AS TO THE ADMISSIBILITY OF

Application No. 26508/95
by Ernst MÄSER
against Austria

The European Commission of Human Rights (First Chamber) sitting in private on 28 February 1996, 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
N. BRATZA
I. BÉKÉS
E. KONSTANTINOV
G. RESS
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 26 January 1995 by Ernst MÄSER against Austria and registered on 14 February 1995 under file No. 26508/95;

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 1917 and residing in Wolfurt (Austria). Before the Commission he is represented by Mr. W.L. Weh, a lawyer practising in Bregenz.

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

The applicant is the owner of land in Wolfurt comprising, inter alia, parcel No. 118 of the Wolfurt Land Register. In the Area Zoning Plan (Flächenwidmungsplan) for Wolfurt of 1976 the applicant's land is marked as agricultural land.

On 22 July 1991 the applicant, assisted by counsel, requested the Mayor of Wolfurt (Bürgermeister) to grant him a building permit in order to build a single family house on parcel No. 118. He submitted that before a building permit could be granted the Area Zoning Plan should be amended in respect of the applicant's parcel in that its use be changed to building land (Baufläche-Wohngebiet).

On 10 October 1991 the Mayor returned the request and the documents submitted to the applicant and informed him that in view of the fact that a previous request by the applicant for amending the Area Zoning Plan had been rejected there was no point in submitting the

present request. The applicant appealed.

On 4 March 1992 the Appeal Board (Berufungskommission) of the Municipality of Wolfurt dismissed the appeal.

On 1 April 1992 the Bregenz District Administrative Authority (Bezirkshauptmannschaft) upon a further appeal by the applicant, quashed the Appeal Board's decision on procedural grounds. It found that if a building project was not in accordance with the Area Zoning Plan it had to be dismissed (abgewiesen) by the authority . The Mayor, however, had rejected (zurückgewiesen) the applicant's request and thus had not taken his decision in the proper form.

On 20 October 1992 the Appeal Board quashed the Mayor's decision and referred the case back to him.

On 17 November 1992 the Mayor dismissed the applicant's request of 22 July 1991, finding that the project was not in accordance with the relevant Area Zoning Plan.

On 5 January 1993 the Appeal Board dismissed the applicant's appeal.

On 8 January 1993 the applicant made a further appeal. He requested in particular that the Area Zoning Plan be amended as his parcel No. 118 was an ideal place for building a house.

On 4 February 1993 the District Administrative Authority dismissed the appeal. The Administrative Authority found that it was obvious that the applicant's project ran counter to the Area Zoning Plan and that for this reason the Mayor and the Appeal Board had had to dismiss the request.

On 16 March 1993 the applicant introduced a complaint to the Constitutional Court (Verfassungsgerichtshof). He submitted that the Area Zoning Plan for Wolfurt was unlawful because it did not allow for the best possible development of Wolfurt. The applicant's land was particularly suitable for construction, although it was not designated as building land.

On 26 November 1993 the applicant submitted a report of a private expert for planning matters in support of his arguments and requested that this report be discussed at an oral hearing before the Constitutional Court. According to this report no objections from a scientific point of view could be raised against a change of the use of the applicant's land in the Area Zoning Plan.

On 10 December 1993 the Constitutional Court refused to deal with the applicant's complaint. It found that in view of its constant case-law according to which there was no subjective right of the owner of land to have the use of his land marked in the Area Zoning Plan amended upon his request, the complaint had no prospect of success. On 7 February 1994 the Constitutional Court referred the case to the Administrative Court (Verwaltungsgerichtshof).

On 2 May 1994 the applicant supplemented his complaint and requested an inspection of the location by the Administrative Court. He submitted in particular that the Area Zoning plan of Wolfurt was inadequate and that it should be changed.

On 9 June 1994 the Administrative Court dismissed the applicant's complaint. It dismissed the complaint in camera as it found that it was apparent from the applicant's submissions that the alleged violation of the law did not exist. The Administrative Court referred also to the Constitutional Court's case-law according to which the legislator was free whether or not to amend an Area Zoning Plan even if all legal requirements for a specific designation of a parcel of

land were met. Moreover, it observed that the mere wish of the owner of land to have the designation of his land in the Area Zoning Plan amended was not even a sufficient reason under regional planning laws to justify the amendment of an Area Zoning Plan.

