COUNCIL OF EUROPE

CONSEIL DE L'EUROPE

Or. English

EUROPEAN COMMISSION
OF HUMAN RIGHTS

Application No. 8695/79

Maximilian INZE
against
AUSTRIA

Report of the Commission

(Adopted on 4 March 1986)

STRASBOURG

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I. INTRODUCTION

1. The following is an outline of the case as submitted to the European Commision of Human Rights, and of the procedure before the Commission.

Substance of the application

2. The applicant complains that he was discriminated against on account of his illegitimate birth in the enjoyment of the property rights which he acquired by way of inheritance from his mother who had owned a hereditary farm. He claims that in the realisation of his share of the estate he was treated worse than his half-brother because the Hereditary Farms Act designated the latter as the principal heir entitled to take over the farm while he himself, as a ceding heir, could get only a monetary compensation calculated in an unfavourable manner. In reality, his share therefore did not correspond to the value of his half-brother's share although it was meant to represent the same fraction of the estate. The applicant invokes Art. 14 of the Convention read in conjunction with Art. 1 of Protocol No. 1 to the Convention.

Proceedings before the Commission

3. The application was introduced on 20 June 1979 and registered on 30 July 1979. The Commission began with the examination of its admissibility on 9 December 1980. It decided to give notice of the application to the respondent Government and to invite that Government to submit written observations on the admissibility of the application.

4. The Government submitted their observations on 3 March 1981, and the applicant replied on 22 April 1981.

5. On 16 July 1981, the Commission decided to request supplementary observations from the parties. Such observations were submitted by the applicant on 8 October 1981 and by the Government on 27 October 1981.

6. On 13 October 1981, the applicant informed the Commission that a judicial settlement had been reached on the domestic level, but that certain issues still remained to be clarified.

7. Further developments were reported by the applicant on 14 December 1981 and 1 March 1982, when the above settlement still had not been implemented due to certain administrative difficulties.

8. The Commission therefore decided on 8 May 1982 to adjourn further consideration of the case pending the outcome of the domestic settlement procedure.

9. Information on the situation was submitted by the Government on 28 May 1982 and the applicant thereafter reported from time to time on further developments. This was done in particular by communications of 9 and 15 June 1982 and by oral explanations given on 3 March 1983. However, it was not before 1 June 1984 that the Commission was informed that the above settlement had actually been carried out.

10. In the light of this information, the Commission decided on 11 October 1984 to resume its examination of the case. After further deliberation, it decided on 5 December 1984 to

- **declare admissible** the applicant's complaint that he had been discriminated against contrary to Art. 14 of the Convention in the enjoyment of his property rights as guaranteed by Art. 1 of the Protocol to the Convention, while at the same time

-**declaring inadmissible** the remainder of the application, i.e. the applicant's further complaints under Arts. 6 and 13 of the Convention.

11. Also, on 5 December 1984, the Commission decided to hold a hearing with the parties on the merits of the admitted part of the application.

12. On 15 March 1985, the Commission decided to grant the applicant legal aid in the proceedings on the merits.

13. The hearing on the merits took place on 3 July 1985. At this hearing, the parties were represented as follows:

- the **applicant**, who was also present in person, by his lawyer, Mr. H. WALTHER of Klagenfurt;

- the **Government** by their Agent, Mr. H. Türk, Head of the International Law Department of the Federal Ministry of Foreign Affairs, who was assisted by Mr. M. Matzka, of the Constitutional Law Department of the Federal Chancellery, and Mrs. I. Djalinous, of the Federal Ministry of Justice, Advisers.

14. After declaring the case admissible, the Commission, acting in accordance with Art. 28 (b) of the Convention, also placed itself at the disposal of the parties with a view to securing a friendly settlement. In the light of the parties' reaction, the Commission now finds that there is no basis on which such a settlement can be effected.

The present Report

15. The present Report has been drawn up by the Commission in pursuance of Art. 31 of the Convention and after deliberations and votes in plenary session, the following members being present:

MM. C.A. NØRGAARD, President
G. JÖRUNDSSON
S. TRECHSEL
B. KIERNAN
A.S. GÖZÜBÜYÜK
H.G. SCHERMERS
G. BATLINER
H. VANDENBERGHE
Mrs G.H. THUNE
Sir Basil HALL

16. The text of the Report was adopted by the Commission on 4 March 1986 and is now transmitted to the Committee of Ministers in accordance with Art. 31, para. 2 of the Convention.

17. A friendly settlement of the case not having been reached, the purpose of the present Report, pursuant to Art. 31 of the Convention, is accordingly :

1. to establish the facts, and

2. to state an opinion as to whether the facts found disclose a breach by the respondent Government of their obligations under the Convention.

18. A schedule setting out the history of the proceedings before the Commission is attached hereto as Appendix I and the Commission's decision on the admissibility of the application forms Appendix II.

19. The full text of the pleadings of the parties, together with the documents lodged as exhibits, are held in the archives of the Commission and are available to the Committee of Ministers, if required.

II. ESTABLISHMENT OF THE FACTS

1. The estate of the applicant's mother

20. The applicant is an Austrian citizen who was born as an illegitimate child in 1942. He is resident at Stallhofen, Carinthia, and is represented by Mr. Heinz Walther, a barrister practising in Klagenfurt.

21. The applicant's mother who had owned a farm at St. Bartlmä, Carinthia, died in 1975 and left as her heirs, apart from the applicant, her husband and her second son who was born in wedlock in 1956. According to the provisions of the Civil Code, the widower was entitled to the fourth part of the inheritance (section 757), and each of the sons (irrespective of the question of illegitimate or legitimate birth) to 3/8 thereof (sections 732 and 754). The applicant and his step-father and half-brother declared that they were willing to accept these shares, and the District Court of Klagenfurt decided on 31 March 1976 that the declarations of acceptance were valid.

2. The Hereditary Farms Act

22. The farm in question was, however, subject to special regulations of the Carinthian Provincial legislation providing that farms may not be divided in the case of hereditary succession, and that one of the heirs must take over the real property undivided and pay off the other heirs (Hereditary Farms Act, Erbhöfegesetz, Provincial Law Gazette No. 33/1903). While leaving unaffected the general regulations of the Civil Code governing the determination of the hereditary shares, this legislation thus regulates the attribution of these shares in cash or kind.

The following provisions of this Act are relevant:

Section 5

(1) The owner of a farm subject to the provisions of this Act is not restricted by the latter in his disposing of the farm or of parts thereof either inter vivos or mortis causa.

(2) The provisions of the present Act shall always be applied in cases of intestate succession, but in cases of testamentary or contractual succession they shall only be applied if the testator selects one of the persons included by the Civil Code among the intestate heirs as the persons to take over the farm, but in doing so he is not bound either by the order of heirs set out in the Civil Code or by the order laid down in the present Act.

Section 6

(1) If the estate of the owner of a farm goes to several persons, only one person, the principal heir, may inherit the farm and its equipment...

