Application No. 18809/91
by F.K.
against Austria

The European Commission of Human Rights (First Chamber) sitting in private on 13 January 1992, the following members being present:

MM.J.A. FROWEIN, President of the First Chamber
F. ERMACORA
G. SPERDUTI
E. BUSUTTIL
A.S. GÖZÜBÜYÜK
SirBasil HALL
Mr.C.L. ROZAKIS
Mrs.J. LIDDY
MM.M. PELLONPÄÄ
B. MARXER

Mr.M. de SALVIA, Secretary to the First 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 11 July 1991 by F.K. against Austria and registered on 16 September 1991 under file No. 18809/91;

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 farmer living in G. He is represented by Messrs. E. and R. proksch, lawyers in Vienna.

The facts of the case, as submitted bdy the applicant, may be summarised as follows.

On 2 December 1987 the Tyrolian Government granted the community of Gerlos the right to use some of the applicant's real property, part of which is farmland and the other part building land, as a skiing slope. Compensation was fixed in the amount of AS 80,763 per annum.

Remedies against the restriction of the applicant's property right were to no avail.

The applicant then brought an action claiming higher compensation. On 27 September 1989 the District Court (Bezirksgericht) in Zell granted compensation in the amount of AS 281,282.80 per annum. An appeal by the defendant community was rejected by the Innsbruck Regional Court (Landesgericht) on 25 May 1990.

An appeal on points of law (Revisionsrekurs) was partly granted by the Supreme Court (Oberster Gerichtshof) which decided on 13 December 1990 that the annual compensation fixed by the lower court was to be limited to a period of 25 years. The Court stated that according to the evaluation method on which the experts had unobjectionally based their opinions it could be expected that the losses incurred by the applicant would be offset within 25 years. Payments unlimited in time would exceed the market value.

On 11 July 1991 the Supreme Court rejected the applicant's

request to amend its decision of 13 December 1990 to the effect that, if the use of the applicant's premises as a skiing slope would exceed 25 years, further compensation would then have to be assessed.

COMPLAINTS

The applicant submits that the compensation to be paid to him was wrongly calculated without taking into account also the agricultural value of his land. Furthermore he points out that even the expert opinions obtained in his case consider it necessary to reevaluate after 25 years the losses incurred by him on account of the use of his premises as a skiing slope. He alleges a violation of Article 1 of Protocol No. 1 to the Convention.

THE LAW

The applicant invokes Article 1 of Protocol No. 1 (P1-1) which guarantees the right to peaceful enjoyment of possessions. This provision in principle grants a right to compensation in case of an expropriation. However, it does not give a right to a particular amount of compensation. It is true that in some cases a substantial reduction of the compensation could be regarded as affecting the very substance of the right to compensation (cf. Eur. Court H.R., James and Others judgment of 21 February 1986, Series A no. 98, p. 36 para. 54).

In the present case the Austrian courts considerably increased the amount of compensation due to the applicant while the Supreme Court limited the annual payments to a period of twenty-five years. The Court's finding that within this time-limit the total of the payments made by then would constitute adequate compensation was based on expert opinion and there is nothing to show that it is arbitrary nor that it deprives the applicant of a considerable share in the value of his land amounting to a disproportionate interference contrary to Article 1 of Protocol No. 1 (P1-1) (cf. No. 14265/88, Dec. 19.1.89; No. 13728/88, Dec. 17.5.90).

It follows that the application must 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. de SALVIA) (J.A. FROWEIN)