Application No. 23539/94
by Maria FIDLER
against Austria

The European Commission of Human Rights (First Chamber) sitting in private on 16 April 1996, the following members being present:

MM. C.L. ROZAKIS, President
E. BUSUTTIL
A. WEITZEL
M.P. PELLONPÄÄ
B. MARXER
B. CONFORTI
N. BRATZA
I. BÉKÉS
E. KONSTANTINOV
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 20 December 1993 by Maria FIDLER against Austria and registered on 28 February 1994 under file No. 23539/94;

Having regard to the report provided for in Rule 47 of the Rules of Procedure of the Commission;

Having regard to the observations submitted by the respondent Government on 18 December 1995 and their further observations of 25 March 1996 and the observations in reply submitted by the applicant on 29 February 1996 and her further observations of 20 March 1996;

Having deliberated;

Decides as follows:

THE FACTS

The applicant, born in 1907, is an Austrian national, residing in Vienna. In the proceedings before the Commission she is represented by Mr. G. Pawlikowsky.

The facts of the case, as submitted by the parties, may be summarised as follows.

The applicant has two great-grandchildren, i.e. her grandson's children, which were born out of wedlock in 1986 and 1988, respectively. Custody over the children is exercised by their mother. It appears from the file that she and the applicant's grandson separated in 1991.

In November 1992 the applicant requested the Favoriten District Court (Bezirksgericht) to grant her access to her great-grandchildren on 24 December 1992.

On 7 January 1993 the Favoriten District Court dismissed the applicant's requests.

On 2 March 1993 the Vienna Regional Civil Court (Landesgericht) rejected the applicant's appeal.

On 11 May 1993 the Supreme Court (Oberster Gerichtshof) rejected the applicant's appeal on points of law (außerordentlicher Revisionsrekurs). It found in particular that one of the conditions for lodging such an appeal was a legitimate interest in pursuing the case. Appeal courts were not called upon to decide on questions of merely theoretical nature, like the question of access to children, when the date, which had been proposed for the visit, had already passed. Thus, the Supreme Court concluded that it was barred from deciding on the merits of the case. This decision was served on the applicant on 21 June 1993.

On 30 September 1994 the applicant died.

COMPLAINTS

1. The applicant complained under Article 6 of the Convention that the Favoriten District Court, without hearing her and without taking any procedural steps, waited until the relevant date had passed, before dismissing her request to have access to her great-grandchildren on Christmas 1992.

2. The applicant also complained under Article 8 of the Convention that the courts' decisions, denying her access to her great-grandchildren on Christmas 1992, violated her right to respect for her family life.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 20 December 1993 and registered on 28 February 1994.

On 6 September 1995 the Commission decided to communicate the application to the respondent Government, pursuant to Rule 48 para. 2 (b) of the Rules of Procedure.

The Government's written observations were submitted on 18 December 1995. In particular the Government informed the Commission that the applicant had died on 30 September 1994. The observations of the applicant's representative were submitted on 29 February 1996.

By letter of 11 March 1996, the attention of the applicant's representative was drawn to the Commission's case-law, relating to the death of the applicant, and he was invited to make any comments he may wish to make in this context. The applicant's representative replied on 20 March 1996. The Government, by letter of 25 March 1996, requested that the application be struck off the list of cases.

REASONS FOR THE DECISION

The applicant complained under Article 6 and Article 8 of the Convention that the decisions of the Austrian courts denied her access to her great-grandchildren.

The Commission notes that the applicant died on 30 September 1994.

The applicant's representative submits that the application mainly concerned the unfairness of the proceedings before the Favoriten District Court, which arbitrarily denied the applicant a timely decision. Further, he argues that the issues raised under Article 6 of the Convention are of considerable public interest. Finally, he claims that the applicant has requested him to maintain the application, but has expressly excluded that any of her heirs take her place in the proceedings.

The Government submit that the exercise of the applicant's right

of access to her great-grandchildren is a personal right, which is not transferable.

The Commission considers that the applicant's death does not in itself dispose of her complaint. In this context the Commission recalls that close relatives of the deceased applicant are in principle entitled to take her place (see Eur. Court H.R., X. v. France judgment of 31 March 1992, Series A no. 234-C, p. 89, para. 26).

The Commission notes that none of the applicant's relatives, if there are any, has expressed the intention to pursue the application. On the contrary, according to the submissions of the applicant's representative, this would be against the applicant's will. As regards the applicant's representative, the Commission finds that he does not have an independent right to continue the proceedings (see Eur. Court H.R., Scherer judgment of 25 March 1994, Series A no. 287, pp. 14-15, para. 31). Finally, the Commission notes that the present application relates to the applicant's request for access to her great-grandchildren. Thus, it concerns an issue which is closely linked to the person of the deceased applicant.

In these circumstances, the Commission considers that it is no longer justified to continue the examination of the application, within the meaning of Article 30 para. 1 (c) of the Convention.

Moreover, as regards the issues raised in the present case, the Commission finds no reasons of a general character affecting respect for Human Rights, as defined in the Convention, which require the further examination of the application by virtue of Article 30 para. 1 in fine of the Convention.

For these reasons, the Commission, unanimously,

DECIDES TO STRIKE THE APPLICATION OFF ITS LIST OF CASES.

Secretary to the First Chamber — President of the First Chamber

(M.F. BUQUICCHIO) — (C.L. ROZAKIS)