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Section 7

The principal heir shall be determined by the laws and regulations governing legal succession. When there are several heirs and no agreement can be reached among them, the farm shall be assigned as follows:

(1) In general, male heirs shall take precedence over female, and older over younger heirs of the same sex; lots shall be cast between heirs of the same age. Those closely related shall, however, take precedence over those more distantly related.

(2) Children of the family shall always take precedence over adopted children and legitimate children over illegitimate children.

(4) The following shall normally be excluded from taking over the farm:
b) persons who, by reason of a mental or physical disability, seem incapable of running the farm themselves,
d) persons who are prevented by their profession from living on the farm and working it in person.

(6) When excluded and non-excluded heirs lodge rival claims, the farm shall go to the person in the second category to whom it would have gone if the first category had not existed.

Section 8

When the estate is being divided, the farm (section 6) shall be assigned to the principal heir, who shall become the estate's debtor for the value of the farm free of charges.

Section 9

(1) The value of the farm shall be determined by agreement among the parties.

(2) If no such agreement can be reached, the court shall call on experts to make an assessment, shall hear the municipal council and the parties and shall, on the basis of equity, determine the value of the farm in such a way that the principal heir can hold out well. ("den Wert des Hofes nach billigem Ermessen derart festsetzen, dass der Übernehmer wohl bestehen kann")...

Section 10

(1) When the estate is being divided, the amount owed by the principal heir under Section 8 shall be included instead of the farm.

(2) This division among the heirs, including the principal heir, shall be governed by the provisions of the Civil Code and the Non-Contentious Procedure Act, but shall always be effected by the court or submitted to the court for approval.

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Section 11

(1) If the parties fail to reach agreement on the time-limit for payment of the sum due to the ceding heirs, the amount of the instalments and the interest accruing, the court shall determine these matters after due deliberation. However, if he so requests, the principal heir must always be granted a period of three years from the date of his formally taking possession for full payment of this amount.

(2) However, the time-limit for payment may not be fixed at over three years without the consent of the creditors.

(3) An attempt shall also be made to reach a friendly agreement concerning security for the sums payable. Failing such agreement, the transfer deed shall stipulate that the principal heir's ownership of the farm may only be entered in the land register if the farm is simultaneously registered as security for the sums payable to the co-heirs.

(4) If, prior to expiry of the said time-limit, ownership of the farm is wholly or partly transferred to a third party by virtue of a legal transaction inter vivos, the co-heirs shall be entitled to claim immediate payment, regardless of the time-limit established for this purpose.

Section 12

The testator may restrict or annul the preference given to the principal heir or extend it subject to the requirements of the law on reserved portions.

Section 14

(1) The law on reserved portions (sections 765 and 766 of the Civil Code) is not affected by the regulations on division of estates.

(2) Reserved portions shall be assessed with reference to the value of the farm, determined in accordance with section 9 (2)...

3. The development of the proceedings in the particular case

a) Qualification of the farm as hereditary farm and establishment of its value

23. In the present case, the applicant claimed that he should be called to take over his mother's farm as he was her eldest son. He submitted that the regulation providing for the precedence of the legitimate children had in the meantime been abrogated, and that his half-brother was in any event excluded as being unfit to work the farm.

24. The question was submitted to the court which on 28 April 1976 held a hearing with the parties and on 26 August 1976 appointed an expert to submit an opinion concerning the following questions: the qualification of the farm as a "hereditary farm" within the meaning of the Provincial Act; its value for the purpose of determining the sums to be paid to the ceding heirs; and the conditions of its exploitation since the death of the applicant's mother.

25. The expert opinion dated 1 October 1976 was submitted to the court on 27 October. It came to the conclusion that the farm was subject to the provisions of the Provincial Act, and that its value was AS 331,040.-. The farm was in a very bad condition and could not by itself provide a sufficient livelihood for a family. After the death of the previous owner, it had been worked mainly by her widower who had kept only a few cattle and used all land for pasture. The grassland had partly run wild, and the fields had no longer been tilled.

26. The court then held a hearing on 18 January 1977 in order to determine the character of the farm as a "hereditary farm". By a decision of 25 January 1977 which has become final it found that it had this character, and at the same time it fixed the value in accordance with the expert opinion at AS 331.040.-.

b) Alleged exclusion of the applicant's half-brother

27. The question of the determination of the heir entitled to take over the farm, and the exclusion of the applicant's half-brother for this purpose as claimed by the applicant, was referred to the Regional Court of Klagenfurt in accordance with section 7 (4) of the Provincial Act. The District Court submitted its file to the Regional Court on 20 July 1977. A hearing which was fixed by the Regional Court to take place on 16 January 1978 was however cancelled, and on 17 January 1978 the court returned the file to the District Court with the request to take further evidence relating to the ability of the applicant's half-brother to work the farm. The expert opinion was to be supplemented in this respect, and the District Court was asked to join its own legal opinion (as required by section 7 (4) of the Act) when resubmitting the file.

28. The District Court then ordered a supplementary expert opinion which was submitted on 6 April 1978. It came to the conclusion that the conditions of the exploitation of the farm had further deteriorated. Certain lands had been left to a motocross club, and others to a neighbour who dumped various construction materials there. At the time, it was therefore hardly possible to speak of an orderly exploitation of the farm. As regards the question of the ability of the applicant's half-brother to work the farm besides his job (as an unskilled worker), the expert answered in the affirmative. The work required to be done at the farm was not very much and his working place was not so far away as to prevent his daily presence at the farm.

29. A hearing of the parties by the District Court had to be postponed several times. It eventually took place on 31 January 1979. On this occasion, it was stated that there was no agreement between the parties as to who should take over the farm even pending the proceedings. The applicant's step-father and half-brother declared that they were opposed to the appointment of a curator.

c) Judicial determination of the principal heir

30. The District Court resubmitted the file to the Regional Court at the end of February 1979. The Regional Court decided on 25 June 1979 to reject the applicant's application as inadmissible insofar as he sought a finding that his stepfather was excluded from taking over the farm. The step-father had in fact not pretended to be entitled to do so. As regards the alleged exclusion of the applicant's half-brother, the court found that he was neither prevented by his profession, nor incapable of working the farm besides his job. He could not be held responsible for the negligent exploitation of the farm since his mother's death because it had been done by his father.

d) Appeal proceedings

31. The applicant appealed from the above decision to the Graz Court of Appeal claiming that certain evidence had been disregarded by the Regional Court when refusing the exclusion of the applicant's half-brother. He furthermore submitted that the provision in section 7 (2) of the Provincial Act giving priority to legitimate children had been abrogated by the new version of s. 754 (1) of the Civil Code enacted in 1970 (Fed. Law Gazette No. 342)*, and by Art. 14 of the European Convention on Human Rights. He requested the court to submit the question of the constitutionality of the provision to the Constitutional Court.

