

AS TO THE ADMISSIBILITY OF

Application No. 17099/90  
by Felix and Carl-Ludwig HABSBURG-LOTHRINGEN  
against Austria

The European Commission of Human Rights sitting in private  
on 6 September 1991, the following members being present:

MM. C.A. NØRGAARD, President  
J.A. FROWEIN  
F. ERMACORA  
G. SPERDUTI  
G. JÖRUNDSSON  
A.S. GÖZÜBÜYÜK  
A. WEITZEL  
J.C. SOYER  
H.G. SCHERMERS  
H. DANELIUS  
Mrs. G.H. THUNE  
Sir Basil HALL  
MM. F. MARTINEZ  
C.L. ROZAKIS  
Mrs. J. LIDDY  
MM. L. LOUCAIDES  
J.-C. GEUS  
A.V. ALMEIDA RIBEIRO  
M.P. PELLONPÄÄ  
B. MARXER

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 15 August 1990  
by Felix and Carl-Ludwig HABSBURG-LOTHRINGEN against Austria and  
registered on 29 August 1990 under file No. 17099/90;

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 applicants, may be  
summarised as follows.

The first applicant, an Austrian citizen born in 1916, resides  
at San Angel in Mexico. The second applicant, an Austrian citizen  
born in 1918, resides in Brussels. The applicants are the sons of  
Charles, the last Emperor of Austria. Before the Commission the  
applicants are represented by Messrs. H. Golsong, a lawyer residing  
at Chevy Chase in Maryland, United States of America, and W. Bitschnau,  
a lawyer residing at Bludenz in Austria.

I.

Charles, Emperor of Austria, abdicated on 11 November 1918.

On 3 April 1919 the Austrian Act on the Banishment and the Expropriation of the Property of the House of Habsburg-Lothringen (Gesetz betreffend die Landesverweisung und die Übernahme des Vermögens des Hauses Habsburg-Lothringen) was enacted. Section 2 of the Act concerns the banishment of the members of the House of Habsburg-Lothringen.

In Article 10 para. 2 of the Vienna State Treaty (Staatsvertrag) of 15 May 1955, the Republic of Austria bound itself to maintain the Act of 3 April 1919.

On 4 July 1963 a Constitutional Statute concerning the authentic interpretation of the Act of 3 April 1919 was enacted. According to this Statute, Section 2 of the 1919 Act was to be read as follows:

[Translation]

"S. 2. In the interest of the security of the Republic the former holders of the Crown and other members of the House of Habsburg-Lothringen are banished from the country, if and to the extent that they do not expressly renounce their membership of this House and all sovereign rights emanating therefrom. The determination whether or not this declaration is to be regarded as sufficient falls to the Federal Government who will consult with the Main Committee of the National Council."

[German]

"§ 2. Im Interesse der Sicherheit der Republik werden der ehemalige Träger der Krone und die sonstigen Mitglieder des Hauses Habsburg-Lothringen, diese, soweit sie nicht auf ihre Mitgliedschaft zu diesem Hause und auf alle aus ihr gefolgerten Herrschaftsansprüche ausdrücklich verzichtet und sich als getreue Staatsbürger der Republik bekannt haben, des Landes verwiesen. Die Festsetzung, ob diese Erklärung als ausreichend zu erkennen sei, steht der Bundesregierung im Einvernehmen mit dem Hauptausschuß des Nationalrates zu."

On 16 September 1963, when signing Protocol No. 4 to the Convention, Austria made a declaration which also appears in the instrument of ratification deposited on 18 September 1969 and which reads as follows:

"Protocol No. 4 is signed with the reservation that Article 3 shall not apply to the provisions of the Law of 3 April 1919, StGB1. No. 209 concerning the banishment of the House of Habsburg-Lorraine and the confiscation of their property, as set out in the Act of 30 October 1919, StGB1. No. 501, in the Constitutional Law of 30 July 1925, BGB1. No. 292, in the Federal Constitutional Law of 26 January 1928, BGB1. No. 30, and taking account of the Federal Constitutional Law of 4 July 1963, BGB1. No. 172."

## II.

On 20 February 1990 the Austrian Embassy in Mexico issued the first applicant with a passport. The passport states on page 4: "This Passport is valid for all countries of the world". On page 6 under the title "Reserved for the Authority" it is stated:

[Translation]

"Austrian Embassy  
Mexico  
'Not entitled to enter Austria and to travel through  
Austria.'  
Mexico, 20 February 1990".

[German]

"Österreichische Botschaft  
Mexiko  
'Berechtigt nicht zur Einreise nach Österreich und nicht zur  
Durchreise durch Österreich.'  
Mexiko, am 20. Februar 1990".

Upon the second applicant's inquiry he was informed by the Austrian authorities that, if he applied for an Austrian passport, an identical statement would be made therein.

## COMPLAINTS

1. The applicants complain under Article 8 of the Convention, taken alone and together with Article 14 of the Convention, that the members of the House of Habsburg are the only Austrians prohibited from entering Austria. The applicants submit that their present application is not the same as Application No. 15344/89 (Carl Ludwig and Lorenz Habsburg-Lothringen v. Austria, Dec. 14.12.89). It is also submitted that there is no domestic remedy at their disposal to complain about the passport statement.

The applicants allege a violation of their right to respect for family life within the meaning of Article 8 in that, because of their prohibition to enter Austria, they cannot visit a sister, princess E., a nephew, various cousins as well as the family grave.

