AS TO THE ADMISSIBILITY OF

Application No. 26704/95
by Ilse PFEUFFER
against Germany

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
M.P. PELLONPÄÄ
B. MARXER
G.B. REFFI
B. CONFORTI
N. BRATZA
I. BÉKÉS
E. KONSTANTINOV
G. RESS
A. PERENIC
C. BÎRSAN

Mrs. S. DOLLE, Acting 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 21 October 1994 by Ilse PFEUFFER against Germany and registered on 14 March 1995 under file No. 26704/95;

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 a German citizen, born in 1942, and residing in Ebenhausen (Germany).

The applicant and her husband are co-proprietors of a plot of land situated in Ebenhausen. In 1964 they erected a house on this land. In 1975 they enlarged the building. On 6 October 1975 the administrative authorities (Landratsamt) in Bad Kissingen ordered the applicant's husband to apply for a permit for the necessary filling up of the land surrounding the house.

Upon the appeal lodged by the applicant's husband, the Würzburg Administrative Court (Verwaltungsgericht) quashed this decision. The administrative authorities appealed against this judgment.

On 22 April 1985 the administrative authorities (Landratsamt) of Bad Kissingen and the applicant's husband reached an agreement before the Administrative Court of Appeal (Bayerischer Verwaltungs-gerichtshof). Under the terms of this agreement the administrative authorities were obliged to submit a plan for the levelling of the land and the applicant's husband undertook to submit the corresponding permit.

On 25 April 1985 the applicant's husband revoked the agreement.

By a judgment of 10 February 1986 the Administrative Court of Appeal decided that the proceedings had been terminated by the above-mentioned agreement of 22 April 1985.

By a decision of 29 March 1993 Würzburg Administrative Court (Verwaltungsgericht) ordered the applicant's husband, in accordance with the agreement of 22 April 1985, to apply for a permit for the filling up of the land. In accordance with Sections 11 and 13 of the Law on the execution of administrative decisions (Verwaltungs-vollstreckungsgesetz - VwVG) The Court imposed a coercive fine of 200 DM on the applicant's husband in case he failed to present the required permit within a month.

The appeal lodged by the applicant's husband against this decision was rejected by the Administrative Court of Appeal on 7 July 1993.

The applicant's husband then lodged a constitutional appeal which was rejected by a panel of three judges of the Federal Constitutional Court (Bundesverfassungsgericht) on 10 September 1993.

These proceedings were the subject of Application No. 24O75/94 brought by the applicant's husband and declared inadmissible by the Commission on 1 December 1994.

By a decision of 26 April 1995 the Administrative Court of Appeal stayed the execution of its decision of 29 March 1993 having regard to the proceedings brought by the applicant before the European Commission of Human Rights and ordered the applicant's husband to inform the Administrative Court of the state of these proceedings.

COMPLAINTS

1. The applicant complains that the conduct of the administrative authorities in the proceedings against her husband caused her severe physical and moral suffering contrary to Article 3 of the Convention.

2. The applicant next complains that in the proceedings before the administrative courts she has never been heard, although, as a co-proprietor of the land, these proceedings affect also her own rights. She alleges a violation of Article 6 of the Convention.

3. The applicant further complains under Article 7 of the Convention that the way the administrative authorities and courts conducted this case constitutes a penalty with regard to her although proceedings have never been instituted against her.

4. She complains also that the decisions issued against her husband violate her property rights as guaranteed by Article 1 of Protocol No. 1.

5. The applicant finally complains under Article 5 of Protocol No. 7 that she was refused the right to enjoy the equality of rights and responsibilities of a private law character between spouses, since she has never been heard in the proceedings at issue. She finally complains that for the same reason she was discriminated against on grounds of sex contrary to Article 14 of the Convention.

THE LAW

1. The applicant complains that she has been subjected to inhuman and degrading treatment contrary to Article 3 (Art. 3) of the Convention in the context of the administrative proceedings instituted against her husband.