32. The Court of Appeal, however, rejected the appeal on 26 September 1979. It confirmed the Regional Court's finding that the applicant's half-brother was not excluded, and it stated that it had no doubts as to the constitutionality of the provision of the Provincial Act giving precedence to the legitimate children. This provision had an objective justification because it was a peculiarity of the rural family and economic structure that the legitimate children lived with the family at the farm, whereas the illegitimate children were not unfrequently brought up elsewhere and therefore did not have the same close link to the farm as the legitimate children. This was also the situation in the present case. The Court of Appeal therefore saw no reason to submit to the Constitutional Court the question of the constitutionality of the provision in question.

e) Further appeal to the Supreme Court

33. The applicant appealed further to the Supreme Court to which he submitted in essence the same arguments as to the Court of Appeal. The Supreme Court, however, found by a decision of 9 April 1980 that the appeal was inadmissible as it was directed against a decision of the Court of Appeal confirming the decision of the Regional Court.

34. The Supreme Court also dealt with the question of the alleged abrogation of section 7 (2) of the Provincial Hereditary Farms Act by section 754 (1) of the Civil Code, as amended, which it denied.

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* The text of this provision reads as follows :
"An illegitimate child shall have the same right of intestate succession in the estate of his mother as a legitimate child..."

35. As regards the further question of the conformity of section 7(2) with the constitutional provision in Art. 14 of the Convention, the Supreme Court observed that Art. 14 was only applicable in relation to the enjoyment, without discrimination, of the rights and freedoms set forth in the Convention. Now, the Convention did not deal with the question of hereditary succession, and Art. 1 of the Protocol which secured the peaceful enjoyment of possessions did not exclude regulations providing for different rules of succession according to birth in wedlock or out of wedlock.

36. In the Supreme Court's view there were further no doubts as to the compatibility of the above provision with the constitutional principle of equality. This principle required the legislation to make no legal distinction based on the personal status of an individual unless this was justified by objective reasons. The challenged regulations of the Provincial Act did not however appear to be unreasonable. Similar provisions also existed in the provincial legislation of Tyrol (**Höfegesetz**) and in the federal legislation for the other provinces (**Anerbengesetz**) which limited the illegitimate children's rights even further because under this legislation they could only take over a hereditary farm if they had been brought up at the farm.

37. The preparatory materials of this legislation showed that the rank of illegitimate children after that of the legitimate children was based on convictions of the rural society. The regulation in question was not contradicted either by attempts to assimilate the legal position of illegitimate children to that of legitimate children because it reflected the special convictions and attitudes of the rural population which, among other things, also affected the legal position of the widower. Apart from these considerations of the preparatory materials, it was observed that the family was an essential element of the legal order. Having regard to all these circumstances, it could not be said that the regulation contained in the Carinthian Hereditary Farms Act was not based on objective considerations and hence there was no reason to submit the matter to the Constitutional Court.

f) Second appeal to the Supreme Court

38. After the Supreme Court's above decision the European Convention on the Legal Status of Children Born out of Wedlock entered into force for Austria with effect from 29 August 1980 (Fed. Law Gazette No. 313/1980). Its Article 9 provides that a child born out of wedlock shall have the same right of succession in the estate of its father and its mother and of a member of its father's or mother's family, as if it had been born in wedlock. Austria has ratified this provision with the reservation that it shall not apply to the succession in the estate of the father or his family.

39. Basing himself on this new legal situation, the applicant again applied to the Supreme Court asking it to reconsider its earlier decision of 9 April 1980. However, on 6 October 1980, the Supreme Court, rejected this application as inadmissible, having regard to the binding effect of its earlier final decision and the absence of a legal possibility to reopen the procedure.

g) Settlement reached between the applicant and his half-brother

40. The procedure of first instance was resumed in October 1981. On 12 October 1981 a judicial settlement was reached between the applicant and his half-brother whereby the applicant renounced any claims to taking over his mother's hereditary farm which would fall to his half-brother. In return he was to obtain a certain piece of the land which had been promised to him by his mother during her lifetime, but no other compensation.

41. The judicial proceedings in the hereditary case were terminated on 31 December 1981 by the transfer (Einantwortung) of the whole farm into the property of the applicant's half-brother. The implementation of the above judicial settlement was reserved to a subsequent agreement between the parties.

42. This agreement was concluded between the applicant and his half-brother on 26 May 1982.

43. The separation of the land thereby assigned to the applicant still required the approval of certain administrative authorities, including in particular the competent forestry authority, having regard to the provisions of the Carinthian Provincial Forestry Act, Prov. Law Gazette No. 77/1979. Certain difficulties arose in this respect because the land in question, which consisted of forest, was not sufficiently large. Its separation was therefore inadmissible under the above Act except in the case of a predominant public interest the existence of which the authority denied. The difficulties were apparently overcome after the Constitutional Court had in a different case found the relevant provisions of the Carinthian Forestry Act to be unconstitutional. The land was then ascribed to the applicant in the official land register. This has been confirmed in an extract from the land register of 13 January 1984.

III. THE PARTIES' SUBMISSIONS

44. The parties' written submissions have been summarised in the relevant part of the decision on admissibility (see Annex II). The present summary may therefore be limited to the arguments submitted at the oral hearing on 3 July 1985.

A. THE APPLICANT'S SUBMISSIONS

45. The applicant complains that he has been discriminated against on account of his illegitimate birth in the enjoyment of the property rights which he had acquired by way of inheritance from his mother (Art. 14 of the Convention read in conjunction with Art. 1 of Protocol No. 1 to the Convention).

46. While under the civil law he had a right to an equal share in his mother's estate, he could not take over her hereditary farm because of the application of s. 7 (2) of the Carinthian Hereditary Farms Act whereby precedence is given in this respect to legitimate children, in this case his younger half-brother. As the ceding heir he had only a right to be paid a financial compensation, but this, he submits, was not to be calculated in such a way that it corresponded to the value of the farm. Even though in the end he obtained some land of his mother's estate by way of a judicial settlement, he claims that he still suffered a disadvantage because he could only conclude that settlement in the weak negotiating position of a ceding heir. He therefore maintains his complaint in this respect despite the judicial settlement in question.

47. The applicant observes that it has been admitted even by the Government that the actual value of his share was less than what his half-brother received.

48. He has submitted an expert opinion according to which the actual value (**Sachwert**) of the farm in 1976 was AS 1,641,552.-- and its capitalised income value (**Ertragswert**) AS 1,269,000.--. The average of these two values is the market value (**Verkehrswert**) which then was AS 1,455,000.--. The transfer value (**Übernahmswert**) calculated according to section 9 (2) of the Hereditary Farms Act, however, was only AS 315,970.94 of which 3/8, i.e. AS 118,489.10, fell to the applicant in the form of a claim to get financial compensation as a ceding heir. The pecuniary loss at the time in question was AS 1,257,518.17, and revalued in 1985 (index increase of 53.9%), it amounted to AS 1,935,320.46.

