AS TO THE ADMISSIBILITY OF

Application No. 19364/92
by Werner BODINGBAUER
against Austria

The European Commission of Human Rights sitting in private on 6 April 1993, the following members being present:

MM. J.A. FROWEIN, President of the First Chamber
F. ERMACORA
G. SPERDUTI
E. BUSUTTIL
A.S. GÖZÜBÜYÜK
Sir Basil HALL
Mr. C.L. ROZAKIS
Mrs. J. LIDDY
MM. M. PELLONPÄÄ
B. MARXER
G.B. REFFI

Mrs. M.F. BUQUICCHIO, Secretary to the First 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 19 November 1993 by Werner BODINGBAUER against Austria and registered on 17 January 1992 under file No. 19364/92;

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 an Austrian citizen, born in 1926 and living in Steyregg. He is represented by Messrs. Haselauer and Steiner, lawyers practising in Linz.

It follows from the applicant's statements and the documents submitted that on 22 June 1989 the competent local authorities (Bezirkshauptmannschaft) issued an expropriation order against the applicant which concerned 33 square meters of real property belonging to the applicant and situated in front of an apartment building likewise belonging to him. The strip of land was needed for the purposes of a pedestrian walkway. The expropriation order also provided for compensation in the amount of AS 800 per square meter. It is also mentioned in the order that the measure in question does not restrict the use of the applicant's remaining property as the existing facilities which had previously been installed on the expropriated strip of land for the purposes of the tenants would be tolerated.

The applicant's appeal was rejected by the Regional Government of Upper Austria (Amt der O.Ö. Landesregierung) on 18 January 1990. It is stated in the decision that the expropriation was in accordance with Section 8 of the Upper Austrian Construction Act (Bauordnung). The necessity of the expropriation followed from the fact that the construction planning scheme (Bebauungsplan) of the City of Steyregg had foreseen the pedestrian walkway.

The applicant then lodged a constitutional complaint alleging, inter alia, a violation of Article 6 of the Convention.

On 24 September 1990 the Austrian Constitutional Court (Verfassungsgerichtshof) decided that in view of its constant jurisprudence the complaint had no chance of success. The court therefore refused to deal with it and referred the matter to the Administrative Court.

On 4 April 1991 the Administrative Court (Verwaltungsgerichtshof) rejected the applicant's appeal as being unfounded. This court likewise considered that the expropriation was necessary in the public interest in view of the city's development plan. It was true that the expropriation legalised the existing situation but the fact that previously the public use of the applicant's property had not been lawful did not render the expropriation itself unlawful. Also the fact that according to the planning scheme parking lots were foreseen in front of the applicant's house could not render the expropriation unlawful as this might, at best, affect the legality of the planning scheme itself. In any event, the planning scheme provided for a pedestrian zone in the street in question and therefore parking lots were also in the public interest. Furthermore, the court noted that the applicant's interests had also been taken into account as the existing tenants' facilities were tolerated. The decision of the court was served on the applicant on 27 May 1991.

COMPLAINTS

The applicant submits that the expropriation constitutes a disproportionate burden for him because it is not absolutely necessary for the purposes of the pedestrian walkway and because he himself and his tenants need the property for depositing goods or parking bicycles. He invokes Article 1 of Protocol No. 1.

In addition he invokes Article 6 of the Convention stating that in first and second instance his appeals against the expropriation order were decided by civil servants and not by independent tribunals. This fact was not remedied by the possibility of appealing to the Constitutional and Administrative Courts as these courts were bound by the facts as established by the lower authorities.

THE LAW

1. The applicant has mainly complained that his right to the peaceful enjoyment of possessions, as guaranteed by Article 1 of Protocol No. 1 (P1-1), was violated, alleging that the expropriation of part of his property for the purposes of a pedestrian walkway contributed a disproportionate burden given that the strip of land in question was not absolutely needed for the walkway whereas his tenants needed it for private purposes.

Article 1 para. 1 of Protocol No. 1 (P1-1) provides:

> "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 Commission first notes that the applicant has not contested that the measure in question was taken on the basis of domestic law. The Commission further considers that the installation of pedestrian walk-ways are in the general interest. As far as the question of a fair balance between the general interest of the community and the requirements of the protection of the individual's fundamental rights is concerned (cf. Eur. Court H.R., Sporrong and Lönnroth judgment of

24 September 1982, Series A No. 52, p. 26, para. 69), the Commission notes that certain facilities for the applicant's tenants, that had been in use before the expropriation measure was taken, continued to be tolerated while the applicant has not shown that beyond this use, the strip of land was absolutely needed for other important private purposes. Finally, the applicant has not alleged that the compensation paid was not in reasonable relation to the value of the property.

It can in these circumstances not be found that the competent authorities exceeded their margin of appreciation and imposed an intolerable, excessive burden on the applicant and/or his tenants.

It follows that this part of the application has to be rejected as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicant has further invoked Article 6 (Art. 6) of the Convention arguing that he did not have access to an independent tribunal which could have examined both the factual as well as the legal issues in the dispute relating to the expropriation matter.

The Commission notes however that the Administrative Court fully and carefully considered all submissions and arguments advanced by the applicant and consequently there is nothing to show that this court was in any way limited in its competence to examine all complaints raised by the applicant.

It follows that there is, in the particular circumstances of the case, no appearance of a violation of Article 6 (Art. 6) and to this extent the application has therefore likewise to be rejected as being manifestly ill-founded.

For these reasons the Commission, unanimously

DECLARES THE APPLICATION INADMISSIBLE

Secretary to the First Chamber — President of the First Chamber

(M.F. BUQUICCHIO) — (J.A. FROWEIN)