AS TO THE ADMISSIBILITY OF

Application No. 14245/88
by W.W.
against Liechtenstein

The European Commission of Human Rights (Second Chamber) sitting in private on 9 December 1991, the following members being present:

MM.S. TRECHSEL, President of the Second Chamber
G. SPERDUTI
G. JÖRUNDSSON
A. WEITZEL
H. G. SCHERMERS
Mrs.G. H. THUNE
Mr.F. MARTINEZ
Mrs. J. LIDDY
MM.M.P. PELLONPÄÄ

Mr. K. ROGGE, Secretary to the Second 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 6 July 1988 by W.W. against Liechtenstein and registered on 26 September 1988 under file No. 14245/88;

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 parties, may be summarised as follows:

The applicant, born in 1925, is a national of Liechtenstein, and resident at S., Liechtenstein. He is a legal adviser and trustee by profession. Before the Commission he is represented by Mr. I. Schuler, a lawyer practising in Bregenz, Austria.

In October 1975 the official liquidator of a Liechtenstein limited company, on behalf of the bankrupt's estate of this company, instituted civil proceedings before the Vaduz Regional Court (Landgericht) against the applicant, the former director of this company, claiming compensation for an unlawful financial transaction. In these proceedings the applicant was represented by counsel.

The Vaduz Regional Court held hearings on 11 November 1975 and 29 January 1976. In 1976 various measures were taken with regard to the taking of evidence as proposed by the applicant, in particular the hearing of witnesses in rogatory proceedings. A further hearing was held on 18 March 1977. The rogatory proceedings were terminated in 1978, the hearing was closed on 10 February 1978.

On 27 May 1980 the proceedings were continued with a hearing before the Vaduz Regional Court. The applicant, duly summoned, was not present personally. The plaintiff requested that the proceedings be suspended until completion of the bankruptcy proceedings on the ground that the compensation claim depended upon the claims against the bankrupt's

estate. The applicant's counsel did not oppose the request. Thereupon, the Regional Court discontinued the proceedings until a final decision was taken about the claims against the bankrupt's estate in the bankruptcy proceedings concerned. The parties waived their rights to appeal.

In the bankruptcy proceedings the last judgment was given by the Liechtenstein Court of Appeal (Obergericht) on 26 June 1986.

In the beginning of 1987 the Vaduz Regional Court continued the civil proceedings against the applicant and fixed a hearing for 27 February 1987.

On 21 January 1987 the applicant's counsel resigned. On 11 February 1987 the applicant requested that the oral hearing fixed for 27 February 1987 be postponed.

At the hearing of 24 April 1987, the Vaduz Regional Court reopened the suspended proceedings. The Regional Court rejected the applicant's further voluminous submissions. It considered that he could have made these submissions far earlier and apparently intended to delay the proceedings. Several witnesses were heard on the merits of the action.

On 30 June 1987 the Vaduz Regional Court ordered the applicant to pay the plaintiff SF 350,000 with interest. The Regional Court found in particular that the applicant, as former director of the limited company concerned, was liable for an amount of SF 350,000 which was missing from the original capital. It also confirmed that the applicant's further submissions at the hearing of 24 April 1987 be rejected.

On 1 September 1987 the applicant lodged an appeal (Berufung) with the Liechtenstein Court of Appeal, and submitted inter alia a private legal opinion on his case, prepared by two law professors.

On 22 October 1987 the Court of Appeal fixed 19 November as the date for a hearing. The hearing was postponed upon the applicant's request and was held on 10 December 1987.

On 10 December 1987 the Liechtenstein Court of Appeal dismissed the applicant's appeal. The written judgment was dated 4 January 1988.

On 28 June 1988 the Liechtenstein Supreme Court (Oberster Gerichtshof) dismissed the applicant's appeal on points of law (Revision) of 4 February 1988.

On 14 July 1988 the applicant filed a complaint with the Liechtenstein Constitutional Court (Staatsgerichtshof) alleging violations of his constitutional rights and rights under the Convention in that the proceedings had been unfair. He submitted in particular that his appeal on points of law was not decided by the competent court as the Supreme Court's judgment was dated 28 June 1988 and thus prepared on the same day as the Court's deliberations in his case. Furthermore, his additional submissions were incorrectly rejected by the Vaduz Regional Court.

On 28 April 1989 the Constitutional Court dismissed the applicant's complaint. The Constitutional Court found in particular that, in the proceedings before the Supreme Court the use of a rapporteur's draft could not be objected to under constitutional or Convention law. The Constitutional Court also considered that the applicant had been given the opportunity to present his arguments; the decision to reject his further submissions before the Vaduz Regional Court did not render the proceedings unfair. The applicant received the judgment on 31 May 1989.

COMPLAINTS

The applicant complains under Article 6 of the Convention about the length of the civil proceedings. He also complains that the Liechtenstein court decisions were incorrect, and that the proceedings concerned were unfair. He submits in particular that some of his submissions at first instance were not admitted. Furthermore, he was not summoned and, therefore, could not attend the hearings in person. Moreover, he complains that the judgment of the Supreme Court was drafted before the deliberations had taken place. He also invokes Article 1 of Protocol No. 1 to the Convention.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 6 July 1988 and registered on 26 September 1988.

On 5 March 1991 the Commission decided that notice should be given to the respondent Government of the application and that the Government should be invited to submit written observations on the admissibility and merits of the case.