49. If instead of the above financial claim, the value of the land which the applicant got by the judicial settlement is taken into account, there was still a substantial loss, because the market value of that land in 1976 was AS 455,700.-- and revalued in 1985 it was AS 706,335.--. The difference to the value of the farm was therefore still more than AS 1.2 million in 1985.

50. However, it is not only the financial disadvantage which the applicant wishes to challenge in his application. He stresses his emotional attachment to the farm in question where he grew up from his birth until 1965. It was only natural that then, at the age of 23, he had to look for professional training elsewhere. It is true that for some time he left Austria and served with a UN contingent in the Near East, but then he married and settled down only a few kilometres from the farm. He stated in the court proceedings that if he were designated as the principal heir, he would be prepared to work the farm any time. In this connection, the applicant also points out that according to the statements of the court the farm has not been properly worked by the principal heir actually designated.

51. The applicant further observes that it is not his objective to challenge the system of hereditary farms as such, but only the criteria applicable to the choice of the principal heir. He points out that in his case the farm was his mother's, who herself had inherited it from her mother. At least in a case of succession after the mother, the criterion of birth in wedlock or out of wedlock is not acceptable and amounts to unjustified discrimination.

52. In the applicant's view, the present state of the law in Austria indeed no longer allows to treat the illegitimate child less favourable than a legitimate one in the succession after their mother. First, section 754 (1) of the Civil Code was amended in 1970 (Federal Law Gazette No. 243) to the effect that in the succession after his mother the illegitimate child shall have the same right of intestate succession as a legitimate one. Secondly, the European Convention on the Legal Status of Children Born out of Wedlock entered into force for Austria on 29 August 1980 (Fed. Law Gaz. No. 313), and its Art. 9 provides that the child born out of wedlock shall have the same right of succession in the estate of its father and its mother and of a member of its father's or mother's family as if it had been born in wedlock. The reservation which Austria made in relation to this provision covers only the succession in the estate of the father or of a member of the father's family, and therefore does not apply to the present case. However, for procedural reasons, the Supreme Court could not reopen the applicant's case having regard to the new legal situation created by the European Convention as the applicant had requested. Nevertheless, it indirectly recognised the unfairness of the situation in which the applicant found himself, and put the blame for this on the legislation which had failed to provide for the possibility of reopening non-contentious proceedings after a final court decision.

53. Already before the entry into force of the European Convention, the applicant had tried to bring about a change of the relevant provincial legislation, bringing it into line with the principles of the reform of the (Federal) Civil Law concerning the status of illegitimate children. On 14 May 1976, he wrote a letter to the President of the Provincial Diet of Carinthia, in which he raised this problem. The President replied on 31 May 1976 that according to his personal view an adaptation of the Hereditary Farms Act was indeed necessary, but that unfortunately the matter fell outside the competence of the Provincial Diet since it was a matter of civil law within the meaning of Art. 10, para. 1 (6) of the Federal Constitution and thus the exclusive competence of the Federal Parliament (cf. Constitutional Court judgments Nos. 2375 and 2452 of 15 December 1952). He promised, however, to raise the issue in the Diet with a view to proposing amending legislation to the Federal Parliament. Up to the present date, the Carinthian Hereditary Farms Act has not been amended by the Federal Parliament.

54. However, there is a Government Bill for the amendment of the similar legislation applicable in other provinces, ie of the Federal Principal Heirs Act (**Anerbengesetz**). This Bill (supplement 421 to the shorthand transcript of the National Council, 16th legislature) proposes to abolish the precedence of legitimate over illegitimate children (and also of male over female heirs) for the purpose of designating the principal heir, and to introduce new criteria of selection based on education and aptitude for running the farm. Despite these fundamental changes, the Chambers of Agriculture have not raised any objections. It is also suggested subsequently to amend the two special provincial laws governing this matter, ie the Tyrolean Farms Act 1900 and the Carinthian Hereditary Farms Act 1903, according to the same principles.

55. In the applicant's view the proposed new legislation shows that the criteria hitherto applied are no longer justified, and that they in fact amount to discrimination.

B. THE GOVERNMENT'S SUBMISSIONS

56. Despite the Commission's decision of 5 December 1984 to declare the application admissible, the Government insist that there are several reasons why it should have been declared inadmissible.

57. First, the Government submit that the applicant can no longer claim to be a victim of a violation of his Convention rights after the conclusion of the judicial settlement of 12 October 1981. The Government invoke the Commission's case law, in particular its Report on application No. 6504/74 (Preikhzas v. Federal Republic of Germany, DR 16,5) and its decision on the admissibility of applications Nos. 5577 - 5583/72 (Donnelly and others v. UK, DR 4,4) where it was stated that a person can no longer claim to be a victim of a violation of his Convention rights if he has obtained full satisfaction by a settlement concluded on the domestic level.

58. In the present case, the applicant could maintain his complaint under Art. 25 of the Convention only if by the above settlement he had obtained less than if the Hereditary Farms Act had not been applied. That he would not have received the farm as such results from the settlement in which the applicant recognised that his mother had promised him certain land, called the "Schiessbühel", as compensation. Now this land was valued in the expert opinion of 1976 at some AS 172,000.-- while the transfer value of the farm in the same expert opinion was some AS 331,000.-- . According to the market value in 1976, the land given to the applicant was worth some AS 445,000.-- and the farm some AS 1,400,000.--. Accordingly, the value of the applicant's land compensation, calculated on whatever basis, was about 30% of the value of the farm, and that is not very far from the 3/8 share to which the applicant was entitled under the applicable provisions of the Civil Code. The applicant had further renounced any further claims in the settlement, and even if he may have been in the weak negotiating position of a ceding heir when concluding that settlement, he was thereby debarred from raising such claims before the Commission.

59. Secondly, the Government submit that Art. 1 of the Protocol is not applicable to hereditary claims as such. In this respect, they invoke the constant case law of the Austrian courts concerning the interpretation of Art. 5 of the (Austrian) Basic Law and of Art. 1 of the Protocol, and also the jurisprudence of the Convention organs, in particular the ECHR judgment of 13 June 1979 in the case of Marckx. In this connection they refer in particular to the fact that the Hereditary Farm Act in no way limits the right of the mother of an illegitimate child to make a will in his favour, and that the provisions of this Act apply only to cases of intestate succession. A regulation restricting the right of intestate succession of certain prospective heirs, however, cannot be seen as an interference with their property rights. These rights are only guaranteed in respect of the existing property of a person, but not in respect of the acquisition of property by way of hereditary succession.

60. As regards the operation of the Hereditary Farms Act, the Government observe that it leaves unaffected the hereditary succession as such, as regulated by the provisions of the Civil Code, and that it only concerns the manner of the division of the estate (**Erbteilung**). The aim of the relevant provisions is to prevent the splitting up of farms by way of inheritance. It thus is provided in the public interest that a hereditary farm must remain undivided and that it shall pass to only one heir, ie the principal heir, while the other heirs, ie the so-called ceding heirs, have to be compensated by financial payments of the principal heir.