Furthermore, the applicants allege a violation of their right to respect for private life within the meaning of Article 8. They claim in particular that when such a passport is shown to a customs officer, they may be subjected to degrading treatment. For instance, they may have to spend hours or whole nights at the border answering questions.

The applicants submit that these interferences with their rights under Article 8 para. 1 of the Convention find no justification under para. 2 of this provision.

2. Under Article 3 of the Convention, taken alone and together with Article 14 of the Convention, the applicants submit that their banishment from Austria, and the statement in the passport relating thereto, amount to inhuman and degrading treatment.

3. Under Article 6 para. 1 of the Convention, taken alone and together with Article 14 of the Convention, the applicants complain that for seventy years they have been deprived of a right to appeal (Rekursmöglichkeit).

## THE LAW

1. The applicants complain under Articles 3, 6 para. 1 and 8 (Art. 3, 6-1, 8) of the Convention, taken alone and together with Article 14 (Art. 14) of the Convention, of their prohibition to enter Austria, as stated in the first applicant's passport.

2. The Commission considers that although only the first applicant's passport contains the contested restriction, if the second applicant applied for a passport, such a statement would also be entered therein. In this respect therefore the Commission need not

distinguish between the applicants.

3. Article 27 para. 1 (b) (Art. 27-1-b) of the Convention provides that the Commission shall not deal with any application submitted under Article 25 (Art. 25) which is substantially the same as a matter which has already been examined by the Commission and if it contains no new information.

In the present case, the Commission notes that on 14 December 1989 it declared inadmissible as being manifestly ill-founded one part of Application No. 15344/89. That part of the application concerned the second applicant's complaints under Articles 8 and 14 (Art. 8, 14) of the Convention of his banishment from Austria.

After examining the present application, the Commission considers that, insofar as it concerns the second applicant's complaints under Articles 8 and 14 (Art. 8, 14) of the Convention that he is prevented from entering Austria, it is substantially the same as the matter which has already been considered by the Commission in Application No. 15344/89, and that in this respect the second applicant has not produced any relevant new information.

It follows that this part of the second applicant's application must be rejected pursuant to Article 27 para. 1 (b) (Art. 27-1-b) of the Convention.

4. Under Article 8 (Art. 8) of the Convention, taken alone and together with Article 14 of the Convention, the first applicant complains that his prohibition to enter Austria violates his right to respect for his private and family life.

The Commission recalls its decision of 14 December 1989 in Application No. 15344/89 in which it found:

"The Commission considers that the requirement, stipulated in the Act of 3 October 1919, that members of the House Habsburg-Lothringen should not be admitted to Austria, unless they renounce their membership of that House and all sovereign rights emanating therefrom, is consistent with the constitutional status of Austria as a Republic. Furthermore, the first applicant has not shown that there exist effective and close family links, constituting family life for the purposes of Article 8 (Art. 8) of the Convention, with persons residing in Austria.

Insofar as the applicant may be understood as complaining that the fact that he cannot visit his family grave breaches his right to respect for private life within the meaning of Article 8 (Art. 8), the Commission, even assuming that an issue could arise in this respect, considers that, in the circumstances of the present case, no lack of respect for private life has been shown.

Accordingly, the Commission finds no lack of respect for the first applicant's right to respect for his private and family life within the meaning of Article 8 para. 1 (Art. 8-1) of the Convention. ...

4. Insofar as the applicant also complains under Article 8 (Art. 8) taken together with Article 14 (Art. 14) of the Convention, the Commission finds, for the reasons given above, that the treatment which the applicant alleges cannot amount to discrimination within the meaning of Article 14 (Art. 14) of the Convention."

In the Commission's opinion these considerations apply equally to the first applicant's complaints in the present case. This part of

the application is therefore manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

5. Insofar as the applicants further complain of a breach of their right to respect for private life in that the entry in their passports may give rise to degrading questioning, the Commission finds that this cannot in itself constitute an interference with the applicants' right to respect for private life within the meaning of Article 8 (Art. 8) of the Convention. Insofar as the applicants, in respect of this complaint, also invoke Article 8 (Art. 8) taken together with Article 14 (Art. 14) of the Convention, the Commission finds that the treatment which the applicants allege cannot amount to discrimination within the meaning of Article 14 (Art. 14) of the Convention. This part of the application is therefore manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

6. Under Article 3 (Art. 3) of the Convention, taken alone and together with Article 14 (Art. 14), the applicants complain of the inhuman and degrading treatment resulting from the entry in the first applicant's passport.

However, the Commission finds that the situation of which the applicants complain has not been shown to constitute a treatment the effects of which are contrary to Article 3 (Art. 3) of the Convention, either taken alone or together with Article 14 (Art. 14) of the Convention. This part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

7. The applicants complain under Article 6 para. 1 (Art. 6-1) of the Convention, taken alone and together with Article 14 (Art. 14) of the Convention, that they have no access to a court to complain of the prohibition to enter Austria, as stated in the first applicant's passport.

However, the Commission recalls its case-law according to which a decision as to whether a person should be allowed to enter or reside in a country does not involve either the determination of that person's civil rights and obligations or of a criminal charge against him within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention (see No. 8118/77, Dec. 19.3.81, D.R. 25 p. 105).

It follows that the applicants' complaints under Article 6 para. 1 and Article 14 (Art. 6-1, 14) of the Convention are incompatible *ratione materiae* with the provisions of the Convention 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 Commission

President of the Commission

(H.C. KRÜGER)

(C.A. NØRGAARD)