AS TO THE ADMISSIBILITY OF

Application No. 23962/94
by Marie-Luise BEER
against Austria

The European Commission of Human Rights (Second Chamber) sitting in private on 12 April 1996, the following members being present:

Mr. H. DANELIUS, President
Mrs. G.H. THUNE
MM. G. JÖRUNDSSON
J.-C. SOYER
H.G. SCHERMERS
F. MARTINEZ
L. LOUCAIDES
J.-C. GEUS
M.A. NOWICKI
I. CABRAL BARRETO
J. MUCHA
D. SVÁBY
P. LORENZEN
K. HERNDL

Ms. M.-T. SCHOEPFER, Secretary to the 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 2 March 1994 by Marie-Luise BEER against Austria and registered on 25 April 1994 under file No. 23962/94;

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 applicant is a German citizen, born in 1947 and residing in Kirchdorf (Tyrol). Before the Commission she is represented by Mr. A. Feichtner, a lawyer practising in Kitzbühel (Tyrol).

The facts of the case, as they have been submitted by the applicant, may be summarised as follows.

A. Particular circumstances of the case

On 16 July 1991 the applicant concluded a sales contract for a parcel of land situated in Kirchdorf.

On 23 July 1991 she requested the local Real Property Transaction Authority for Kirchdorf (Grundverkehrsbehörde) to approve the above sales contract.

On 31 March 1992 the local Authority, without having held a hearing, refused the applicant's request. It found that the transaction ran counter to the public interest as defined in Section 4 para. 2 of the Real Property Transaction Act (Grundverkehrsgesetz) as the applicant had the intention to purchase a holiday residence while the land at issue was particularly suited for satisfying the need for housing of the local population.

On 15 April 1992 the applicant appealed.

On 17 September 1992 the Regional Authority dismissed the applicant's appeal without a hearing. It found that the transaction ran counter to the public interest as in view of the high percentage of foreign land owners in Kirchdorf the danger of foreign domination (Überfremdung) existed. Furthermore, the applicant had only her secondary residence in Kirchdorf and was staying there during weekends so that she merely had the intention to acquire a holiday residence.

On 24 November 1992 the applicant introduced a complaint to the Constitutional Court (Verfassungsgerichtshof). She complained that the real property transaction authorities could not be considered as tribunals within the meaning of Article 6 para. 1 of the Convention, and that no oral hearing had been held in the proceedings on her request. Furthermore, the fact that she could not acquire the land at issue violated her right to property under Article 1 of Protocol No. 1.

On 21 June 1993 the Constitutional Court dismissed the applicant's complaint. Referring to its previous case-law, it found that the organisation of the real property transaction authorities in the Tyrol was in accordance with constitutional law. Moreover, the proceedings at issue did not violate her right to property. This decision was served on the applicant on 6 September 1993.

B. Relevant domestic law

1. Under the Tyrolean Real Property Transaction Act (Grundverkehrs-gesetz), as in force at the relevant time, a sales contract concerning real property was subject to approval by the real property transaction authorities if agricultural and forestry land was concerned or if the purchaser did not possess Austrian nationality (Sections 1 and 3). A sales contract could only take effect if it was approved by the real property transaction authorities (Sections 3 and 16). The purchaser of land was obliged to seek approval within two months of the approval of the contract (Section 15 para. 1). No entry could be made in the land register (by which property is acquired) until the transaction had been approved by the competent authority (Section 1 para. 3). If approval was withheld, the acquisition was null and void (Section 16 para. 1).

2. The procedure before the real property transaction authorities is governed by the General Administrative Procedure Act 1950 (Allgemeines Verwaltungsverfahrensgesetz).

Section 40 of the General Administrative Procedure Act deals with oral hearings and provides as follows:

[Translation]

> "(1) Oral hearings shall be held in the presence of all known parties and the necessary witnesses and experts. If oral hearings have to be combined with an inspection of the location, they should, if possible, be held there or otherwise at the seat of the authority or another location which in the circumstances appears most suitable.
>
> (2) The authority must ensure that an inspection of the location is not abused for the discovery of a professional secret."

