.12.82	Klagenfurt Regional Court refused release on bail. Appeal.

26.1.83	Files sent to the Graz Court of Appeal.
4.2.83	Graz Court of Appeal quashed decision of 30.12.82.
22.2.83	Bail fixed at 100,000 AS.
28.2.83	Bail paid by applicant's wife. Release on bail.
24.3.83	Seperation of applicant's case.
22.3.84	Second counsel's request for transfer of case to Linz Regional Court.
4.4.84	Witness questioned by investigating police officer.
17.4.84	Applicant questioned by investigating judge.
30.4.84	Files sent to Klagenfurt Public Prosecutor's Office.
9.5.84	Indictment.
11.5.84	Bill of indictment received by Klagenfurt Regional Court.
17.5.84	Bill of indictment submitted to counsel.
17.8.84	Request of Klagenfurt Public Prosecutor's Office not to transfer case.
21.8.84	Request for transfer submitted to Supreme Court.
20.9.84	Request for transfer dismissed.
21.11.84	Trial fixed for 14.12.84.
24.11.84	Applicant changed counsel.
27.11.84	Applicant's request to take further evidence and to postpone hearing.
11.12.84	Applicant submitted documents.
17.12.84	Trial fixed for 25.1.85.
25.1.85	Trial. Postponed to take further evidence.
4.2.85	Technical expert appointed.
12.2.85	Expert opinion submitted.
18.2.85	Trial fixed for 29.3.85.
29.3.85	Trial. Conviction for receiving stolen goods.
1.4.85	Applicant announced plea of nullity and appeal.
10.4.85	Applicant's request that bail be paid back.
23.5.85	Applicant's request that files be sent to Linz Regional Court.
30.5.85	Request of applicant's wife that bail be paid back.
7.8.85	Written judgment of 29.3.85 served upon applicant.
10.8.85	Requests of 10.4. and 30.5.85 dismissed.

14.8.85	Applicant filed plea of nullity and appeal.
23.9.85	Appeal of applicant's wife against decision of 10.8.85.
7.10.85	Expert's fees fixed. Files sent to Supreme Court.
24.10.85	Expert's appeal.
31.10.85	Graz Court of Appeal quashed decision of 10.8.85
19.12.85	Supreme Court quashed judgment of 29.3.85.
6.3.86	Graz Court of Appeal dismissed expert's appeal.
25.8.86	New trial fixed for 20.10.86.
22.9.86	Files sent to Linz Regional Court for inspection by defence counsel.
10.10.86	Request of the Public Prosecutor's Office to transfer case to Linz Regional Court where proceedings had been instituted in June 1986.
15.10.86	Trial cancelled. Case transferred.
15.11.86	Case transferred back.
16.2.87	Files returned to Klagenfurt Regional Court.
5.3.87	Case transferred to Linz Regional Court a second time.
17.3.87	Case transferred back to the Klagenfurt Regional Court.
14.4.87	Trial fixed for 19.5.87.
24.4./5.5.87	Information that witness summons could not be served and that applicant changed address.
12.5.87	Trial cancelled.
14.5.87	Judge stated that she was disqualified.
10.6.87	Case assigned to substitute judge.
23.6.87	Trial fixed for 15.7.87.
15.7.87	Trial. Adjourned.
16.7.87	Court requested Linz Regional Court's files.
17.7.87	Applicant's request to be paid bail back.
28.7.87	Renewed request for Linz files.
29.9.87	Information by Linz Regional Court about termination of proceedings.
16.10.87	Request of 17.7.87 dismissed. Trial fixed for 4.11.87.
28.10.87	Appeal against decision of 16.10.87 concerning bail.
4.11.87	Trial. Conviction for negligent receiving of stolen goods.

13.11.87	Plea of nullity and appeal.
19.11.87	Applicant's request to correct the verbatim record.
21.12.87	File sent to the Supreme Court.
23.12.87	Klagenfurt Regional Court's decision to correct the record.
29.3.88	Applicant's plea of nullity dismissed. Appeal withdrawn.
29.4.88	Bail paid back.