AS TO THE ADMISSIBILITY OF

Application No. 25044/94
by Josef W. DORNER
against Austria

The European Commission of Human Rights (First Chamber) sitting in private on 15 May 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 23 June 1994 by Josef W. DORNER against Germany and registered on 31 August 1994 under file No. 25044/94;

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 an Austrian citizen, born in 1926 and living in Zurich.

The facts as submitted by the applicant may be summarised as follows:

Since 1 March 1991 the applicant has been receiving a partial Austrian pension in the amount of 1.984,40 AS.

This pension was calculated by the Austrian social security authorities (Pensionsversicherungsanstalt) on the basis of 149 months of contributions paid in Austria and 475 months of contributions paid in other states, i.e. a total of 624 months.

On 23 September 1992 the Vienna Social Court (Sozialgericht) rejected the applicant's claim for a higher pension allegedly resulting from the taking into account contributions paid by the applicant between 1947 and 1950.

The court found that Sections 238 and 239 of the Austrian Social Security Act (ASVG) expressly provided that the period in question was not to be taken into account. The court added that the legislative

text was clear and left no room for another interpretation.

This judgment was confirmed by the Vienna Court of Appeal (Oberlandesgericht) on 10 September 1993. This court explained that the purpose of the provisions in Sections 238 and 239 was to protect the persons ensured by the social security scheme. In the period in question the maximum limit of contribution had not been adapted to the then existing conditions of wages and prices so that there existed an under-insurance. Even if the applicant's income was, as he claimed, higher than the average wages at the relevant time the statutory maximum contribution limit was however so low that taking into account the period in question would inevitably have a negative effect on the calculation of the applicant's total pension right. The court concluded that in these circumstances there was no reason to grant the applicant's request to submit the question to the Constitutional Court (Verfassungsgerichtshof) whether or not the regulation complained of by the applicant in question was compatible with constitutional law.

COMPLAINTS

The applicant argues that the application of the regulation in question causes him the loss of his pension rights in the amount of 28% and considers that this violates his right to life as guaranteed by Article 2 of the Convention.

THE LAW

The applicant complains of the amount of his partial Austrian pension which he considers to be too low.

While the applicant has invoked Article 2 (Art. 2) of the Convention the Commission considers that this complaint falls rather under Article 1 of Protocol No. 1 (P1-1) which guarantees the right to the peaceful enjoyment of possessions. According to the Commission's case-law this provision guarantees to persons who have paid contributions to a social insurance system the right to derive benefit from the system. However, it cannot be interpreted as an entitlement to a pension of a particular amount.

The Commission found in this respect:

"The operation of a social security system is essentially different from the management of a private life insurance company. Because of its public importance, the social security system must take account of political considerations, in particular those of financial policy. It is conceivable, for instance, that a deflationary trend may oblige the state to reduce the nominal amount of pensions. Fluctuations of this kind have nothing to do with the guarantee of ownership as a human right." (cf. No. 5849/72, Müller v. Austria, Dec. 1.1.95, D.R. 3, p. 25 [32]).

While it is true, that in some cases, a substantial reduction of the pension could be regarded as affecting the very substance of the right to retain the benefit of the old age insurance system, it follows from the decisions of the Austrian courts in the present case that the applicant's pension was correctly calculated in accordance with the existing Austrian law. This means that the applicant never had a right to a higher pension. The maximum contribution levels between 1 January 1947 and 31 December 1950 were according to the appellate court so low that the taking into account of the period in question would in general have a negative effect on the calculation of pension rights even if the applicant's wages did at that time exceed the average wages.

It can in these circumstances not be found that the amount of the applicant's partial Austrian pension was fixed in an arbitrary manner. It follows that there is no appearance of a violation of Article 1 of Protocol No. 1 (P1-1) and the application therefore has to be rejected

as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

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)