The Commission recalls the case-law of the Court in accordance

with which ill-treatment must attain a minimum level of severity before a breach of Article 3 (Art. 3) can be established (cf. Eur. Court H.R., Ireland v. United Kingdom judgment of 18 January 1978, Series A no. 25, p. 65, para. 162). Even assuming that the applicant has exhausted domestic remedies, the Commission considers that there is no evidence that the above threshold has been reached in the circumstances of the present case.

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.

2. The applicant next alleges a violation of her right to a fair hearing as guaranteed by Article 6 (Art. 6) of the Convention, mainly on the ground that she was not heard in the proceedings against her husband.

The Commission recalls that it has already examined the complaints concerning the fairness of the administrative proceedings in Application No. 24075/94 brought by the applicant's husband and has found that these complaints were manifestly ill-founded. With regard to the applicant's present complaint, the Commission notes that the applicant was not a party to the proceedings concerned and has never requested to take part in these proceedings. In these circumstances the Commission considers that the applicant's complaint does not give rise to any issue under Article 6 (Art. 6) of the Convention.

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.

3. The applicant also complains that the decisions of the administrative authorities and courts constitute a penalty with regard to her in breach of Article 7 (Art. 7) of the Convention.

Article 7 (Art. 7) of the Convention provides as relevant:

> "1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed..."

However, the Commission considers that in the present case no procedure determining the applicant's guilt and no imposition of a penalty within the meaning of this provision took place. Accordingly, Article 7 (Art. 7) is not applicable.

It follows that this complaint must be rejected as being incompatible ratione materiae with the Convention within the meaning of Article 27 para. 2 (Art. 27-2).

4. The applicant further complains that the execution of the agreement of 22 April 1985 affects her right to the peaceful enjoyment of her possessions as guaranteed by Article 1 of Protocol No. 1 (P1-1).

This provision (P1-1) 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 considers that the obligation imposed on the applicant's husband to submit a building permit comes in principle within the scope of paragraph 2 of this provision (P1-2), being a measure to enforce laws which the State "deems necessary to control the use of property in accordance with the general interest".

The Commission notes that the planning and construction legislation provides for the preservation of the landscape and the settlement structure. This is an aim which is clearly in the general interest, and accordingly the applicable legislation can be justified under Article 1 para. 2 of the Protocol (P1-2).

Furthermore no unlawfulness was established by the competent domestic authorities. The Commission notes in particular that the Administrative Court of Appeal rejected the complaints of the applicant's husband on 7 July 1993 and a constitutional appeal was rejected by a panel of three judges of the Federal Constitutional Court on 10 September 1993. Even assuming that the applicant herself has complied with the condition as to the exhaustion of domestic remedies, the Commission finds no reason to doubt that the obligation to submit a building permit was lawful.

In these circumstances, the Commission considers that, bearing in mind the wide margin of appreciation afforded to Contracting States in the field of building and planning regulations, the control of the use can be considered to be justified within the meaning of the second paragraph of Article 1 of Protocol No. 1 (P1-1) to the Convention.

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.

5. The applicant finally invokes Article 5 of Protocol No. 7 (P7-5) according to which spouses shall enjoy equality of rights and responsibilities of a private law character between them. She complains also that, contrary to Article 14 (Art. 14) of the Convention, she is a victim of discrimination on ground of sex because she has never been heard in the proceedings before the administrative authorities and courts although, as a co-proprietor of the land, she is directly affected by these proceedings.

However, the Commission finds that in accordance with the domestic law the authorities were entitled to chose one of the co-proprietors as the addressee of their decisions. It notes that after the decision of 6 October 1975 the applicant, as a co-proprietor, would have had the opportunity to join the proceedings. There is no indication that the administrative authorities and courts based their decisions on arbitrary considerations or treated this case differently from other comparable cases.

It follows that this part of the application is also 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.

Acting Secretary to the First Chamber	President of the First Chamber
(S. DOLLE)	(C.L. ROZAKIS)