61. It is admitted that the calculation of the transfer value (**Übernahmswert**) of a farm differs from the mode of calculation applicable to the division of an estate in other cases. In order to achieve the object of the legislation to maintain viable farms, this transfer value must be determined in such a manner that the principal heir "can hold out well" (**wohl bestehen kann**). It must be prevented that after the transfer to the principal heir the farm is encumbered with compensation claims of the ceding heirs in an amount which would destroy the viability of the farm. For this reason, it is well possible that in certain cases the ceding heirs will get less than the real value of their hereditary shares. The Government submit that this effect is a necessary consequence of the very object of the legislation, and is clearly covered by public interest.

62. If the applicant had not concluded the settlement with his half-brother, the court would have been obliged to determine the financial compensation due to him. It may well have fixed a sum below the value of the land which the applicant got through the settlement, and the applicant would not even in that case have had any good chances to appeal successfully. It may therefore be accepted that the settlement was advantageous for the applicant from an economic point of view and that he was in fact in a weak negotiating position because it was already clear that the court would not appoint him as the principal heir. However, his position was not so weak that he was practically compelled to conclude that settlement by which he indeed renounced his hereditary claims including the claims to the reserved portion of the estate (**Erb- und Pflichtteilsansprüche**). He had already been recognised as a legitimate heir entitled to a 3/8 share of the state, and could not in any event be deprived of this entitlement.

63. The Government admit that in effect the applicant got less than his half-brother, even taking into account that in the end he got a piece of land instead of the financial compensation. The applicant does not appear to contest that on the basis of the transfer value this piece of land corresponded roughly to his 3/8 share. What he seems to challenge is rather the fact that he did not get the farm whose real value was of course more than the theoretical transfer value.

64. Nevertheless the applicant would not have been better off if instead of the transfer value according to the Hereditary Farms Act the basis of the distribution of the estate had been the one applied by the courts in other cases. They would not have based themselves on the market value as the applicant seems to believe, but on the so-called "common value" (**gemeiner Wert**) within the meaning of S. 305 of the Civil Code. This common value varies according to the particular circumstances of the transaction in question. In the case of transactions concerning farms (**Bauerngüter**) it is generally accepted that their common value corresponds to the capitalised income value (**Ertragswert**). According to the case law of the Supreme Court this value must be the starting point for the calculation of intestate shares and reserved portions, but it may have to be adjusted according to the circumstances if there is a considerable difference to the market value. Also, the principle of the transferee's "well holding out" is generally applicable in cases of distribution of real property of this kind, even if the Hereditary Farms Act does not apply.

65. The Government finally submit in this context that in the calculations submitted by the applicant he refutes the application of the "transfer value" only insofar as his own share is concerned while he has no hesitation to apply it to his half-brother's share.

66. As regards the criteria for the selection of the principal heir, the Government submit that the existence of such criteria is a necessary consequence of the aim of the legislation according to which only one heir can be called to take over the farm. The fact that new criteria are now being proposed in an amendment Bill to the Federal Principal Heirs Act, having regard to social developments and changed attitudes of the population groups concerned does not in the Government's submissions allow the conclusion to be drawn that the criteria hitherto applied are contrary to the Convention and in particular to Art. 14 thereof.

67. As the Supreme Court held in the present case, these criteria are based on objective reasons, namely the social and economic conditions of farmers' families, and the convictions of the rural population. In general, only legitimate children are brought up at the farm while illegitimate children are often brought up elsewhere and therefore do not have the same close link to their parents' farm. It is not, in principle, wrong for the legislation to take as the starting point of a differentiating regulation the average situation of the persons affected by that regulation, although that may lead to hardships in some individual cases.

68. The Government further observe in this context that the preference given to the legitimate child is based on the presumed will of the deceased. The regulations contained in s. 7(2) of the Hereditary Farms Act are only applicable to cases of intestate succession, and if the owner of a hereditary farm does not wish these regulations to apply, he has every possibility to set them aside by the making of a will in which he may designate another person as the principal heir (cf. section 5 of the Act). In this context, he is not limited by the scope of persons mentioned in section 7 (2), ie he may also designate an outsider; an illegitimate child may also be designated if that should correspond to the wishes of the testator.

69. The Government finally mention the special treatment reserved to the surviving spouse of the owner of a hereditary farm who has normally a right to stay on the farm and to be maintained by the principal heir. It is said to be more logical that in such a case this maintenance obligation should fall on the own child of the surviving spouse rather than on the illegitimate child of the deceased. In the present case the situation was exactly like this.

70. The Government refer to the case law of the Convention organs concerning the interpretation of Art. 14, in particular the ECHR judgments in the Belgian Linguistic case and in the case of Marckx according to which a differential treatment is to be considered as discriminatory only if it lacks a reasonable justification ie if either it pursues no legitimate aim, or if there is no adequate relationship between the measure taken and the aim pursued. In the light of this case law, the Government are of the opinion that the challenged legislation indeed is based on reasonable and objective considerations, and that, accordingly, there can be no question of a breach of Art. 14.

IV OPINION OF THE COMMISSION

A. Point at issue

71. The only point at issue in the present case is the question whether or not there has been a breach of Art. 14 of the Convention, read in conjunction with Art. 1 of the Protocol, by a discrimination of the applicant, on account of his illegitimate birth, with regard to his right to the peaceful enjoyment of his possessions.

B. Whether the applicant can still claim to be a victim of a violation of his Convention rights (Art. 25 of the Convention)

72. The applicant's complaint of discrimination is based on the application of particular legislation (section 7, para. 2 of the Carinthian Hereditary Farms Act 1903) whereby precedence is given to a child born in wedlock over one born out of wedlock as regards its designation as the principal heir entitled to take over his parent's farm in a case of intestate succession.

73. The Government refer to the fact that the applicant has entered into a settlement with his half-brother and contend that he cannot, therefore, claim to be a victim within the meaning of Art. 25.

74. However, as the Commission already pointed out in its decision on the admissibility of the present application, the applicant concluded this settlement in a situation in which he could no longer hope for a judicial decision in his favour. Furthermore, the settlement was concluded between private parties, the State not being involved either directly or indirectly. Therefore, the declaration of the applicant that he renounced any further claims does not extend to the substance of the proceedings before the Commission.

75. Finally, it is not contested that the main grievance of the applicant, namely that due to his birth out of wedlock he was prevented from taking over the farm, was not affected by the settlement.

76. For these reasons, the Commission confirms the finding in its decision on admissibility according to which the applicant can still claim to be a victim of a violation of his Convention rights.

