AS TO THE ADMISSIBILITY OF

Application No. 14699/89
by Georg and Helmut MEUSBURGER
against Austria

The European Commission of Human Rights sitting in private on 6 April 1993, the following members being present:

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

Mrs. M.F. BUQUICCHIO, 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 17 January 1989 by Georg and Helmut MEUSBURGER against Austria and registered on 27 February 1989 under file No. 14699/89;

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 applicants are brothers, born in 1936 and 1938 respectively. They are Austrian citizens, living in Dornbirn and Schwarzach respectively. Both are represented by Dr. W. L. Weh, a lawyer practising in Bregenz.

On 20 September 1984 the applicants offered the highest bid (Meistgebot) for the forced sale (Zwangsversteigerung) of farmland situated in Hörbranz.

Under the applicable Real Property Transaction Act (Grundverkehrsgesetz) the transfer of agricultural property requires approval by a Real Property Transactions Commission (Grundverkehrskommission).

On 29 January 1985 the competent Commission refused approval of the applicant's bid. An appeal against this refusal was rejected by the Provincial Agrarian Senate (Grundverkehrssenat) on 9 August 1985.

The applicants then lodged a constitutional complaint alleging a violation of their right to a fair trial (Article 6 of the Convention). On 1 December 1986 the Constitutional Court (Verfassungsgerichtshof) quashed the Senate's decision on the grounds that with regard to one of the members of this body there were legitimate reasons to fear a lack of impartiality given that the person

in question was a civil servant of the Agricultural Authorities. In addition he had previously been involved in the matter as an expert.

The case was referred back to the Senate for a new decision.

On 22 May 1987 the Senate, recomposed, again rejected the applicant's appeal.

The applicants again lodged a constitutional complaint alleging violations of constitutional law and of the right to the peaceful enjoyment of possessions as guaranteed by Article 1 of Protocol No. 1.

On 10 June 1988 the complaint was rejected by the Constitutional Court. Insofar as the right to peaceful enjoyment of possession was invoked the Court referred to the reasons given for the refusal to approve the property transaction, namely that the applicants, being owners and managers of a machine production firm, only intended to run the farm as a hobby during their leisure time. This would not correspond to the purposes and aims of the Real Property Transaction Act which are the preservation of an effective farming community and of economically sound agricultural enterprises. These considerations did in the opinion of the Constitutional Court not disclose any arbitrariness.

COMPLAINTS

The applicants criticise the Provincial Agrarian Senate; the way it was set up, allegedly without public control, the way it is partly composed of members who are not independent of the executive and the way it conducts the proceedings. In this respect it is submitted that they were refused the inspection of files relating to similar cases and that their request to hear the mayor of Hörbranz was rejected. They invoke Article 6 of the Convention.

Further they invoke Article 1 of Protocol No. 1. They submit that Section 5 para. 1 of the Real Property Transaction Act/ excludes any kind of consideration for the striking of a balance between the demands of the general interest of the community and the interests of the prospective buyer. They submit that they were born and brought up on a farm and intended to use the farm in question for horse-breeding. In these circumstances they consider that the denial of the necessary approval imposed on them an excessive burden.

Finally they submit that the Real Property Transaction Act discriminates against non-farmers.

THE LAW

1. The applicant has complained of the proceedings before the Regional Agrarian Senate.

It is true that Article 6 (Art. 6) of the Convention secures to everyone the right to a fair hearing before an impartial tribunal established by law.

However, the Commission is not required to decide whether or not the facts alleged by the applicant disclose any appearance of a violation of this provision, as Article 26 (Art. 26) of the Convention provides that the Commission "may only deal with the matter...within a period of six months from the date on which the final decision was taken".

In the present case the first decision of the Constitutional Court has to be considered as the final decision regarding the subject of this particular complaint as the applicants alleged at the time a violation of Article 6 (Art. 6) of the Convention while, with their second constitutional complaint they invoked the right to peaceful

enjoyment of possessions.

The decision in question was given on 1 December 1986. It did not however start the six months time-limit as the Constitutional Court sent the case back to the Provincial Agrarian Senate for a new decision. Had this institution then decided in the applicants' favour they could no longer have been considered to be victims of the alleged violations of Article 6 (Art. 6) of the Convention. Therefore the decision of the Provincial Agrarian Senate, which rejected the applicants' appeal a second time on 22 May 1987, has, in the particular circumstances of the case, to be considered as the starting point for the six months time-limit in respect of the applicants' complaints under Article 6 (Art. 6) of the Convention which they did in fact not pursue with their second constitutional appeal. It follows that the six months time-limit was not respected because the application was submitted to the Commission on 17 January 1989. Furthermore, an examination of the case does not disclose the existence of any special circumstances which might have interrupted or suspended the running of the six months period.

This part of the application consequently has been introduced out of time and must be rejected under Article 27 para. 3 (Art. 27-3) of the Convention.

2. As regards the applicants' remaining complaints under Article 1 of Protocol No. 1 (P1-1) to the Convention, read in conjunction with Article 14 (Art. 14) of the Convention the Commission considers that the requirement of administrative consent to the acquisition of real property as stipulated in the Real Property Transactions Act constitutes a "control of the use of property" within the meaning of the second paragraph of Article 1 of Protocol No. 1 (P1-1). It clearly is "in accordance with the general interest" that the legislation aims at preserving viable agricultural enterprises in the hands of the rural population depending on agriculture for their livelihood. In view of this legitimate aim it was also justified to refuse the applicants permission to acquire the farm in question, having regard to the fact that they intended to run it as hobby farmers and thus under conditions not in conformity with legislative aims. The Commission concludes that the restriction complained of was covered by the second paragraph of Article 1 of Protocol No. 1 (P1-1).

Furthermore, there is no appearance of discrimination of the applicants contrary to Article 14 (Art. 14) of the Convention as regards the enjoyment of their property rights. It does not appear from the file that the applicants were treated differently from other persons merely on the grounds that they were business men. Members of other professions, except farmers, would likewise have been refused permission to acquire the farm under such conditions. The differential treatment of farmers, however, is based on reasonable and objective criteria and thus cannot be regarded as discriminatory (cf. No. 12337/86 Dec. 6.3.89, unpublished).

The applicants' above complaints are therefore 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) (J.A. FROWEIN)