AS TO THE ADMISSIBILITY OF

Application No. 32009/96
by Thea REUTER
against Germany

The European Commission of Human Rights (First Chamber) sitting in private on 16 October 1996, the following members being present:

Mrs. J. LIDDY, President
MM. M.P. PELLONPÄÄ
E. BUSUTTIL
A. WEITZEL
B. MARXER
G.B. REFFI
B. CONFORTI
N. BRATZA
I. BÉKÉS
G. RESS
A. PERENIC
C. BÎRSAN
K. HERNDL
M. VILA AMIGÓ

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 12 May 1991 by Thea REUTER against Germany and registered on 25 June 1996 under file No. 32009/96;

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, born in 1926, is a German national and resident in Simmern.

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

In 1990 and 1991 the applicant, who owns a house where she lives in the attics, unsuccessfully instituted eviction proceedings against Ms. S., the tenant of the apartment on the ground floor of her house.

In 1994 Ms. S. filed an action with the Simmern District Court (Amtsgericht) against the applicant, claiming a declaratory judgment to the effect that the renewed notice of termination of her tenancy contract by the applicant was invalid. The applicant, represented by counsel, again claimed the eviction of Ms. S.

On 6 April 1995 the Simmern District Court decided that the tenancy contract between the applicant and Ms. S. had to be continued for an indefinite period. The Court, having regard to S. 564b and S. 556a para. 1 of the Civil Code (Bürgerliches Gesetzbuch), found that, even assuming that the applicant had shown that she needed the apartment for her own accommodation, Ms. S. could claim the

continuation of the tenancy on the ground that her eviction would amount to an undue hardship. The Court, taking into account Ms. S.'s state of health, as established in the previous proceedings and confirmed in a recent medical certificate, considered that her interests in staying in the apartment outweighed the applicant's interests. The Court also observed that the applicant could have previously moved into an apartment on the first floor, but had preferred to rent it to third persons.

The rent legislation forms part of the Civil Code (SS. 535 to 580a), which contains rules on the protection of tenants. According to S. 554a para. 1, the tenant is entitled to object to the termination of the tenancy and claim its continuation, if such termination of the tenancy would amount, for the tenant himself or his family, to a hardship which is not justified, having due regard to the landlord's legitimate interests. S. 564a para. 1 provides that the landlord can only terminate a tenancy if he has a legitimate interest to do so. S. 564a para. 2 mentions, inter alia, the example that the landlord needs the accommodation concerned for his own housing of the housing of one of his family members.

On 7 November 1995 the Bad Kreuznach Regional Court (Landgericht) dismissed the applicant's appeal. It confirmed the reasoning of the District Court. It weighed in detail the applicant's disadvantageous living situation against the risk that, on account of her poor health, the then 86-year-old tenant, who had lived in the said apartment for 33 years, would become a person needing care in case of her eviction.

On 18 January 1996 the Federal Constitutional Court (Bundes-verfassungsgericht) refused to admit the applicant's constitutional complaint (Verfassungsbeschwerde).

COMPLAINTS

The applicant complains about the German court decisions dismissing her claims for an eviction of her tenant Ms. S. She invokes Articles 2, 5, 6 and 8 of the Convention.

THE LAW

1. The applicant's complaint relate to the refusal, by the German courts, to permit the termination of a tenancy contract with one of the applicant's tenants, and the eviction of this tenant.

2. The Commission has first examined the applicant's complaint under Article 8 (Art. 8) of the Convention.

Article 8 (Art. 8), so far as relevant, provides as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society ... for the protection of the rights and freedoms of others."

The Commission recalls that, although the object of Article 8 (Art. 8) is essentially that of protecting the individual against arbitrary interference by the public authorities, it may also give rise to positive obligations, particularly the obligation to ensure respect for private and family life even in the sphere of interpersonal relations. In this matter as in others a fair balance must be struck between the general interest and the interests of the people concerned (cf. Eur. Court HR., Velosa Barreto v. Portugal judgment of 21 November 1995, para. 23, to be published in Series A no. 334).

The Commission recognises that the decisions complained of prevented the applicant from living in another apartment of the house owned by her, namely the apartment on the ground floor rented by Ms. S.

However, effective protection of respect for private and family life does not go so far as to place the State under an obligation to give a landlord or landlady the right to recover possession of a rented house or apartment on request and in any circumstances (cf. Velosa Barreto judgment, para. 24, loc. cit.). The legislation applied by the German courts pursues the protection of the rights of others, namely the social protection of tenants.

Both the Simmern District Court and the Bad Kreuznach Court of Appeal found that, even assuming that the applicant had shown that she needed the apartment in order to live there, the tenant Ms. S. could claim the continuation of the tenancy on the ground that her eviction would amount to an undue hardship. In this respect, the Courts carefully weighed the applicant's and her tenant's conflicting interests. Both courts, on the basis of medical certificates, reached the conclusion that the interests of the then 86-year-old tenant, on account of her poor health, outweighed the interests of the applicant as owner of the house concerned.

The applicant's submissions do not disclose any indication that the German courts acted arbitrarily or unreasonably or failed to discharge their obligation to strike a fair balance between the respective interests.

Accordingly, there is no indication of a breach of Article 8 (Art. 8) of the Convention.

It follows that the applicant's complaint under Article 8 (Art. 8) is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

3. The Commission, considering the applicant's legal position as the owner of the house in question, has further examined her complaint under Article 1 of Protocol No. 1 (P1-1).

This provision 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 finds that the restriction on the applicant's right to terminate her tenant's lease constitutes control of the use of property within the meaning of the second paragraph of Article 1 of Protocol No. 1 (P1-1), which pursued a legitimate social policy aim. Moreover, the Commission finds that the impugned court decisions, taken in accordance with the legislation on the protection of tenants, complied with the conditions laid down in Article 1 of Protocol No. 1 (P1-1) (cf., mutatis mutandis, Eur. Court HR., Mellacher v. Austria judgment of 19 December 1989, Series A no. 169, pp. 25-26, para. 45; Spadea and Scalabrino v. Italy judgment of 28 September 1995, Series A no. 315-B, pp. 25-27, paras. 29-41; Velosa Barreto judgment, loc. cit. paras. 35-37). In the circumstances of the present case, the Commission, having regard to its above findings under Article 8 (Art. 8) of the Convention, considers in particular that the German

courts duly balanced the interests of the parties to the dispute before them. Consequently, regard being had to the legitimate aim pursued, the court decisions in question were not disproportionate in view of the margin of appreciation permitted under the second paragraph of this provision. Accordingly, there is no appearence of a breach of Article 1 of Protocol No. 1 (P1-1).

It follows that the part of the application is likewise manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2).

4. The Commission further finds that there is no appearance of a violation of the other Convention rights invoked by the applicant, namely her rights under Articles 2, 5 and 6 (Art. 2, 5, 6). In particular, there is nothing to show that the applicant could not duly present her arguments in the court proceedings or that the proceedings were otherwise unfair, contrary to Article 6 (Art. 6). It follows that this part of the application is also manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2).

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

M.F. BUQUICCHIO
Secretary
to the First Chamber

J. LIDDY
President
of the First Chamber