C. The applicability of Art. 1 of the Protocol, read in conjunction with Art. 14 of the Convention

77. The applicant complains of a discrimination contrary to Art. 14 in conjunction with Art. 1 of the Protocol. The Government contest that the latter provision is applicable to hereditary claims like the one at issue. In this respect, they invoke in particular the ECHR judgment of 13 June 1979 in the Marckx case (Series A, vol. 31, § 50), where the Court observed that Article 1

> "does no more than enshrine the right of everyone to the peaceful enjoyment of 'his' possessions, that consequently it applies only to a person's existing

possessions and that it does not guarantee the right to acquire possessions whether on intestacy or through voluntary dispositions.... Since Art. 1 of the Protocol proves to be inapplicable, Art. 14 of the Convention cannot be combined with it ...."

78. The present case must be distinguished from the Marckx case in that it does not relate to a potential right to inherit in the future, but to the position of a person who has already acquired a right to inheritance in respect of a certain share of an estate. The Commission considers that this latter right must be regarded as a property right within the meaning of Art. 1 of the Protocol even before the respective parts of the estate are assigned to the individual heirs.

79. In fact, under Austrian law the successor acquires his hereditary rights automatically at the moment of the de cuius' death (cf. section 545 of the Civil Code). Thus, the applicant was entitled to 3/8 of his mother's estate immediately after her death. Together with his half-brother and step-father he had a common right of property to the estate (cf. SS. 547 and 550 of the Civil Code). What was open to dispute is only the specific part of the estate which the applicant was to receive, in particular, whether or not he was entitled to take over the farm. The Commission therefore considers that, unlike in the Marckx case, an issue under Art. 1 of the Protocol does in fact arise in the present case.

80. Of course, the Convention cannot be read as conferring on the applicant the right to take over the farm. However, this does not prevent the application of Art. 14 to the facts of the present case. The Commission here refers to what the Court set out in its judgment in the Belgian Linguistic case (judgment of 23.7.68, Series A, Vol. 5, p. 33, para. 9,):

> "While it is true that this guarantee has no independent existence in the sense that under the terms of Art. 14 it relates solely to 'rights and freedoms set forth in the Convention', a measure which in itself is in conformity with the requirements of the Article enshrining the right or freedom in question may however infringe this Article when read in conjunction with Art. 14 for the reason that it is of a discriminatory nature.
>
> Thus, persons subject to the jurisdiction of a Contracting State cannot draw from Art. 2 of the Protocol the right to obtain from the public authorities the creation of a particular kind of educational establishment; nevertheless, a State which had set up such an establishment could not, in laying down entrance requirements, take discriminatory measures within the meaning of Art. 14.
>
> To recall a further example, cited in the course of the proceedings, Art. 6 of the Convention does not compel States to institute a system of appeal courts. A State which does set up such courts consequently goes beyond its obligations under Art. 6. However, it would violate that Article, read in conjunction with Art. 14, were it to debar certain persons from these remedies without a legitimate reason while making them available to others in respect of the same type of actions.

> In such cases there would be a violation of a guaranteed right or freedom as it is proclaimed by the relevant Article read in conjunction with Art. 14. It is as though the latter formed an integral part of each of the Articles laying down rights and freedoms. No distinction should be made in this respect according to the nature of these rights and freedoms and of their correlative obligations, and for instance as to whether the respect due to the right concerned implies positive action or mere abstention. This is, moreover, clearly shown by the very general nature of the terms employed in Art. 14 'the enjoyment of the rights and freedoms set forth in this Convention shall be secured'. "

81. The Commission considers that this doctrine must be applied to the present case, where the applicant was by law at a disadvantage in his chances to take over the farm. It must ascertain whether the distinction operated on account of birth out of wedlock can be justified in the light of Art. 14 of the Convention. The Commission here refers to para. 54 of the Court's judgment in the Marckx case (loc.cit.) where it was stated that a distinction made in the matter of patrimonial rights between "illegitimate" and "legitimate" children does raise an issue under Art. 14 (in that case in conjunction with Art. 8).

82. Art. 14 guarantees the principle of equality of treatment. Distinctions in the treatment with regard to Convention rights, in order not to be discriminatory, must have an objective and reasonable justification. As the Court held in the Belgian Linguistic case (ibid p. 34, para. 10):

> "the existence of such a justification must be assessed in relation to the aim and effects of the measure under consideration, regard being had to the principles which normally prevail in democratic societies. A difference of treatment in the exercise of a right laid down in the Convention must not only pursue a legitimate aim: Art. 14 is likewise violated when it is clearly established that there is no reasonable relationship of proportionality between the means employed and the aim sought to be realised."

D. The justification of the differential treatment in the present case

83. Applying these criteria the Commission must therefore examine the arguments put forward by the Government to justify the preference given to the legitimate child over the child born out of wedlock in the Hereditary Farms Act.

84. The following reasons for the differential treatment in question have been adduced by the Government:

a) the presumed will of the deceased;

b) the convictions and attitudes of the rural population;

c) the fact that children born out of wedlock often are not brought up on the farm;

d) the position of the surviving spouse; and finally

e) the necessity to protect the family as an essential element of the legal order.

85. The Government point out that the applicable provisions of the Hereditary Farms Act only concern cases of intestate succession and that they can be set aside by the making of a will (cf. section 5 of the Act). The applicant's mother thus could in fact have ordered in a will that the applicant was to take over the farm as the principal heir.

86. The Commission observes, however, that this argument does not in any way give a reasonable justification for giving precedence over the child born out of wedlock to the legitimate child in legal regulations concerning intestate succession.

87. The Government, without giving any substantiation, allege that the solution adopted in the Hereditary Farms Act corresponds to the considerations and attitudes held by the rural population of Carinthia.

88. Even assuming that this allegation is correct, the Commission cannot accept such an argument as constituting a justifying reason for the distinction at issue. On the very contrary - it is exactly against the traditional contempt of all kinds of minorities that Art. 14 of the Convention offers protection.

89. The Government also refer to the fact that children born out of wedlock are often not brought up on the farm. They do not however advance any statistical or other substantiation of this statement.

90. Even if it is assumed that some evidence for such a statistical assertion could be produced, that material could explain the idea which led to the legislation at issue, but could not, in the Commission's view, be accepted as a justification. In fact, the applicant did grow up on the farm of his mother.

91. Furthermore, the Government advance the argument that leaving the farm to the legitimate child in preference is justified because it must be assumed that this child will provide better care for the surviving spouse, his or her natural father or mother.

92. The Commission agrees that this consideration is as such reasonable and that it could provide a justification for precedence of the legitimate child in certain cases. However, the argument is again rather an explanation than a justification in the case at issue. In fact, it was never tested and could not be tested whether the applicant would not care for his step-father as well as his half-brother.

93. Finally, the Government attempt to justify the differentiation to the detriment of the illegitimate child by pointing to the necessity of protecting the legal family.

