AS TO THE ADMISSIBILITY OF

Application No. 13385/87
by Erhard and Martha PÖSCHL
against Austria

The European Commission of Human Rights sitting in private on 14 December 1989, the following members being present:

MM. C. A. NØRGAARD, President
J. A. FROWEIN
S. TRECHSEL
E. BUSUTTIL
A. S. GÖZÜBÜYÜK
A. WEITZEL
J. C. SOYER
H. G. SCHERMERS
H. DANELIUS
G. BATLINER
H. VANDENBERGHE
Mrs. G. H. THUNE
Sir Basil HALL
MM. F. MARTINEZ
C.L. ROZAKIS
Mrs. J. LIDDY
Mr. L. LOUCAIDES

Mr. H. C. KRÜGER, Secretary to the Commission

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 7 October 1987 by Erhard and Martha Pöschl against Austria and registered on 13 November 1987 under file No. 13385/87;

Having regard to the report provided for in Rule 40 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The applicants, a married couple, are Austrian citizens born in 1933 and 1935 respectively who reside in Klagenfurt. They are represented by Rechtsanwalt Dr. Heinz Walther of Klagenfurt.

The applicants complain that under new legal regulations they are required to pay interest for a credit which was originally granted without an obligation to pay interest.

The credit in question, of more than 15 million AS, had originally been granted in 1963 to the applicants' legal predecessor by the Public Fund for Reconstruction of Dwelling Houses (Wohnhaus-wiederaufbaufonds). The Fund was established by legislation of 1948 (Wohnhauswiederaufbaugesetz, BGBl. No. 130) and reorganised in 1974 (Stadterneuerungsgesetz, BGBl. No. 287).

By an Act of 1984 (Wohnhaussanierungsgesetz, BGBl. No. 438) Section 33 of the 1974 Act was amended to the effect that the Federal Minister competent to administer the Fund could by Decree (Verordnung) prescribe the levying of interest up to 6% for outstanding credits.

The Minister made use of this authorisation and issued a Decree (Stadterneuerungs-Verordnung BGBl. No. 528/1984) which provided in Section 2 that as from 1 January 1986 the interest should be 1% per semester for the first two repayments and 1,5% per semester thereafter.

In norm control proceedings instituted in connection with a case in which the applicants were not involved, the Constitutional Court (Verfassungsgerichtshof) found the 1984 legislation (Section 33 of the 1974 Act as amended in 1984 and Section 2 of the Decree) unconstitutional on the ground that there was no sufficient legal determination of the Minister's discretion ("formalgesetzliche Delegation"). The relevant decisions of the Constitutional Court (G 86/86 of 3 October 1986 and V 41/85 of 9 October 1986) fixed 30 September 1987 as the time limit within which new legislation should be enacted.

A new law (Rückzahlungsbegünstigungs- und Wohnrechtsänderungsgesetz) was enacted on 3 July 1987 (BGBl. No. 340). It contained regulations similar to those of the 1984 Decree which were accorded constitutional rank (Verfassungsbestimmung) thus making them unassailable before the Constitutional Court.

Before the entry into force of this new law the 1984 legislation, although found to be unconstitutional, continued to apply to all cases except the one which had led to the Constitutional Court's above decisions (cf. Article 140 paras. 5 and 7 of the Federal Constitution). The applicants therefore were required to pay interest as prescribed in the 1984 Decree, which they did under protest, reserving their rights in view of the present Convention proceedings.

Because of the constitutional situation, no new norm control proceedings could be instituted before the Constitutional Court either by a civil court seized with the applicants' case or by the applicants themselves. In the latter respect the applicants refer to a Constitutional Court decision (G 230/85, V 59/85 of 3 March 1986) which declared an individual norm control application inadmissible. They were thus prevented from raising even constitutional issues other than those considered by the Constitutional Court in its above decisions, including issues under the Convention.

The applicants finally state that they did not make use of the privileged conditions for the repayment of the credit under an Act of 1971 (Rückzahlungsbegünstigungsgesetz BGBl. No. 336) because they trusted that the credit conditions could not be changed.

COMPLAINTS

The applicants consider that their right to a credit without an obligation to pay interest was a "civil right" within the meaning of Article 6 para. 1 of the Convention. They complain of a violation of this provision, read in conjunction with Article 13 of the Convention, because they did not have any judicial or other effective remedy to challenge the unilateral change of the credit conditions brought about by the ministerial Decree of 1984.

