AS TO THE ADMISSIBILITY OF

Application No. 23464/94
by Johann and Elisabeth KÜHBERGER
against Austria

The European Commission of Human Rights (First Chamber) sitting in private on 28 June 1995, 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
G.B. REFFI
B. CONFORTI
N. BRATZA
I. BÉKÉS
E. KONSTANTINOV
G. RESS
A. PERENIC
C. BÎRSAN

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 17 January 1994 by Johann and Elisabeth KÜHBERGER against Austria and registered on 15 February 1994 under file No. 23464/94;

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

The applicants, born in 1934 and 1939 respectively, are Austrian nationals. They are residing in Durban, South Africa. In the proceedings before the Commission they are represented by Mr. Hafner, a lawyer practising in Altmünster.

In 1973 the applicants bought a plot of land in Bad Aussee. On 27 July 1979 the Mayor (Bürgermeister) of Bad Aussee, upon the applicants' request, designated their plot of land for building purposes.

In 1981 the Bad Aussee municipality issued a zoning plan (Flächenwidmungsplan) designating the applicants' plot of land as open land (Freiland). On 9 December 1981 the said zoning plan was approved by the Office of the Styria Regional Government (Amt der steiermärkischen Landesregierung). Subsequently, it was published on the notice board of the Bad Aussee municipality and entered into force on 2 January 1982.

On 4 July 1991 the applicants informed the Bad Aussee

municipality that they intended to sell the plot of land at issue and requested whether it could, according to the prior designation, be used for building purposes.

By letter of 9 July 1991 the Bad Aussee municipality replied that the plot of land had meanwhile been designated as open land. The applicants received this letter on 15 July 1991.

On 19 July 1991 the applicants requested compensation under S. 34 of the Styria Regional Planning Act (Raumordnungsgesetz) for the loss in value of their plot of land and also requested reinstatement to the status quo (Wiedereinsetzung) as regards the one-year time-limit laid down in this provision for asserting such a claim. They submitted in particular that they had only learned from the letter of the Bad Aussee municipality, which they had received on 15 July 1991, that their plot of land may no longer be used for building purposes. They had been prevented from making their claim in time, as they were permanently residing in South Africa and the zoning plan had never been served on them. Further, they could not have knowledge of its eventual publication.

On 18 February 1992 the Liezen District Administrative Authority (Bezirksverwaltungsbehörde) dismissed the applicants' request for reinstatement and rejected their compensation claim as having been lodged out of time. The District Administrative Authority, referring to the case-law of the Administrative Court (Verwaltungsgerichtshof), found that S. 71 of the Code of Administrative Procedure (Allgemeines Verwaltungsverfahrensgesetz), concerning reinstatement to the status quo, only applied if a party, in the course of administrative proceedings, failed to comply with a procedural time-limit. However, the said provision did not apply to asserting a substantive claim, like the compensation claim under S. 34 of the Styria Regional Planning Act, which became extinct unless it was asserted within one year after the entry into force of the relevant zoning plan.

On 14 January 1993 the Office of the Styria Regional Government dismissed the applicants' appeal. It noted the applicants' submissions, that the time-limit was a procedural issue, as their request for compensation was aimed at a procedural act, namely that of issuing a decision. However, it confirmed the District Administrative Authority's view. It further noted in particular that the zoning plan at issue had been duly published on the municipality's notice board. As the applicants were residing in South Africa they could have been expected to nominate a person to represent them in proceedings concerning their plot of land.

On 26 June 1993 the Administrative Court dismissed the applicant's complaint. It confirmed that, according to S. 71 of the Code of Administrative Procedure, reinstatement to the status quo only applied to procedural time-limits but not to a time-limit for asserting a substantive claim, like the one laid down in S. 34 of the Styria Regional Planning Act. The administrative authorities had, thus, rightly dismissed the applicants' request. The decision was served on the applicants' counsel on 20 July 1993.

COMPLAINTS

1. The applicants complain that the zoning plan, which changed the planning designation of their plot of land and, thus, constituted an interference with their right to property, was never served on them. They submit that, for this reason, the interference at issue was not in accordance with the general principles of international law. They also complain that the proceedings relating to the zoning plan were unfair in this respect. They invoke Article 1 of Protocol No. 1 and Article 6 of the Convention.