94. The Commission observes that this is an argument traditionally invoked to justify the discrimination of children born out of wedlock. Insofar as Art. 14 refers to "birth" as a criterion of discrimination, it is aimed precisedly at the distinction which was operated in the present case. The Commission considers that the difference of treatment complained of lacks objective and reasonable justification (cf. mutatis mutandis ECHR, Marckx judgment, loc.cit., para. 55).

95. Finally, the Commission observes that the present case discloses a classical case of discrimination, namely legislation to the disadvantage of a minority based on a criterion - birth - which in itself has no intrinsic link with the matter to be decided - in the present case the taking over of a farm.

E. Conclusion

96. For these reasons, the Commission, by six to four votes, concludes that there has been a breach of Art. 14 of the Convention, read in conjunction with Art. 1 of the Protocol.

Secretary to the Commission

(H.C. KRÜGER)

President of the Commission

(C.A. NØRGAARD)

Dissenting Opinion of Mr. H.G. Schermers

For three reasons I do not agree with the opinion of the majority that the Convention was violated in the INZE case.

1. Article 1 of the First Protocol guarantees the peaceful enjoyment of possessions. It does not entitle everybody to have possessions, nor does it - even in combination with Art. 14 of the Convention, guarantee any equality in the amount of possessions people can have. The distribution of possessions, even the right to individual ownership of a State's means of production, are social questions to which different solutions are sought by different social systems. That is outside the scope of the Protocol.

The scope of Art. 1 of the First Protocol should be narrowly interpreted. Though all rights concerning property may be of some importance, they cannot all be classified as fundamental human rights. The purpose of a Human Rights Convention is to protect the essential personal freedoms and rights of men. The taking away of the possessions of a person may be seen as an attack on his personal freedoms if these possessions have in some way become part of his personal way of life. Rights such as the right to inherit, or to have an inheritance divided in a particular way, though not without importance, are not sufficiently fundamental to be classified as part of the human right of property. I doubt whether any method of acquiring property should be read into Art. 1 of the First Protocol, but certainly not the right to inherit. This right is not of the nature of a fundamental right.

The peaceful enjoyment of possessions includes the right to dispose of them. A person may, therefore, give property away, or by testament bequeath possessions to other persons. This, however, is the right of the owner, not of the receiver of the property. In the cultural tradition of Europe there may be a right to leave one's possessions to an heir, to someone who can continue the estate. This side of the system of inheritance may be difficult to challenge. But at the side of the receiver the situation is totally different. He may not have had any relation to the property before and the creation of rights for any receiver usually restricts the freedom of the owner to leave the property to whomever he likes or to divide (or not divide) it in a particular way. If there is any human right involved (which I doubt), then it is the right of the owner. If the owner does not dispose of his possessions during his lifetime, then the national legislation is to provide what will happen to them. It is up to the national legislator to make the rules. This is not covered by the European Convention on Human Rights, and for good reasons. The social conceptions of inheritance are too divergent to discern generally valid principles, let alone human rights. Between the extreme that all property should go to the eldest son and the extreme that the community should obtain everything there are vast divergencies, usually leading to a distribution of the property between the closest relatives under the condition that a heavy taxation is paid to the community.

For practical reasons it will be impossible to create a system in which the inheritance of people is divided amongst the poor, but if such a system could be found, it would not be against any basic principle of human rights. One could even defend that it is unfair and against general rules of human rights that children of rich parents (who for that reason have an easier childhood than others) have the additional benefit of obtaining capital when these parents die. Seen from the theoretical standpoint other divisions of property may well be fairer.

The protection of the right to inherit should therefore not be considered as incorporated in Art. 1 of the First Protocol. The way in which an inheritance is divided comes closer to the right to inherit than to the fundamental human right of the protection of property and should therefore also be excluded from the scope of the fundamental human right.

I find some support for a restrictive interpretation of Art. 1 in previous case law. In the Marckx case, the Court held that the Article does not apply to the expectation to obtain property. In case 2775/66 of 22 December 1967 (unpublished) the Commission held that the Convention does not guarantee the right to receive property by way of inheritance (Digest Vol. 1, p. 72).

2. Secondly, the difference in treatment of the applicant cannot be seen as illegitimate discrimination. I agree with the majority that with respect to discrimination one has to be particularly careful for groups which are traditionally discriminated against. Children born out of wedlock are a vulnerable group because of their having been slighted for long time in history. Even taking account of this, I do not think that the treatment of the applicant is unlawful discrimination. One should take into account that the value of the property has been justly divided. The only problem under discussion is the question who shall actually obtain the farm. As only one of the heirs can be appointed, there will always be unequal treatment with respect to the others. Attribution to a son is discriminatory against daughters, attribution to the older is discriminatory against the younger, etc. One heir has to be favoured and as long as good reasons can be found for his appointment there will not be unlawful discrimination. The Government put forward two arguments why children born in wedlock should be favoured above children born out of wedlock. First, statistics show that children born out of wedlock more often live away from the farm. As the law must have general application, such statistical data can be lawfully taken into account. Secondly, in almost 50% of the cases there will be a surviving spouse, parent of the child born in wedlock but often not of the children born out of wedlock. It will be easier to create a cooperation between the surviving spouse and his own child than between the surviving spouse and a step-son.

These arguments would not be sufficient for discriminating against children born out of wedlock, but in the case where one has to be favoured above the others almost any objective argument can be used. Therefore in the present sitution, I do not see any unlawful discrimination.

3. The third reason why I do not accept a violation of the Convention does not concern the Austrian law, but only its application in the present case. It is the most probable wish of the deceased mother. I accept that the absence of a testament does not necessarily mean that the mother wanted the law to be applied and thus to favour her second son, but there is a reasonable chance that this was her wish. In any case it may be submitted that she would have written a last will if she had had a strong preference for her illegitimate oldest son and that she would not have done so if she had had a similar preference for her second son (because she could rely on the law). This means that the possibility of the mother preferring the farm to go to the second son is larger than the possibility that she preferred the elder son.

Conclusion

As Art. 1 does not give rights to prospective heirs, the Article is not applicable in the present case and the application of Mr. Inze should be declared incompatible with the Convention. But even if the appliation was compatible with the Convention, it should be rejected as there is no illegitimate discrimination.

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Dissenting Opinion by Mr. H. Vandenberghe
(Translation)

1. It is not disputed that the applicant had a right of succession to 3/8 of his mother's estate.

The problem which arises concerns only the manner of dividing the estate, more precisely the exercise of a preferential right in relation to the farm which belonged to the estate.

It is wholly reasonable that the attribution of assets of the estate which, for economic reasons, it is difficult to divide "in natura" should be operated on the basis of a preferential right of one of the heirs.

The attribution of this right is a modality of the division and does not seem to me to constitute a right covered by Art. 1 of Protocol No. 1 to the Convention. Nor do I think that as such Art. 1 guarantees any right to inherit in kind ("in natura").

Since the applicant has the same right of succession to his mother's estate as his half-brother - each of them being entitled to 3/8 of the estate - I do not see any problem under Art. 1 even in conjunction with Art. 14.

