

AS TO THE ADMISSIBILITY OF

Application No. 15886/89
by Stanislava KREMZOW
against Austria

The European Commission of Human Rights (Second Chamber) sitting in private on 5 May 1993, the following members being present:

MM. S. TRECHSEL, President of the Second Chamber
G. JÖRUNDSSON
A. WEITZEL
J.-C. SOYER
H.G. SCHERMERS
H. DANELIUS
Mrs. G.H. THUNE
MM. F. MARTINEZ
L. LOUCAIDES
J.-C. GEUS
M.A. NOWICKI

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 22 November 1989 by Stanislava KREMZOW against Austria and registered on 11 December 1989 under file No. 15886/89;

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 parties, may be summarised as follows.

The applicant is an Austrian and Czech national born in 1943 and residing in Vienna. Before the Commission she is represented by Mr. W. L. Weh, a lawyer practising in Bregenz and Mr. H. Mühlgassner, a lawyer practising in Vienna.

On 17 February 1983 the Tax Office (Finanzamt) for the 6th, 7th and 15th District of Vienna instituted administrative criminal proceedings under the Code of Fiscal Offences (Finanzstrafgesetz) against the applicant on suspicion of tax evasion.

On 22 April 1983 the applicant was interrogated as an accused.

On 6 June 1984 the Administrative Court (Verwaltungsgerichtshof) rejected a complaint by the applicant challenging the delay in the criminal proceedings.

In the tax assessment proceedings the Tax Office on 23 March 1984 completed the tax audit and concluded that due to unreported income taxes of more than AS 170,000 had not been payed. On 30 April 1984 the Tax Office issued tax assessment orders (Abgabenbescheide) concerning value added tax from 1979 to 1983 and income tax from 1978 to 1982.

On 4 June 1984 the applicant appealed against these assessment orders without giving reasons for her appeal. The time-limit for filing the reasons was extended three times, the last time until 30 June 1985. Following a reminder the applicant finally filed her reasons for the appeal on 4 November 1985. On 10 July 1986 the Regional Directorate of Finance (Finanzlandesdirektion) decided on the applicant's appeal and partly quashed the Tax Office's assessment orders. On 28 August 1986 the Tax Office decided again in the tax assessment proceedings. This decision became final on 5 November 1987 when the applicant withdrew her appeal.

In the meantime, the criminal proceedings had not progressed.

On 18 December 1987 the applicant filed a request for transfer of jurisdiction (Devolution) in respect of the criminal proceedings from the Tax Office to the higher authority, claiming that her right to a decision within a reasonable time under Article 6 para. 1 of the Convention had been violated. This request was rejected by the Regional Directorate on 2 March 1988. It found that the Code of Fiscal Offences did not provide for a transfer of jurisdiction.

On 29 April 1988 the applicant filed a complaint with the Constitutional Court (Verfassungsgerichtshof) against the Regional Directorate's decision of 2 March 1988, invoking Articles 6 and 13 of the Convention.

On 3 October 1988 the Constitutional Court refused to entertain the applicant's complaint. Referring to its earlier case-law the Constitutional Court considered that the applicant's complaint did not show sufficient prospect of success. The Administrative Court, to which the complaint was referred, eventually discontinued the proceedings as the applicant had not complied with a Court's order to remedy defects of the complaint (Mängelbehebungsauftrag).

Meanwhile, on 9 May 1988, the Tax Office informed the applicant of the amount of evaded taxes determined in the course of the assessment proceedings and instructed her to submit a written statement by 10 June 1988.

On 25 May 1988 the applicant asked for an extension of the time-limit for filing her written statement because she had no access to the file which had been transmitted to the Constitutional Court. On 26 June 1989 the file was returned to the Regional Directorate of Finance.

On 11 October 1989 the applicant lodged a complaint (Beschwerde) against the notice and instruction of the Tax Office of 9 May 1988.

On 26 April 1990 the applicant introduced a complaint (Säumnisbeschwerde) with the Administrative Court against the inactivity of the Directorate of Finance in dealing with her complaint of 11 October 1989. On 21 September 1990 the Administrative Court ordered the Directorate of Finance to decide on the applicant's complaint. On 28 September 1990 the Regional Directorate of Finance rejected the applicant's complaint of 11 October 1989.

On 20 November 1990 the applicant filed a complaint with the Administrative Court against the Regional Directorate's decision of 28 September 1990. Following a reminder by the applicant, the Administrative Court initiated proceedings on 5 February 1991, and on 2 April 1991 the Regional Directorate filed written observations in reply.

