AS TO THE ADMISSIBILITY OF

Application No. 15222/89
by G.S.
against Austria

The European Commission of Human Rights sitting in private on 13 May 1992, the following members being present:

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

Mr. M. de SALVIA, 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 18 April 1989 by G.S. against Austria and registered on 20 July 1989 under file No. 15222/89;

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 applicant is an Austrian citizen living in Linz. He is represented by Mr Helmut Blum, a lawyer practising in Linz.

The facts of the case, as they have been submitted by the applicant and which follow from the statements and the documents submitted by him, may be summarised as follows.

On 11 February 1986 the applicant bought a youth hostel situated in Fusch and registered in the land registry of the District Court (Bezirksgericht) of Zell am See (Salzburg).

On 25 July 1986 the local authority of Fusch ordered the youth hostel to be closed on the ground that an inspection following complaints from various guests of the youth hostel had revealed a number of detectable or suspected defects. A detailed description of these defects was given.

The applicant's appeal (Berufung) was in part rejected by the local authority on 29 January 1987. The applicant was however allowed to use the ground floor of the hostel.

Both the applicant and the company which had sold the property to the applicant lodged an appeal with the Regional Government of Salzburg (Landesregierung). On 27 August 1987 the Regional Government rejected the applicant's appeal as being ill-founded and the company's appeal as being inadmissible. The company had stated that by agreement of 2 and 9 January 1987 it had bought the youth hostel back from the applicant. Its appeal was considered inadmissible however as no appeal had previously been lodged with the local authority.

In respect of the applicant's appeal, it is stated that the applicant had not been registered as the new owner of the youth hostel in the land register. Under the Civil Code property rights with regard to real property are not transferred by a sales contract alone but require the subsequent registration of the buyer as the new owner. Therefore the applicant was not affected by the decision of the local authority according to which authorization to re-open the youth hostel could only be given if certain works were carried out making the use of the building more secure.

The applicant lodged an action with the Administrative Court (Verwaltungsgerichtshof) which was rejected on 22 September 1988, and served on applicant's counsel on 24 October 1988. The Administrative Court likewise considered that only the registered owner of the property was affected in his rights by the decision complained of. Consequently the applicant was not a party in the proceedings in question and the dismissal of his appeal did not violate his rights.

COMPLAINTS

The applicant points out that the local authority's decision of 29 January 1987 granting his appeal in part was communicated to him. He therefore concludes that he was a party in the proceedings and the Administrative Court wrongly dismissed his action. He submits that the closure of the youth hostel deprived him of his only means of existence, obliging him to institute settlement proceedings in court to reach agreement with his various creditors. He also submits that the Administrative Court's decision in effect deprived him of access to a court to have his civil rights determined. He alleges a violation of Article 6 of the Convention.

THE LAW

The applicant complains of the dismissal of his administrative action by the Administrative Court on 22 September 1988 and also of the court proceedings concerned. He invokes Article 6 (Art. 6) of the Convention.

With regard to the judicial decision of which the applicant complains, the Commission recalls that, in accordance with Article 19 (Art. 19) of the Convention, its only task is to ensure the observance of the obligations undertaken by the Parties in the Convention. In particular, it is not competent to deal with an application alleging that errors of law or fact may have been committed by domestic courts, except where it considers that such errors might have involved a possible violation of any of the rights and freedoms set out in the Convention. The Commission refers, on this point, to its established case-law (see e.g. No. 458/59, Dec. 29.3.60, Yearbook 3 pp. 222, 236; No. 5258/71, Dec. 8.2.73, Collection 43 pp. 71, 77; No. 7987/77, Dec. 13.12.79, D.R. 18 pp. 31, 45).

The applicant's action was considered by the Administrative Court which found that under Austrian law he was not entitled to challenge an administrative act directed against another person, namely the registered owner of the youth hostel operated by him. The Commission cannot find that this ruling is in any way arbitrary.

It is true that the applicant also complains that in effect he was deprived of access to a court in violation of Article 6 para. 1 (Art. 6-1) of the Convention.

However, a right of access to a court under Article 6 (Art. 6) may only be claimed if the applicant has an arguable claim under domestic law. In the present case the applicant is undisputedly not the owner of the building which according to the Austrian authorities, needs repairs. He cannot therefore, under Austrian law, contest the

owner's obligation to carry out the repairs required by the authorities. On the other hand, if he has contractual relations with the owner he is free to bring an action against him in relation to the claims which may arise from the fact that he can no longer use the building as a youth hostel.

In the circumstances the Commission therefore finds no appearance of a violation of the Convention.

It follows that the application is manifestly ill-founded and must be rejected in accordance with 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. de SALVIA) (E. BUSUTTIL)