2. The applicants also complain under Article 6 of the Convention

that they could not claim compensation under S. 34 of the Styria Regional Planning Act, as any such claim became extinct one year after the entry into force of the zoning plan, although they did not know about its existence. Thus, they were denied access to court.

THE LAW

1. The applicants complain that the zoning plan of 1981, which changed the planning designation of their plot of land, was never served on them. They invoke Article 1 of Protocol No. 1 (P1-1) and Article 6 (Art. 6)of the Convention.

Article 26 (Art. 26) of the Convention provides that the Commission may only deal with a matter "after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken." The "final decision" refers only to domestic remedies with can be considered to be "effective and sufficient" for the purpose of rectifying the subject-matter of the complaint (No. 11763/85, Dec. 9.3.89, D.R. 60 p. 137).

In the present case the relevant zoning plan was issued in 1981 and the applicants learned about its existence and the change in the planning designation of their plot of land by letter of 9 July 1991 of the Bad Aussee municipality, which they received on 15 July 1991. Thereupon, they requested compensation for the loss of value of their plot of land and reinstatement to the status quo as regards the time-limit for asserting the compensation claim. The final decision in these proceedings was given by the Administrative Court on 26 June 1993 and served on the applicants on 20 July 1993. They introduced their application on 17 January 1994.

The Commission finds that the above proceedings do not constitute an effective remedy as regards the violation alleged by the applicants, namely that the zoning plan, which changed the designation of their plot of land, was not served on them. The decisions concerning the zoning plan were taken in 1981. However, the applicants only learned about the existence of the zoning plan by letter of the Bad Aussee municipality, which they received on 15 July 1991. In these circumstances, the Commission finds that this date has to be taken as the starting point for the six-months'-period laid down in Article 26 (Art. 26) of the Convention. Given the date of introduction of the application, namely 17 January 1994, the applicant's failed to comply with the requirements of Article 26 (Art. 26).

It follows that this part of the application has to be rejected in accordance with Article 27 para. 3 (Art. 27-3) of the Convention.

2. The applicants complain under Article 6 (Art. 6) of the Convention that they could not claim compensation under S. 34 of the Styria Regional Planning Act, as any such claim became extinct one year after the entry into force of the zoning plan, although they did not know about the latter's existence. Thus, they were denied access to court.

Article 6 (Art. 6), so far as relevant, reads as follows:

" In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... "

The Commission recalls that Article 6 (Art. 6) extends only to disputes over "civil rights and obligations" which can be said, at least on arguable grounds, to be recognised under domestic law; it does not in itself guarantee any particular content for "civil rights and obligations" in the substantive law of the Contracting States (see Eur. Court H.R. Bodén judgment of 27 October 1987, Series A no. 125-B, p. 39, para. 28).

In the present case the zoning plan, changing the designation of the applicants' plot of land, entered into force on 2 January 1982. The applicants, on 19 July 1991, requested compensation under S. 34 of the Styria Regional Planning Act and reinstatement to the status quo as regards the time-limit for asserting their claim. However, the Liezen District Administrative Authority rejected their claim. It found that, according to S. 34 of the Styria Regional Planning Act, the claim at issue becomes extinct unless it is asserted within one year after the entry into force of the relevant zoning plan. As regards the applicants' request for reinstatement into the status quo, it found that the relevant provision of the Code of Administrative Procedure only applied to procedural time-limits but not to time-limits for asserting a substantive claim. Subsequently, the Office of the Styria Regional Government and the Administrative Court confirmed this decision.

In these circumstances, the Commission finds that the applicants, at the time of their request of 19 July 1991, could not claim to have a right to compensation under Austrian law. Thus, the proceedings relating to the said request did not involve a determination of their civil rights and obligations within the meaning of Article 6 (Art. 6) of the Convention. Consequently, the applicants cannot claim a right of access to court in this matter.

It follows that this part of the application is incompatible ratione materiae within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission, by a majority,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the First Chamber — President of the First Chamber

(M.F. BUQUICCHIO) — (C.L. ROZAKIS)