The Government's observations were submitted on 7 May 1991. The applicant's submissions in reply were submitted on 29 July 1991.

On 27 May 1991 the Commission referred the application to the Second Chamber.

THE LAW

1.The applicant complains under Article 6 para. 1 (Art. 6-1) of the Convention about the length of the proceedings before the Liechtenstein courts.

Article 6 para. 1 (Art. 6-1) of the Convention provides, inter alia, that in the determination of his civil rights and obligations, everyone is entitled to a fair hearing within a reasonable time.

The Government submit that the period to be considered under Article 6 para. 1 (Art. 6-1) started on 8 September 1982 when Liechtenstein ratified the Convention. Having regard to the relevant criteria established in the case-law of the Convention organs, they consider that as from this date the proceedings were terminated within a reasonable time. In particular, in 1982 the civil proceedings concerned were still suspended pending the outcome of the bankruptcy proceedings, which were decisive for the plaintiff's claims. Following termination of the bankruptcy proceedings in June 1986 the proceedings only lasted two years at three instances (until the Supreme Court's judgment of 28 June 1988). The applicant had himself delayed the proceedings.

The applicant considers that the reasons given for the Regional Court's decision of 27 May 1980 concerning the suspension of the proceedings show that the plaintiff's claims were unfounded and his action should have been dismissed.

The Commission has examined the length of the proceedings in this case according to the criteria established in the case-law of the Convention organs.

The relevant period did not begin as from the institution of the civil proceedings in October 1975, but only as from 8 September 1982 when Liechtenstein ratified the Convention and recognised the right of individual petition. However, in assessing the reasonableness of the time that elapsed after 7 September 1982, account must be taken of the then state of proceedings (cf. Eur. Court H.R., Baggetta judgment of 25 June 1978, Series A no. 119, p. 32, para. 20 with further reference).

The proceedings terminated on 31 May 1989, when the applicant received the Constitutional Court's judgment of 28 April 1989. The period to be considered thus amounts to six years, eight months and three weeks.

The applicant's case concerned compensation claims of about SF 350,000 and raised both difficult questions under Liechtenstein company law - in this respect the applicant filed a private expert opinion with the Liechtenstein Court of Appeal - and factual questions which necessitated the taking of evidence.

The applicant did not, during the relevant period, particularly delay the proceedings. In February 1987 a hearing before the Vaduz Regional Court was, upon his request, postponed for two months. Furthermore, upon his request, a hearing before the Court of Appeal was postponed for three weeks.

With regard to the conduct of the proceedings by the Liechtenstein courts, the Commission notes that, at the start of the period relevant under Article 6 para. 1 (Art. 6-1) of the Convention, the proceedings were, upon the plaintiff's request, suspended pending the outcome of bankruptcy proceedings. The bankruptcy proceedings were related to the compensation claim in dispute in the present case. The applicant's counsel had not opposed this request, the applicant himself had not been present although duly summoned. The parties had waived their right to appeal against the suspension order.

The bankruptcy proceedings terminated on 26 June 1986. The applicant did not show that these proceedings were unduly delayed by the Liechtenstein authorities.

The civil proceedings against the applicant were continued by the Vaduz Regional Court in the beginning of 1987, when a hearing was fixed for 27 February 1987. The applicant had not asked for reopening of the proceedings at any earlier date.

The Commission, having regard to the reasons for the suspension of the proceedings in 1980 and in particular the attitude of the applicant, represented by counsel, towards this matter, finds that the suspension of the civil proceedings did not result in any undue delays (cf., mutatis mutandis, Eur. Court H.R., Lechner and Hess judgment of 23 April 1987, Series A no. 118, p. 19, para. 53).

The proceedings were formally reopened on 24 April 1987. The Vaduz Regional Court passed its judgment on 30 June 1987, the Liechtenstein Court of Appeal on 10 December 1987, the Supreme Court on 28 June 1988 and the Constitutional Court on 28 April 1989. The case thus passed four instances within two years. There were no unreasonable delays caused by the conduct of the Liechtenstein courts.

The Commission finds that, in these circumstances, the length of the proceedings, even taking their state in September 1982 into account, was not excessive.

Consequently, there is no appearance of a violation of the applicant's right to a hearing within reasonable time, as guaranteed under 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).

2.The applicant further complains under Article 6 (Art. 6) of the Convention about the decisions taken by the Liechtenstein courts. He considers that the proceedings were not fair.

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 (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).

As regards the applicant's complaints under Article 6 (Art. 6) of the Convention, the Commission finds that there is nothing to indicate that the applicant, represented by counsel, could not properly present his case or that the proceedings were otherwise unfairly conducted.

The Commission considers in particular that the applicant failed to show that the decision of the Vaduz Regional Court not to admit his further submissions had been arbitrary. Moreover, there is no indication that the applicant's personal presence was indispensable for the proper conduct of the proceedings. Finally, his submissions that the Supreme Court's deliberations and judgment were based on a draft do not disclose any appearance of a violation of his rights under Article 6 para. 1 (Art. 6-1).

Consequently, this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

3.The applicant also alleges a violation of Article 1 of Protocol No. 1 (P1-1) in respect of his above complaints. However, Liechtenstein is not a Party to Protocol No. 1 to the Convention. The remainder of the application is therefore incompatible ratione personae with the provisions of the Convention and must be rejected under Article 27 para. 2 (Art. 27-2).

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Second Chamber President of the Second Chamber

(K. ROGGE) (S. TRECHSEL)