AS TO THE ADMISSIBILITY OF

Application No. 16261/90
by R.M.
against Austria

The European Commission of Human Rights (First Chamber) sitting in private on 30 June 1993, the following members being present:

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

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 4 December 1989 by R.M. against Austria and registered on 7 March 1990 under file No. 16261/90;

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 living in Ottnang. He is represented by Mr. E. Proksch, a lawyer practising in Vienna.

It follows from the applicant's statements and the documents submitted that the applicant is the owner of a small agricultural property which he uses for organic biological cultivation.

On the basis of a consolidation plan for his community the competent agrarian authorities (Gmunden) on 22 September 1982 provisionally allotted to the applicant a new plot of land while his previous property was allotted to other farmers.

In consequence of the applicant's appeal the consolidation plan was amended and his property was returned to him in 1988.

Alleging that the yield of the provisionally allotted property was inferior to the yield from his original property the applicant requested compensation in the amount of AS 95,000.

This request was rejected by the competent agrarian authorities on the ground that it had no basis in Austrian law.

On 26 September 1989 the Austrian Constitutional Court (Verfassungsgerichtshof) rejected the applicant's constitutional

complaint stating that there was no appearance of a violation of constitutional rights.

The applicant also appealed to the Administrative Court (Verwaltungsgerichtshof). This court rejected the appeal on 21 September 1989 as being unfounded. The court confirmed that under the existing law there was no basis for the applicant's claim.

COMPLAINTS

The applicant submits that his claim for compensation constitutes a civil right within the meaning of Article 6. He considers that the agrarian authorities which rejected his complaint for compensation can not be considered as an impartial tribunal established by law.

The applicant furthermore alleges a violation of Article 1 para. 1 of Protocol No. 1.

THE LAW

1. The applicant has invoked Article 6 (Art. 6) of the Convention arguing that he did not have access to an independent tribunal which could have examined his claim for compensation.

However, even assuming that Article 6 (Art. 6) applies, it has not been shown in the present case that there were factual issues before the Administrative Court which that court was prevented from examining. Consequently it cannot be found that the Administrative Court was in any way limited in its competence to examine the issues raised by the applicant. The Administrative Court found that there was no basis in the domestic law for the applicant's alleged claim. It has not been shown that this finding is inconsistent with any provisions of the Austrian legal order or arbitrary for any other reason.

Consequently there is, in the particular circumstances of the case, no appearance of a violation of Article 6 (Art. 6) of the Convention and to this extent the application has therefore to be rejected as being manifestly ill-founded.

2. The applicant has further complained that his right to the peaceful enjoyment of possessions, as guaranteed by Article 1 of Protocol No. 1 (P1-1), was violated, alleging that the plot of land allocated to him was not adequate.

Article 1 of Protocol No. 1 (P1-1) provides:

> "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 measure in question concerned the regulation of the use of the applicant's property. It first notes that the applicant has not contested that the measure was taken on the basis of domestic law. The Commission further considers that the consolidation of agricultural land is in the general interest. Finally, as far as the question of a fair balance between the general interest of the community and the requirements of the protection of the

individual's fundamental rights is concerned (cf. Eur. Court H.R., Sporrong and Lönnroth judgment of 24 September 1982, Series A No. 52, p. 26, para. 69), the Commission notes that in the applicant's case the consolidation plan was eventually amended and the applicant was returned his original property. The loss which he allegedly incurred in respect of yield is not of such importance as to constitute a reason for considering the provisional attribution of other land as a disproportionate measure imposing an intolerable, excessive burden on the applicant.

It follows that this part of the application has likewise to be rejected as being 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 — Acting President of the First Chamber

(M.F. BUQUICCHIO) — (E. BUSUTTIL)