The applicants further allege a violation of Article 1 of Protocol No. 1 to the Convention, claiming that the legal imposition of an obligation to pay interest amounted to an interference with their right to the peaceful enjoyment of their possessions.

The applicants also allege that they have been discriminated against in the enjoyment of their property rights, contrary to the requirements of Article 14 of the Convention, in that the obligation to pay interest affected various groups of persons differently, without any reasonable justification, depending on the date when the credit had been granted and how much had been repaid: in particular

the applicants were treated differently from those persons who had profited from privileged conditions of repayment under the 1971 Act and who, to this extent, were exonerated from the obligation to pay interest.

As regards compliance with the six months time-limit, the applicants finally submit that the situation complained of has become final only on the date of the adoption of the 1987 Act.

THE LAW

1. The applicants complain of a violation of Article 6 para. 1 (Art. 6-1) of the Convention because they did not have a judicial remedy to challenge the modification of the credit conditions which in their view affected their "civil rights" within the meaning of this provision.

The Commission notes, however, that the credit in question was granted to the applicants by a public fund established under legislation enacted to promote the reconstruction of dwelling houses in the public interest. Both the original particularly favourable credit conditions and their subsequent amendment by the introduction of an obligation to pay interest were not the result of contractual negotiations between the parties concerned, but of the legislation itself which in this way regulated the use of public funds for subsidising reconstruction work. In these circumstances the Commission does not consider it as decisive that at least for certain purposes Austrian law assimilates the legal relationship between the parties concerned to a contract of civil law. In the Commission's opinion the modification of the credit conditions by an act of legislation did not "determine" the applicants' "civil rights" within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention. Even assuming that the applicants' "civil rights" were affected, Article 6 para. 1 (Art. 6-1) of the Convention in any event does not include a right to have legislation reviewed by a court.

The applicants' complaint under this provision must accordingly be rejected under Article 27 para. 2 (Art. 27-2) of the Convention as being incompatible with the provisions of the Convention, ratione materiae.

2. The applicants complain that the imposition of an obligation to pay interest for the credit granted to them amounted to an interference with their right to the peaceful enjoyment of their possessions under Article 1 of Protocol No. 1 (P1-1) to the Convention.

However, the Commission considers that the right to a credit of the kind in question cannot as such be regarded as a "property right" within the meaning of this provision. Nevertheless, as its use is tied to certain real property and represents an important economic value, it is possible that modifications of the credit conditions may affect property rights. In the Commission's view such modifications must be considered under the second paragraph of Article 1 (Art. 1-2) which recognises the right of the State "to enforce such laws as it deems necessary to control the use of property in the general interest".

Insofar as the applicants complain that the legislation applied had been found to be unconstitutional, it must be observed that in the Austrian legal system the said unconstitutionality did not make the temporary further application of this legislation unlawful. The measure complained of must therefore be regarded as "lawful" for the purposes of the Convention. The Commission further considers that the introduction of an obligation to pay interest also pursued a legitimate aim of general interest, as it was subsequently confirmed by constitutional legislation, and that it was not disproportionate.

The applicants' above complaint must therefore be rejected as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

3. The applicants complain of discrimination contrary to Article 14 of the Convention, read in conjunction with Article 1 of Protocol No. 1. (Art. 14+P1-1) However, the Commission finds no indication that by the general introduction of an obligation to pay interest on all outstanding credits any arbitrary distinctions or distinctions based on criteria of personal status incompatible with Article 14 (Art. 14) of the Convention were made. This complaint, too, must therefore be rejected as being manifestly ill-founded.

4. The applicants finally complain under Article 13 (Art. 13) of the Convention that they had no effective domestic remedy to challenge the introduction of an obligation to pay interest. The Commission recalls that this obligation was introduced by legislation and that the Commission has consistently held that Article 13 (Art. 13) of the Convention does not require a remedy against legislation as such (cf. Young, James and Webster case, Comm. Report 14.12.79, para. 177). This last part of the application is therefore also manifestly ill-founded.

For these reasons, the Commission

DECLARES THE APPLICATION INADMISSIBLE

Secretary to the Commission — President of the Commission

(H.C. KRÜGER) — (C.A. NØRGAARD)