AS TO THE ADMISSIBILITY OF

Application No. 23242/94
by Erna HABLE
against Austria

The European Commission of Human Rights (First Chamber) sitting in private on 11 May 1994, the following members being present:

MM. A. WEITZEL, President
C.L. ROZAKIS
A.S. GÖZÜBÜYÜK
Mrs. J. LIDDY
MM. M.P. PELLONPÄÄ
G.B. REFFI
B. CONFORTI
N. BRATZA
I. BÉKÉS
E. KONSTANTINOV

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 december 1993 by Erna Hable against Austria and registered on 12 January 1994 under file No. 23242/94;

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 1933 and living in Wels. She is represented by Mr. M. Nordmeyer, a lawyer practising in Wels.

It follows from her statements and the documents submitted that the applicant got divorced on 21 April 1982. In accordance with Section 55 (3) of the Marriage Act (EheG) the divorce tribunal, i.e. the Wels District Court (Kreisgericht), stated that the former husband was guilty of the breakdown of the marriage.

The ex-husband remarried in August 1982 and died in March 1989. His inheritance was passed on to his second wife and a child which was born out of that marriage as well as a child born out of the marriage with the applicant.

In January 1990 the applicant brought an action against the three heirs claiming that her former husband's estate was bound to pay her maintenance. This action was dismissed in first and second instance but eventually partly granted by the Supreme Court (Oberster Gerichtshof) on 20 February 1992.

Subsequently the applicant requested her former husband's social insurance company (Pensionsversicherungsanstalt der Angestellten) to grant her a widow's pension on account of her former husband's insurance rights. This request was rejected on 24 August 1992 and an action was dismissed by the Wels District Court on 5 November 1992.

The court stated that under Section 270 in conjunction with Section 258 (4) of the Social Insurance Act (ASVG) a divorced woman could claim a widow's pension on account of her deceased ex-husband's social insurance if it was established by a court judgment or a friendly settlement reached in court that the insured person was at the time of his death obliged to pay maintenance to his former wife. The District Court pointed out that in accordance with the Supreme Court's constant jurisprudence the judgment or agreement recognising the obligation to pay maintenance had to be given or established during the lifetime of the insured person while in the applicant's case an action for maintenance payments had been brought after her ex-husband's death. The requirements of the law were thereby not fulfilled.

This decision was confirmed by the Court of Appeal in Linz on 25 February 1993. This court likewise pointed out that the judgment complained of was in conformity with constant jurisprudence. Insofar as the applicant had complained of being discriminated against in comparison to couples living separated without divorcing the court stated that married couples were not in a comparable situation to that of divorced couples. The court further pointed out that the applicant had had sufficient time to bring an action against her former husband for maintenance and that the regulation making a widow's pension dependent on the existence of maintenance judgment at the time of the death of the insured person was designed to avoid manipulation such as for example the unjustified recognition of maintenance claims by the heirs.

An appeal on points of law (Revision) was rejected by the Supreme Court on 11 May 1993. This court pointed out that it did not have to decide the question whether the requirements for widow's pension had to be considered as fulfilled if maintenance claims were already pending in court against the insured person during his lifetime but judgment was given only after his death. The court admitted that an amendment of the relevant legal provisions was being prepared according to which in the future widow's pension could also be claimed if the divorced husband had in fact paid maintenance to his former wife even if no judgment obliged him to do so. However, even under the new future regulation the applicant did not qualify for a widow's pension.

COMPLAINTS

The applicant considers that the wording of the relevant provisions of Austrian law could be interpreted in her favour. She also submits that according to opinions expressed in Austrian legal writing there is no objective justification for differentiating between divorced women who have sued for maintenance during the lifetime of their ex-husband and those who have brought such an action after death. She therefore considers that Article 1 of Protocol No. 1 in conjunction with Article 14 of the Convention were violated in her case because she was being discriminated against and that a widow's pension is being denied to her although it has been established by the Supreme Court that her former husband was obliged to pay her maintenance.

THE LAW

1. The Commission has first examined the applicant's complaint under Article 1 of Protocol No. 1 (P1-1) to the Convention which guarantees the right to peaceful enjoyment of possessions. It observes, however, that future income constitutes a "possession " only if it has been earned or where an enforceable claim to it exists (No. 10438/83, Dec. 3.10.84, D.R. 41 p. 170). The applicant's claim to a widow's pension was denied by the competent Austrian courts. There is nothing to show that the decisions arbitrarily denied her an existing statutory right. Consequently she cannot rely on Article 1 of Protocol No. 1 (P1-1). The complaint should therefore in this respect be rejected as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. In so far as the applicant complains of discriminatory treatment, in the enjoyment of her right to respect for her possessions contrary to Article 14 of the Convention in conjunction with Article 1 of Protocol No. 1 (Art. 14+P1-1), the Commission finds that the differentiation made under Austrian law between on the one hand divorced women who have during the life-time of their ex-husband obtained recognition of a maintenance claim and on the other hand those who raised maintenance claims after their ex-husband's death only, is objectively justified for the purpose set out in the domestic judgment complained of. Even if in Austrian legal writing the regulation in question has been criticised it has to be noted that the applicant got divorced in April 1982. She has had several years to claim maintenance from her ex-husband who died in 1989 while the applicant did not bring an action for maintenance before January 1990.

In the particular circumstances it cannot be found that the result reached in the applicant's case is disproportionate to the aims pursued by the legislative regulation in question (cf. No. 15845/89, Dec. 4.4.90, unpublished).

There is consequently no appearance of a violation of the provisions invoked by the applicant. In this respect the application must also 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) — (A. WEITZEL)