AS TO THE ADMISSIBILITY OF

Application No. 25045/94
by Inge DOBBERSTEIN
against Germany

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

Mr. C.L. ROZAKIS, President
Mrs. J. LIDDY
MM. E. BUSUTTIL
A.S. GÖZÜBÜYÜK
A. WEITZEL
M.P. PELLONPÄÄ
B. MARXER
B. CONFORTI
N. BRATZA
I. BÉKÉS
E. KONSTANTINOV
G. RESS
A. PERENIC
C. BÎRSAN
K. HERNDL

Mrs. M.F. BUQUICCHIO, 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 10 May 1994 by Inge DOBBERSTEIN against Germany and registered on 31 August 1994 under file No. 25045/94;

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 1929 and living in Bochum-Oberdahlhausen. She is represented by Mr. R. Schleifenbaum and Partners, a law firm in Siegen.

It follows from the applicant's statements and the documents submitted that the applicant inherited from her late husband, who died on 12 January 1993, a farm of some 80 hectares situated in Schlochau/Pommern, formerly German territory but which in consequence of World War II is now part of Poland.

On 2 January 1990 the applicant's late husband requested the Federal Republic for diplomatic protection by way of measures safeguarding his property right and/or his claim for compensation for the loss of the use of his property.

On 30 January 1990 the German Foreign Office (Auswärtiges Amt) rejected the request stating that after careful examination of all aspects of the matter and in particular of the circumstances which in the present case were beyond the Federal Government's sphere of influence, the Government did not for the time being consider it appropriate to raise the alleged claims as suggested by the applicant by way of diplomatic action on the interstate level.

Subsequently the applicant's late husband brought an action against the Federal Republic before the Cologne Administrative Court (Verwaltunggericht) with a view to obtaining a court order obliging the Government to grant him the diplomatic protection he requested.

On 19 June 1991 the action was dismissed. Recognising that there existed an obligation on the part of the State to give diplomatic protection vis-à-vis foreign States to its citizens, the court noted that in deciding whether or not such protection had to be given and if so which measures had to be taken, the State enjoyed a wide margin of appreciation in view of the fact that foreign relations not only depended on the will of the Federal Republic but also on factors beyond its influence. The courts therefore only had a limited power of control and there was nothing to show that the defendant had wrongly exercised its discretionary power.

The fact that in the Treaty of 17 June 1981 concluded between Germany and the Polish Republic providing for friendly relations and collaboration between the two neighbour States did not at all deal with property questions showed that this matter had been deliberately left out by the Federal Republic in order to avoid endangering the signing of the Treaty by both parties. On the other hand the German Government had made it clear in the Treaty negotiations that it considered the expulsion of Germans from former German territories to be unlawful. However, it had been sufficiently shown and explained in the present proceedings that in view of the attitude of the Polish Government the German Government had reason to believe that any diplomatic action on behalf of Germans expelled by Polish authorities was bound to fail and could only harm interstate relations.

An appeal against the judgment of 19 June 1991 was rejected by the Administrative Court of Appeal of North Rhine Westphalia (Oberverwaltungsgericht) on 28 April 1993. This court likewise considered that the defendant Government's position in the matter in question was unobjectionable. It considered it to be established that the Federal Government had made it clear to the Polish authorities that it considered the expulsion of Germans and the confiscation of their property to be in violation of international law. In signing the German/Polish Treaty of 1981 and the Treaty of 14 November 1990, recognising the existing borders between the two countries, the Federal Government had succeeded in keeping the property question (Vermögensfrage) open. The court considered it unobjectionable that the defendant Government for the time being saw no possibility of reaching an agreement with the Polish Government on the property issues but hoped that the treaties agreed upon with Poland opened possibilities for the future that these matters could be settled in a satisfactory manner.

Leave to appeal on points of law (Revision) was denied by the Appellate Court and the applicant's complaint in this respect was rejected by the Federal Administrative Court (Bundesverwaltungsgericht) on 11 August 1993.

The applicant then lodged a constitutional complaint which was rejected by a group of three judges of the Federal Constitutional Court (Bundesverfassungsgericht) on 29 October 1993.

COMPLAINTS

The applicant maintains that she is entitled to a positive diplomatic action on the part of the Federal Republic with a view to securing her property right or her right to compensation. She submits that the inactivity of the respondent Government amounts to a violation of Article 1 of Protocol No. 1.

THE LAW

The applicant relies on the right to the peaceful enjoyment of possessions as guaranteed by Article 1 of Protocol No. 1 (P1-1) and submits that this provision imposes a positive obligation on the German Government to take diplomatic action vis-à-vis the Polish Government in order to see to it that her family's property, confiscated after World War II by Polish authorities, is either returned or compensation paid to her.

The Commission first notes that there has been no direct interference with the applicant's possessions by the German authorities.

The Commission recalls that the Convention does not contain a right which requires a High Contracting Party to espouse an applicant's complaints under international law or otherwise to intervene with the authorities of another State on his or her behalf (No. 7597/76, Dec. 2.5.78, D.R. 14 p. 117 at 123, 124; see also No. 12822/87, Dec. 9.12.87, D.R. 54 p. 201).

The Commission has also held in relation to the German-Polish Border Treaty of 17 October 1991 that this treaty had neither the effect of depriving persons definitely of the ownership of property possessed before 1945 in regions which are now part of Polish territory nor did it violate any assumed positive obligation on the part of Germany to give protection to its citizens against violations of fundamental rights. In the latter respect the Commission had regard to the discretionary power which the High Contracting Parties to the Convention enjoy in respect of their diplomatic actions. It concluded in agreement with the Federal Constitutional Court that the general interest of establishing normal and friendly relations with a neighbouring state prevailed over the individual interests of persons whose properties had been confiscated by Polish authorities (No. 24928/94, Dec. of 30.11.94; see also No. 20931/92, Dec. of 10.2.93, and No. 21591/93, Dec. of 28.2.96 unpublished).

Likewise in the present case the Commission agrees with the domestic courts that Germany enjoys large discretionary power and therefore the denial of a concrete diplomatic action on behalf of the applicant does not disclose any appearance of a violation of Article 1 of Protocol No. 1 (P1-1).

The application has therefore to be rejected in accordance with Article 27 para. 2 (Art. 27-2) of the Convention 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) — (C.L. ROZAKIS)