[German]

> "(1) Mündliche Verhandlungen sind unter Zuziehung aller bekannten Beteiligten sowie der erforderlichen Zeugen und Sachverständigen vorzunehmen und, sofern sie mit einem Augenschein verbunden sind, womöglich an Ort und Stelle, sonst am Sitz der Behörde oder an

dem Ort abzuhalten, der nach der Sachlage am zweckmäßigsten erscheint.

(2) Die Behörde hat darüber zu wachen, daß die Vornahme eines Augenscheins nicht zur Verletzung eines Kunst-, Betriebs- oder Geschäftsgeheimnisses mißbraucht wird."

It is the constant practice of administrative authorities to hold oral hearings in camera unless the law provides otherwise.

COMPLAINTS

The applicant complains that the real property transaction authorities cannot be regarded as tribunals within the meaning of Article 6 para. 1 of the Convention since its members are merely appointed for a term of office of three years and can be removed before the end of their term of office. She also complains that in the proceedings at issue the real property transaction authorities did not hold a public hearing as required by Article 6 para. 1 of the Convention.

She further complains about the fact that she could not acquire the land at issue and relies on Article 1 of Protocol No. 1.

THE LAW

1. The applicant complains that the real property transaction authorities cannot be regarded as tribunals within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention since its members are merely appointed for a term of office of three years and can be removed before the end of their term of office.

Article 6 para. 1 (Art. 6-1) of the Convention, as far as relevant, reads as follows:

"In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing ... by an independent and impartial tribunal established by law."

The Commission recalls that in the case of Sramek the Court has held that the Tyrolean Real Property Transaction Act satisfies the requirements of Article 6 (Art. 6) as regards the length of the term of office of the members of the Regional Authority and the - limited - possibility of removing them (Eur. Court H.R., Sramek judgment of 22 October 1984, Series A no. 84, p. 18, para. 38).

The Commission observes that the legislation on the term of office of the members of the real property transaction authorities in the Tyrol and the possibility of removing them from office before their term of office has expired has remained unchanged since the Court's above-mentioned judgment.

The Commission therefore finds no appearance of a violation of the applicant's rights under Article 6 para. 1 (Art. 6-1) of the Convention as regards the organisation of the real property transaction authorities.

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

2. The applicant further complains that in the proceedings at issue the real property transaction authorities did not hold a public hearing as required by Article 6 para. 1 (Art. 6-1) of the Convention.

The Commission considers that it cannot, on the basis of the file, determine the admissibility of this complaint and that it is

therefore necessary, in accordance with Rule 48 para. 2 (b) of the Rules of Procedure, to give notice of this complaint to the respondent Government.

3. Lastly, the applicant complains about the fact that she could not acquire the land at issue and relies on Article 1 of Protocol No. 1 (P1-1), which provides as follows:

> " Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

The Commission observes that under the relevant domestic law a sales contract concerning land can only take effect and be entered into the land register if it has been approved by the competent real property transaction authority. The transfer of title does not occur before the entry into the land register. The applicant thus complains that she could not acquire property over the land at issue. However, Article 1 of Protocol No. 1 (P1-1) does not guarantee a right to acquire possessions (No. 11628/85, Dec. 9.5.86, D.R. 47, 270; Union of Atheists v. France, Comm. Report 6.7.94, para. 55; No. 21956/93, Dec. 22.2.95, unpublished).

It follows that this part of the application is 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, unanimously,

DECIDES TO ADJOURN its examination of the complaint as regards the lack of a public hearing;

DECLARES INADMISSIBLE the remainder of the application.

Secretary to the Second Chamber — President of the Second Chamber

(M.-T. SCHOEPFER) — (H. DANELIUS)