COMPLAINTS

The applicant complains under Article 6 of the Convention that his request for an amendment of the Area Zoning Plan had not been determined by a tribunal within the meaning of this provision. He further complains that the refusal of the Austrian authorities to amend the Area Zoning Plan violated his right to property as guaranteed by Article 1 of Protocol No. 1.

THE LAW

The applicant complains that his request for an amendment of the Area Zoning Plan had not been determined by a tribunal within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention, which, in so far as relevant, reads as follows:

> "In the determination of his civil rights and obligations ... , everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

The dispute in the present case concerns a proposed amendment to the existing Area Zoning Plan for Wolfurt which the applicant tried to obtain by his request to the Mayor of Wolfurt and the subsequent appeal proceedings. In determining whether the applicant's rights under Article 6 para. 1 (Art. 6-1) have been violated in these proceedings, the Commission must first consider whether the decisions by the Austrian authorities to refuse the applicant's request involved a determination of his civil rights within the meaning of this provision.

The applicability of Article 6 para. 1 (Art. 6-1) depends on whether there was a dispute over a "right" which can be said, at least on arguable grounds, to be recognised under domestic law, and, if so, whether this "right" was of a "civil" character within the meaning of Article 6 para. 1 (Art. 6-1). In particular, the dispute must be genuine and serious, it may relate not only to the actual existence of a right but also to its scope and the manner of its exercise and, finally, the results of the proceedings concerning the dispute at issue must be directly decisive for such a right (see Eur. Court H.R., Allan Jacobsson judgment of 25 October 1989, Series A no. 163, p. 19, paras. 66-67).

The Commission recalls that it has previously held that a decision rejecting a request for amendment of an existing building plan does not involve a determination of civil rights (see No. 11844/45, Dec. 29.2.88, D.R. 55, p. 205; No. 20326/92, Dec. 2.9.94, unpublished). The Commission has also held that a dispute about an owner's use of land for purposes other than those listed in the relevant rules does not determine the owner's civil rights, but concerns the application of public law regulations to the permitted use of the land (see No. 10471/83, Dec. 9.12.85, D.R. 45, p. 113).

From the above case-law it follows that civil rights within the meaning of Article 6 (Art. 6) of the Convention were involved where the applicants had had, or could arguably be said to have had, rights recognised under domestic law which were revoked or denied by the decisions of the administrative authorities (see No. 20326/92, Dec. 2.9.94, unpublished). In the present case, however, the applicant had no right to build on his property as, according to the Area Zoning Plan which had been issued in 1976, this land was designated as agricultural land. The refusal of the Austrian authorities to amend the Area Zoning Plan as requested by the applicant did not change this situation. The Commission further notes that according to the decisions of the

Constitutional Court and the Administrative Court in the applicant's case the regional planning laws did not recognise a right for the individual to have an Area Zoning Plan amended.

The Commission, therefore, considers that the proceedings at issue did not involve a determination of the applicant's civil rights within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention.

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

2. The applicant further complains that the refusal of the Austrian authorities to amend the Area Zoning Plan violated his right to property. He invokes Article 1 of Protocol No. 1 (P1-1), which reads 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, assuming that the designation of the applicant's land as agricultural in the Area Zoning Plan of 1976 constituted a measure for the control of use of property within the meaning of paragraph 2 of Article 1 of Protocol No. 1 (P1-1-2), finds however that the refusal of the Austrian authorities to amend the Area Zoning Plan upon the applicant's request did not alter the already existing authorised use. Thus, the decisions complained of do not disclose any appearance of a violation of the applicant's right to property as guaranteed by Article 1 of Protocol No. 1 (P1-1).

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.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the First Chamber — President of the First Chamber

(M.F. BUQUICCHIO) — (C.L. ROZAKIS)