2. Subsidiarily, I note that the provisions of the Hereditary Farms Act are applicable only if - as in the present case - the deceased has not left a last will. Under this condition the law presumes the will of the deceased.

In the particular case there are indications that the attribution of the preferential right to the legitimate child corresponded not merely to the presumed but also to the real will of the applicant's mother. In fact, the agreement which the applicant concluded with his half-brother on 12 October 1981 refers to the will of the mother that the applicant should get the "Schiessbühel" rather than the farm.

For these considerations and having regard to the particular circumstances of the case it does not appear to me that there has been a violation of Art. 14 of the Convention read in conjunction with Art. 1 of the Protocol.

Dissenting Opinion by Sir Basil Hall

1. I do not share the opinion of the majority of the Commission that in this case there has been a breach of Art. 14 of the Convention read in conjunction with Art. 1 of the First Protocol. It does not appear to me that the rules as to succession on death contained in the Austrian Civil Code and the Carinthian Hereditary Farms Act of 1903 relate to the enjoyment by a person of his possessions or to any other provision of the First Protocol. The Court in its judgment in the Marckx case (judgment of 13 June 1979, Series A, vol. 31, para. 50, quoted in para. 77 of the Commission's Report) stated that Art. 1 of the First Protocol "applies only to a person's existing possessions and that it does not guarantee the right to obtain possessions... on intestacy ... Since Art. 1 of the Protocol proves to be inapplicable Art. 14 of the Convention cannot be combined with it on the point now being considered. "

2. I respectfully agree with the Court's interpretation of Art. 1 of the First Protocol and consider that until a distribution of the estate of the intestate took place, Art. 1 had no application. Accordingly, Art. 14 of the Convention cannot be combined with Art. 1 of the Protocol in the present case.

The passage quoted in para. 80 from the judgment of the Court in the Belgian Linguistic case (judgment of 23.7.68, Series A, vol. 5, para. 9) relates to circumstances of a very different kind from those obtaining in this case and does not in my view establish a doctrine which requires a qualification of the general statement in the Marckx judgment quoted above. The instances given of discrimination in the Belgian Linguistic judgment were of discrimination in the implementing of the right to education conferred by Art. 2 of the Protocol and of discrimination in the right to appeal from a judicial decision, something which has a close relationship to the operation of Art. 6.

4. Even if I did not hold the opinion which I have expressed above, I would not consider that the Austrian legislation in its application to the applicant constituted discrimination. General rules of succession may properly be made, and in practice that entails differentiation on the ground of birth and sex. The older may be preferred to the younger (or indeed the reverse), the child may be preferred to the spouse, the male may be preferred to the female and while I do not agree with every ground put forward by the Government, there is practical justification for preferring the legitimate child to the illegitimate in the rules for succession to hereditary farms.

The establishment of such an order of succession is not readily to be regarded as discriminatory, and the fact that in a particular case the order operates to the disadvantage of an individual is not discrimination against him.

APPENDIX I

History of Proceedings

Item	Date	Note
Introduction of application	20 June 1979	
Registration	30 July 1979	
Examination of admissibility		
Decision to give notice of the application to the respondent Government and to invite them, in accordance with Rule 42 (2)(b) of the Rules of Procedure, to submit observations in writing on the admissibility of the application	9 December 1980	Fawcett Nørgaard Busuttil Daver Opsahl Polak Frowein Jörundsson Tenekides Trechsel Kiernan Klecker Melchior Sampaio
Government's observations	3 March 1981	
Applicant's observations in reply	22 April 1981	
Decision to ask the parties for supplementary observations in writing	16 July 1981	Nørgaard Frowein Busuttil Opsahl Tenekides Trechsel Kiernan Melchior Sampaio Gözübüyük Weitzel Soyer

Item	Date	Note
Applicant's supplementary observations	8 October 1981	
Applicant informs Commission of domestic settlement procedure	13 October 1981	
Government's supplementary observations	27 October 1981	
Applicant reports on developments concerning the domestic settlement procedure	14 December 1981 1 March 1982	
Commission decides to adjourn the examination of admissibility pending the outcome of the domestic settlement procedure	8 May 1982	Nørgaard Busuttil Jörundsson Kiernan Melchior Sampaio Carrillo Gözübüyük Weitzel Soyer Schermers
Applicant submits further information	10, 15 June 1982 3 March 1983 1 June 1984	
Commission decides to resume examination of admissibility, holds deliberations	11 October 1984	Nørgaard Sperduti Frowein Jörundsson Tenekides Trechsel Kiernan Gözübüyük Weitzel Soyer Schermers Danelius Batliner Anton Campinos Vandenberghe Thune

Item	Date	Note
Commission continues deliberations and decides to declare the application partly admissible, partly inadmissible, and to hold an oral hearing on the merits of the admissible part of the application	5 December 1984	Nørgaard Frowein Jörundsson Tenekides Trechsel Kiernan Gözübüyük Soyer Schermers Danelius Batliner Anton Campinos Vandenberghe Thune
Examination of merits		
Decision on admissibility sent to the parties	17 January 1985	
Applicant's proposal for friendly settlement	25 January 1985	
Commission decides to grant the applicant legal aid for the proceedings on the merits	15 March 1985	Frowein Jörundsson Tenekides Trechsel Kiernan Soyer Batliner Vandenberghe Hall
President rules to cancel the hearing scheduled for 13 May 1985 because of pending settlement negotiations	19 March 1985	
New date of hearing fixed for 3 July 1985 if settlement negotiations should fail	27 March 1985	
Government's comments on settlement proposal	29 April 1985	
Applicant's comments	10 May 1985	

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Item	Date	Note
Commission confirms hearing on 3 July 1985	11 May 1985	Nørgaard Frowein Busuttil Jörundsson Trechsel Kiernan Carrillo Gözübüyük Soyer Schermers Danelius Batliner Vandenberghe Thune Hall
Hearing on the merits and deliberations	3 July 1985	Nørgaard Ermacora Busuttil Jörundsson Tenekides Trechsel Kiernan Gözübüyük Schermers Danelius Batliner Campinos Vandenberghe Thune Hall
	Government	Türk Matzka Djalinous
	Applicant	Walther Inze
Applicant makes new settlement proposal	12 July 1985	
Government's comments on the proposal	10 September 1985	
Applicant's further comments	4 October 1985	

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Item	Date	Note
Commission decides to speed up settlement procedure	12 October 1985	Nørgaard Sperduti Frowein Ermacora Busuttil Jörundsson Tenekides Kiernan Carrillo Gözübüyük Weitzel Soyer Schermers Danelius Batliner Thune Hall
Government rejects settlement	7 November 1985	
Commission deliberates on the merits, takes the final vote and considers and adopts its Report under Art. 31 of the Convention	4 March 1986	Nørgaard Jörundsson Trechsel Kiernan Gözübüyük Schermers Batliner Vandenberghe Thune Hall