AS TO THE ADMISSIBILITY OF

Application No. 29544/95
by Helmut ENTLEITNER
against Austria

The European Commission of Human Rights (First Chamber) sitting in private on 2 July 1997, the following members being present:

Mrs. J. LIDDY, President
MM. M.P. PELLONPÄÄ
E. BUSUTTIL
A. WEITZEL
C.L. ROZAKIS
L. LOUCAIDES
B. CONFORTI
N. BRATZA
I. BÉKÉS
G. RESS
A. PERENIC
C. BÎRSAN
K. HERNDL
M. VILA AMIGÓ
Mrs. M. HION
Mr. R. NICOLINI

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 27 September 1995 by Helmut ENTLEITNER against Austria and registered on 14 December 1995 under file No. 29544/95;

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 1943. He lives in Piesendorf, and is represented before the Commission by Mr. E. Proksch, a lawyer practising in Vienna. The facts of the case, as submitted by the applicant, may be summarised as follows.

The particular circumstances of the case

On 12 June 1991, the applicant applied to the Salzburg District Agricultural Authority (Agrarbezirksbehörde, the "District Authority") for declarations (1) that the share in an agricultural association (Agrargemeinschaft) represented by a certain parcel of land ("the share") belonged to him, and (2) that grazing rights in that parcel ("the grazing rights") also belonged to him. On 24 June 1991, the District Authority found that the applicant had not made out his claims, and it declared that the share and the grazing rights belonged to a third person. The applicant appealed to the Regional Agricultural Authority (Agrarlandesbehörde, the "Regional Authority").

The Regional Authority dismissed the applicant's appeal on 8 May 1992. After an oral hearing, it found, so far as relevant, that the share had passed with a transfer of the land to a third party in 1949

(as rectified in 1952). The question of the grazing rights had to be determined by reference to the ownership of the land on 29 April 1868, as that was the last time they were mentioned. In the absence of any express alienation of the grazing rights since then, the grazing rights passed with the land - that is, the applicant did not own them.

The Constitutional Court (Verfassungsgerichtshof) declined to deal with the applicant's constitutional complaint on 14 October 1992. It remitted the case to the Administrative Court (Verwaltungs-gerichtshof).

The Administrative Court dismissed the applicant's administrative complaint on 14 March 1995 (judgment received by the applicant's representative on 31 March 1995). In its 29 page judgment, the Administrative Court confirmed the relevant parts of the Regional Authority's decision. It declined to hold the hearing the applicant had requested.

Relevant domestic law

A summary of the rules concerning the composition of and procedure before Regional Agricultural Authorities, and hearings before the Administrative Court may be found in the judgment of the European Court of Human Rights in the case of Kuso and Stallinger (Eur. Court HR, Kuso and Stallinger judgment of 23 April 1997, Reports 1997-II, No. 35). In that case, Regional Agricultural Authorities were referred to as the Regional Land Reform Boards.

COMPLAINTS

The applicant alleges a violation of Article 6 para. 1 of the Convention and of Article 1 of Protocol No. 1 to the Convention. Under Article 6, he claims that the civil servants who participated in the Regional Agricultural Authority also act as experts, and that the Authority cannot therefore be an independent tribunal within the meaning of Article 6. He also claims that the subsequent review by the Constitutional and Administrative Courts cannot remedy these flaws, as these courts merely have power to quash decisions, and cannot take decisions on the merits on their own.

He also claims that the absence of an oral, public hearing before any of the bodies which considered the case violated Article 6.

In connection with Article 1 of Protocol No. 1, the applicant claims that the Agricultural Authorities, the Constitutional Court and the Administrative Court deprived him of his possessions without any legislative competence to do so, and moreover did so without any compensation. He adds that the transfer on which the agricultural authorities based their decisions did not include the share.

THE LAW

1. The applicant alleges a violation of Article 1 of Protocol No. 1 (P1-1) to the Convention, 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 must first establish whether the applicant owned any "possessions" within the meaning of Article 1 of Protocol No. 1 (P1-1). Only if there are such "possessions" need it determine whether any interference with the right to peaceful enjoyment of those possessions was compatible with the provision. In assessing whether there was a "possession", the Commission will have regard to the position in domestic law (see Eur. Court HR, Tre Traktörer AB v. Sweden judgment of 7 July 1989, Series A no. 159, p. 21, para. 53, and Pressos Compania Naviera SA and others v. Belgium judgment of 20 November 1995, Series A no. 332, p. 21, para. 31).

The aim of the proceedings in the present case was to determine whether the applicant did, or did not, own the share and the grazing rights. All the bodies which examined the question in detail - that is, the District Authority, the Regional Authority and the Administrative Court - came to the conclusion that the applicant did not own them, as they had passed with previous transfers of the land. In domestic law, therefore, the applicant had no possessions, and it is not for the Commission to substitute its opinion of domestic law for that of the domestic authorities.

The Commission concludes that the proceedings in the present case did not affect the applicant's peaceful enjoyment of his "possessions". The applicant's entitlement under domestic law was to a determination of the question of whether the share and the rights belonged to him, and that determination was duly undertaken, even if the outcome was unsuccessful from the applicant's point of view.

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 also alleges a violation of Article 6 (Art. 6) of the Convention, which provides, so far as relevant, as follows:

> "1. In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. ..."

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.

For these reasons, the Commission

DECIDES TO ADJOURN the examination of the applicant's complaint that the proceedings in the case did not comply with Article 6 of the Convention,

unanimously,

DECLARES INADMISSIBLE the remainder of the application.

M.F. BUQUICCHIO	J. LIDDY
Secretary	President
to the First Chamber	of the First Chamber