On 20 March 1992 the Tax Office discontinued the criminal proceedings against the applicant.

According to the applicant the Administrative Court has not yet decided on her complaint of 20 November 1990.

COMPLAINTS

1. The applicant complains that the criminal proceedings instituted against her had not been concluded within a reasonable time as required by Article 6 para. 1 of the Convention.
2. The applicant further complains that the Code of Fiscal Offences does not provide for any effective remedy to challenge unreasonable delays in the proceedings. She claims that for this reason there has also been a violation of Article 13 of the Convention.

The applicant initially also complained under Article 6 para. 1 of the Convention that her case was not heard by an independent tribunal and that she was refused access to the case file. In her observations of 13 June 1991 she withdrew these two complaints.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 22 November 1989 and registered on 11 December 1989.

On 7 January 1991 the Commission decided to communicate the application to the respondent Government and to request them to submit their written observations on the admissibility and merits.

The Government's observations were submitted on 15 March 1991. On 13 June 1991 the applicant submitted her observations in reply.

On 2 April 1992 the applicant filed further submissions.

THE LAW

1. The applicant complains about the length of the administrative criminal proceedings instituted against her under the Code of Fiscal Offences. She relies on Article 6 para. 1 (Art. 6-1) of the Convention which, as far as relevant, provides as follows:

"In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

The Government submit that delays in the proceedings were due to the applicant's conduct, namely her filing as many appeals as possible, which continuously delayed the proceedings in that the files were not available to the Tax Office. In particular, in the course of the tax assessment proceedings the applicant had filed an appeal on 4 June 1984 without submitting reasons and she had requested three times an extension of the time-limit for doing so. When she had finally submitted the reasons on 4 November 1985 the authority had decided expeditiously.

The applicant submits that the proceedings had lasted eight and a half years without a decision in first instance being taken, though the case was not a complex one. Moreover, delays in the proceedings were due to inactivity of the authorities, in particular between 26 June 1989 and 28 September 1990 and between 26 April 1990 and 21 September 1990. Between 23 March 1984 and 4 December 1987 the criminal proceedings did not progress as the authorities had waited for the outcome of the tax assessment proceedings. The applicant further submits that it would have been possible for the tax authorities to produce copies of the file in order to be able to continue the

proceedings.

The Commission finds that the applicant's complaint about the length of the criminal proceedings against her raises questions which require an examination of the merits. This part of the application therefore cannot be declared manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention. No other ground for declaring it inadmissible has been established.

2. The applicant also complains that the Code of Fiscal Offences does not provide for any effective remedy to challenge unreasonable delays in the proceedings. She considers that for this reason there has also been a violation of Article 13 (Art. 13) of the Convention.

Article 13 (Art. 13) of the Convention states as follows:

"Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by a person acting in an official capacity."

The Government submit that the applicant did not raise her complaint within the six-month time-limit provided for in Article 26 (Art. 26) of the Convention. On 2 March 1988 the Regional Directorate of Finance rejected the applicant's request to transfer the matter to a higher authority. Thereupon the applicant filed a complaint with the Constitutional Court which on 3 October 1988 decided not to entertain her complaint. This decision was served on the applicant on 21 November 1988. In the Government's opinion the applicant should have raised her complaint with the Commission within six months from this date, that is, before 21 May 1989.

The applicant considers that the lack of an effective remedy, as prescribed in Article 13 (Art. 13) of the Convention, against undue delays by the tax authorities constitutes a continuing situation. The Constitutional Court's decision of 3 October 1988 only confirmed that there was no possibility of seeking legal redress for the failure of the tax authority to act.

The Commission notes that the Constitutional Court, by its decision of 3 October 1988, refused to entertain the applicant's complaint for lack of prospect of success. The Commission agrees with the applicant that by this decision the Court only confirmed that no effective remedy to complain of the delay in the proceedings existed.

Therefore, the Commission concludes that this complaint cannot be rejected for non-compliance with the six month time-limit as set out in Article 26 (Art. 26) of the Convention.

The Commission further finds that the applicant's complaint under Article 13 (Art. 13) of the Convention cannot be separated from the issues under Article 6 para. 1 (Art. 6-1) of the Convention which require a further examination of the merits. It therefore has to be declared admissible as well, no other ground for declaring it inadmissible having been established.

For these reasons, the Commission, unanimously,

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

Secretary to the Second Chamber

President of the Second Chamber

(K. ROGGE)

(S. TRECHSEL)