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Part Three. Judicial decisions on questions relating to the United Nations and related
intergovernmental organizations

Chapter VIII. Decisions of national tribunals



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Chapter VIII

DECISIONS OF NATIONAL TRIBUNALS

Austria

Poole v. the Government of the Republic of Austria. Overruling of court decision by Ministry of Justice of 28 August 1986

Article XII, section 27 (h), of UNIDO Headquarters Agreement¹—Freedom of UNIDO officials to acquire or maintain within Austria immovable property under the same conditions applicable to Austrian nationals—Order of the administrative authorities of a district court of Vienna charging an official of UNIDO the registration fee in the land register—Application by the official to the court, requesting exemption from the fee—Decision from the President of the Provincial Court for Civil Matters (“Landesgericht fuer Zivilrechtssachen, Wien”), denying exemption in view of the official’s nationality not being Austrian—Overruling of the President of the Provincial Court for Civil Matters by the Federal Ministry of Justice

In connection with the acquisition of immovable property in 1983, Mr. L. G. Poole, an official of UNIDO with diplomatic status, was contacted by the competent district court for Vienna (Wien Innere Stadt). As a consequence, the administrative authorities of the district court charged Mr. Poole a fee in the amount of 24,260 schillings for registration of his property in the land register (“Grundbuchseintragungsgebuehr”) and asked that this amount be transferred directly to the Payments Office of the Vienna Higher Provincial Court (“Einbringungsstelle beim Oberlandesgericht Wien”). Failing payment of the amount requested by the payment order of 7 May 1986, an application was made to the Payments Office on 4 June 1986, requesting a correction. Mr. Poole requested this on the grounds, *inter alia*, that while not being an Austrian citizen, he had been an official of UNIDO for a considerable time before the acquisition of the property and therefore was entitled under the Agreement between the Republic of Austria and the United Nations regarding the Headquarters of the United Nations Industrial Development Organization, article XII, section 27 (h),

“to acquire or maintain within the Republic of Austria . . . under the same conditions applicable to Austrian nationals immovable property . . .”

On the basis of this provision, Mr. Poole requested exemption from payment of the land registry registration fee.

In reply to this application for correction, Mr. Poole received a final administrative court decision (“Bescheid”), dated 30 June 1986, from the President of the Provincial Court for Civil Matters, Vienna (“Landesgericht fuer Zivilrechtssachen, Wien”). The civil court administration considered, *inter alia*,

Mr. Poole's liability in the matter to arise out of the fact that he had stated, in connection with the acquisition of property, that he was a citizen of Jamaica. In the opinion of the administrative authorities of the civil court, only Austrian citizens were exempt *ex leges* from the land registry registration fee according to paragraph 30/3 of the respective statute "Wohnungsgemeinnuetzigkeitsgesetz 1979", in connection with paragraph 23 Z 1 of the "Wohnbaufoerderungsgesetz 1968". Mr. Poole was informed that he could appeal against this decision within six weeks to the Administrative Court ("Verwaltungsgerichtshof") or to the Constitutional Court ("Verfassungsgerichtshof").

On 18 August 1986, by a note verbale to the Federal Ministry for Foreign Affairs of Austria, the secretariat of UNIDO drew the attention of the Ministry to the matter and stated, *inter alia*, that:

"the secretariat of UNIDO would be inclined to take the view that the effect of section 27 (h) of UNIDO's Headquarters Agreement is to grant to UNIDO officials the right to acquire and possess immovable property in the Republic of Austria under the same conditions applicable to Austrian citizens and that, in the absence of any provision to the contrary, the requirement of equal treatment extends to fees levied on or in connection with the acquisition, such as the "Grundbuchseintragungsgebuehr". The secretariat of UNIDO therefore trusts that the competent authorities of the Republic of Austria will take all necessary steps to ensure that Mr. Poole's above-mentioned privilege is implemented."

By a note verbale of 28 August 1986, the Federal Ministry for Foreign Affairs informed UNIDO that:

"The Federal Ministry of Justice has now overruled the decision of the President of the "Landesgericht fuer Zivilrechtssachen Wien" of 30 June 1986. This decision by the Federal Ministry of Justice is based on article XII, section 27 (h), of the Agreement between the United Nations and the Republic of Austria regarding the Headquarters of the United Nations Industrial Development Organization of 18 July 1967. This provision grants to officials of UNIDO the right to acquire or maintain immovable property under the same conditions as applicable to Austrian nationals. The Federal Ministry for Foreign Affairs wishes to point out that this decision of the Federal Ministry of Justice, however, does not affect the practice of the competent Austrian authorities regarding the registration fee of mortgages."

In view of the overruling of the Court's decision, Mr. Poole withdrew the complaint he had filed with the Administrative Court against the decision of the President of the Provisional Court for Civil Matters, Vienna, for which the deadline was 3 September 1986.

NOTE

¹ United Nations, *Treaty Series*, vol. 600, p. 93; reproduced also in *Juridical Year-book*, 1967, p. 44.